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Town of North Smithfield  
Planning Board  
c/o Mark Carruolo  
Town Planner  
Town Hall  
83 Greene Street  
North Smithfield, RI 02896

**RE: Unified Land Development Plan Review, Including a Special Use Permit, Dimensional Variances and Waivers as Required for a Wireless Communications Facility (the “Application”)**

**Applicant:** American Tower LLC (“ATC”)

**Site:** 51 Industrial Drive, North Smithfield, RI (Tax Assessor’s Plat 5, Lot 484) (the “Site”)

**Owner:** MJJB Development, LLC (“Owner”)

**Facility:** Install a 140’ above ground level (hereafter “AGL”) monopole-style tower (the “Monopole”) with the wireless communication facilities of FCC licensees AT&T, Verizon Wireless, and T-Mobile (the “Carriers”) attached to the Monopole with the Carriers’ equipment cabinets containing the associated electronic equipment adjacent at the base of the Monopole with cables running from inside the Monopole to the equipment, all within a fenced compound with underground utilities from an existing utility pole (the “Facility”), all as depicted on the plans submitted with the Application (the “Plans”). The Application is submitted in cooperation with the Town of North Smithfield which allowed for the removal of the Carriers’ wireless facilities collocated on the existing nearby water tank (the “Tank”) located at 40 Comstock Road which is being refurbished. The previously approved and installed temporary monopole and associated wireless facilities will be removed within a reasonable time after commencement of operations by the Carriers at the Monopole and the Facility.

**Relief:** **Minor Land Development Review** pursuant to Section 5.4 of the Ordinance - the proposed use is a permitted use in the Manufacturing Zoning District, subject to Development Plan Review in Section 17 (see Section 5.4.7.18 –

Cellular Communications Tower – Monopole over 125 feet in height and up to 200 feet in height); and,

**Special Use Permit** pursuant to Section 5.6.3.10(6)(A)(1); and,

**Dimensional Variances** from:

Sections 5.6.3.10(7)(A)(1) and (2) for setbacks from: any residential structure or lot line a minimum distance of 500 feet; and the lot line of any adjoining commercial or manufacturing structure or use a distance equal to one and one-half times the height of the tower; and,

**Waivers** as required to install, operate and maintain the Facility,

all pursuant to the North Smithfield Zoning Ordinance (the “Ordinance”), Rhode Island General Laws, and the federal Telecommunications Act of 1996 (the “TCA”), and such other relief as deemed necessary, all rights reserved. ATC requests that the Planning Board combine the preliminary and final approval stages.

Dear Honorable Members of the Town of North Smithfield Planning Board:

On behalf of ATC and the Owner, and while reserving all rights, we are pleased to submit this legal brief to the Town of North Smithfield Planning Board (the “Board”) in support of the Unified Application to install, operate and maintain the Facility at the Site, all in accordance with the Ordinance, Rhode Island law and the TCA. In light of the TCA and as will be demonstrated herein and by ATC at the public hearing(s) before the Board, ATC’s Facility complies with the Ordinance. The following provides background information regarding the Facility and addresses each applicable section of the Ordinance.

## **BACKGROUND**

The Site is located within the Manufacturing (M) zoning district. The Carriers are licensed by the Federal Communications Commission (“FCC”) to provide wireless communication services in the area and currently operate wireless facilities collocated on a temporary tower on the Site, and previously operated on a water tank owned by the Town of North Smithfield and located adjacent to the Site at 40 Comstock Road. ATC maintained a legal interest in the agreements with the Carriers on the Tank and controlled and managed the wireless facilities on the Tank. The Town of North Smithfield requested, through ATC, that the Carriers remove their wireless facilities from the Tank. ATC and the Carriers worked cooperatively with the Town of North Smithfield for many months to accommodate this request at significant cost to ATC and disruption to the Carriers. In order to remove the Carriers’ wireless facilities from the Tank, a temporary monopole was approved and installed to temporarily allow the Carriers to collocate and maintain critical wireless coverage in the area. As previously discussed with the Board at the hearings relating to the temporary monopole, ATC is not requesting approval of a permanent facility through this Application to maintain the wireless coverage in this area of North Smithfield.

ATC entered into an agreement with the Owner of the Site which allows for the installation of the Facility on the Site. ATC owns and manages wireless communication infrastructure throughout the United States. ATC leases space to wireless communications services providers and other users of wireless technologies. ATC strives to be a good neighbor to the communities within which it has communication sites and has worked cooperatively with the Town of North Smithfield on this overall project. All three Carriers will utilize the Facility as noted in the attached letters of support and interest.

Maintaining the existing wireless coverage in the area is critical to and will not be a threat to the public health, safety and welfare. In fact, ATC submits that the Facility will aid in public safety by maintaining these critical wireless communication services for the residents, businesses, commuters, emergency personnel and travelers utilizing wireless communications near the Site and along the nearby roads, all as depicted on the coverage maps submitted. These wireless communication services further the public interest of health and safety as they provide wireless emergency 911 services to the community and communication services for the public. According to published reports, approximately 80% of all emergency 911 calls are made from wireless devices.

This Facility also aligns with the objectives of FirstNet's mission to create a nationwide broadband network for America's public safety first responders. AT&T's network provides dedicated and preemptive services on its network for first responders. FirstNet is a federal agency with a mandate to create a nationwide, interoperable public safety broadband network for first responders. First responders across the country have relied on more than 10,000 separate radio networks which oftentimes do not interoperate with one another. By deploying a nationwide broadband public safety network built specifically to meet the communication needs of first responders, the FirstNet network provides a solution to the decades-long interoperability and communication challenges first responders have experienced. These issues were highlighted in the 9/11 Commission's Final Report. Using a combination of new and existing wireless facilities, AT&T provides prioritized, preemptive wireless services for first responders across Rhode Island and nationwide. FirstNet's initiatives strengthen and modernize these communications services by providing for quicker response and communication connectivity by law enforcement, fire, emergency medical and other public safety personnel. FirstNet requires a highly reliable network that offers priority to first responders with a trusted and resilient network. The Facility will allow for continuing access to this reliable and robust network in this area of the Town of North Smithfield. Today, wireless infrastructure is required to assist with public safety needs.

The Facility is shown in detail on the Plans submitted with this Application. The Carriers operate nationwide wireless communication systems that offer enhanced features such as caller ID, voice mail, e-mail, superior call clarity and high-speed data services. The Carriers are authorized to provide wireless services through licenses issued by the FCC. The Facility is critical to maintaining reliable and cutting-edge wireless communication services in and around

the Town of North Smithfield but especially in the area around the Site. To replicate the existing coverage in the area, the Facility must be located within the general vicinity of the Tank and at a height to replicate the coverage and avoid interference from the Tank itself.

As will be demonstrated through the written and oral evidence at the public hearing(s) in connection with the Application, in light of the TCA, the Facility meets with all applicable requirements of the Ordinance to the maximum extent possible. ATC has located the Monopole to avoid interfering with any operations at the Site. Additionally, the Facility is located to minimize the impact on the nearby neighborhood and uses the natural vegetative screening available at and near the Site.

The Facility will not generate any additional noise, traffic, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. No increase in traffic or hindrance to pedestrian movements will result from the Facility. On average, only one or two round trip visits per month are required to service and maintain the Facility which is already occurring to service the existing wireless facilities. This is an unmanned facility and will have no negative effects on the adjoining lots. The Facility will comply with all applicable building code requirements. The Facility will comply with the maximum permissible levels of emissions using conservative methods and parameters established by the FCC, the exclusive regulatory agency with respect to radio frequency emissions. The Facility does not require police or fire protection because it has its own monitoring equipment that can detect malfunction and/or tampering.

### **THE ORDINANCE**

As provided in the use chart contained in Section 5.4 of the Ordinance, the proposed use is a permitted use in the Manufacturing Zoning District, subject to Development Plan Review in Section 17 of the Ordinance (see Section 5.4.7.18 – Cellular Communications Tower – Monopole over 125 feet and up to 200 feet in height).

Section 45-23-50 of the Rhode Island General Laws entitled “Development Plan Review”, authorizes the Board to consider a unified application for Development Plan Review and empowers the Board to issue special use permits and variances under this unified Development Plan Review process. ATC also requests that the Board combine the preliminary and final approval stages pursuant to R.I. General Laws §45-23-50(d).

### **SECTION 17. SITE PLAN REVIEW**

**17.1. Authority and Purpose. Development Plan Review shall be required for certain types of development as described in Section 17.2 below but will not preclude the need to meet other requirements as contained in the Zoning Ordinance, nor be used to deny a permitted use as provided in Section 5.4.**

ATC respectfully seeks Development Plan Review approval from the Board for the permitted use as provided in Section 5.4.7.18 of the Ordinance.

### **17.3. Review Process.**

**17.3.1. Review by Planning Board.** Development Plan Review applications involving construction or alteration of non-residential or mixed-use buildings less than 5,000 square feet shall be reviewed by the Planning Board pursuant to the same procedures and time periods set forth in Section Article 3-5 of the Land Development and Subdivision Regulations (Regulations) for Minor Subdivisions, as amended.

As evidenced on the Plans, the Facility, while not a building, is less than 5,000 square feet.

**17.4. Application Contents.** Every site plan submitted in accordance with this article shall include the following data, details and supporting plans. Plans must be prepared and signed by registered engineers, architects, land surveyors or landscape architects, as appropriate. The number of pages submitted should depend upon the proposal's size and complexity.

ATC respectfully submits that the evidence and Plans submitted with the Application contain sufficient detail for the Board to conduct a full review of the Application for the Facility.

**Sec. 17.5. Environmental impact assessment.** The applicant shall minimize significant emission of noise, dust, fumes, noxious gases, radiation, water pollutants, flooding, erosion, sedimentation, glare and adverse lighting.

The Facility will not increase any impact on the area because substantially similar wireless communication services facilities are currently operating on the Site. The antennas and electronic equipment do not generate significant noise and no fumes, noxious gases, water pollutants, flooding, erosion, sedimentation, glare or adverse lighting. No lighting is required. The emissions from the Facility will comply with all applicable FCC standards as required of all carriers.

**17.6 . Fiscal impact assessment.** A fiscal impact analysis of the proposed development shall be required by the Board with respect to the economic impact of Major Land Development Projects on the Town. The Board, at its discretion may require an impact analysis for Minor Land Development Projects.

The Facility will have no negative fiscal impact, is unmanned and requires no Town services.

**17.7. Traffic impact assessment.** The applicant shall minimize vehicular and pedestrian conflict (i.e., provisions for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, internal traffic control, and control of flow patterns). A traffic impact analysis of the proposed development shall be required to evaluate the points of pedestrian and vehicular traffic conflict for all Major Land Development Projects. The Board, at its discretion may require a traffic impact analysis for Minor Land Development Projects.

The Facility will not generate any additional traffic in the area because substantially similar wireless facilities are currently operating on the Site and previously operated at the Tank. The Carriers' technicians will access the Facility over an existing access drive from Comstock Road for their infrequent maintenance visits, typically once a month.

**17.8. Site and design standards** The following standards pertain mainly to land outside of the public right-of-way. Any construction or improvements involving a public right-of-way or utilities in the public right-of-way shall be designed in accordance with the standards contained in the Regulations, incorporated herein by reference.

The Facility will have minimal impact on the Site. There will be no significant stormwater runoff based on the minimal increase in non-pervious surfaces in light of the large size of the parcel. Electric and fiber utilities will be provided underground from an existing utility pole, all as approved by the utility company.

#### **17.8.2. Groundwater Resource Protection Wastewater Disposal**

The Facility is unmanned and does not require water, sewer or wastewater disposal.

#### **17.8.3 Access and Circulation Vehicular and Pedestrian Circulation**

Access to the Facility will be via existing an existing access from Comstock Road. There will be no change in access and vehicular and pedestrian circulation.

#### **17.8.4. Landscaping**

There is currently no landscaping in this area of the Site. ATC proposes a chain linked fence to secure the Facility. In light of the nature of the proposed project and existing vegetation, no landscaping is proposed. ATC notes that the Facility will be substantially similar to the wireless facilities previously located at the Tank. ATC is willing to work with the Board.

#### **17.8.6. Building Design Maintaining Local Architectural Character**

This provision of the Ordinance is not applicable to this Application because no buildings are being installed.

#### **17.8.7 Servicing the Building Loading Areas**

This provision of the Ordinance is not applicable to this Application because no loading areas are proposed or required.

#### **17.9. Waivers.**

ATC respectfully asserts that the evidence submitted with the Application, including the Plans, are sufficient for the Board to make an informed decision, especially in light of the nature of the installation of the Facility and the minimal impact to the area near the Site. To the extent necessary, ATC requests any required waivers from the technical filing requirements.

**17.10 Required Findings** The following required findings shall be the basis for Development Plan Review approval:

**(1) That the design of the proposed development will be consistent with the purposes of this Ordinance as listed in Section 17.1;**

The Facility is consistent with the purposes of the Ordinance. The Facility will promote public health, safety and the general welfare by maintaining critical wireless services as described above, including emergency communication services in the areas near the Site. ATC has proposed an installation at the Site located in the Manufacturing zoning district and adjacent to the previously existing wireless facilities at the Tank. The Facility is proposed as the permanent replacement for the facilities at the Tank, as requested by the Town of North Smithfield in order to allow for the refurbishing of the Tank. The project will not increase traffic in the area and will use an existing drive for access off of Comstock Road. We note there is inadequate space for the Facility at the parcel which contains the Tank, and the wireless facilities must be in close proximity to the Tank to maintain wireless services. Natural, historic and cultural resources will be preserved and not be negatively impacted through the design and location of the Facility. Open space will not be negatively impacted. The Site is private property with no right of public access. No lighting is required and there is adequate parking available for the minimal maintenance visits by the Carriers. Other than signage required by the FCC, no signage is proposed. There is no proposed signage for advertising. The previously approved and installed temporary monopole and associated wireless facilities will be removed within a reasonable time after commencement of operations by the Carriers at the Monopole and the Facility.

**(2) That the design of the proposed development will be consistent with the goals of the North Smithfield Comprehensive Plan, as amended, and complies in all respects with the North Smithfield Zoning Ordinance;**

The design of the Facility is consistent with the North Smithfield Comprehensive Plan, to the extent applicable. See the expert planner's report prepared by Pimentel Consulting, Inc. and submitted with the Application. The project as proposed is submitted to accommodate the request of the Town of North Smithfield in order to refurbish the Tank.

**(3) Any conditions or restrictions that are necessary to ensure that these findings have been met have been incorporated into the vote of approval.**

ATC is willing to work cooperatively with the Board and consider any reasonable conditions of approval.

**Section 17.11 Conditions of Development Plan Review Approval**

ATC is willing to work cooperatively with the Board and consider any reasonable conditions of approval.

**Land Development and Subdivision Regulations of North Smithfield, Rhode Island (the "Regulations")**

**Article 3.3. Application for Development and Certification of Completeness**

**(A) Classification.** The Administrative Officer shall advise the applicant as to which approvals are required and the appropriate board for hearing an application for a land development or subdivision project.

Based on ATC's discussions with the Administrative Officer, ATC requests Minor Land Development Plan Review with no Public Improvements.

### **Article 3.5. Minor Land Development and Minor Subdivision Review**

ATC respectfully requests that the Board combine the preliminary and final approval stages due to the straightforward nature of the Facility.

**Article 1.5. Required Findings** The Planning Board shall make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:

- 1. The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;**
- 2. The proposed development is in compliance with the standards and provisions of the North Smithfield Zoning Ordinance;**
- 3. There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;**
- 4. Subdivision, as proposed will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable (see definition of Buildable Lot). Lots with such physical constraints to development Page I-3 may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans;**
- 5. All proposed land developments and all subdivision lots shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement; and,**
- 6. Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations.**

Based on the evidence submitted with the Application and presented at the public hearing(s), ATC respectfully requests that that the Board make such positive findings to the extent applicable.

## **WIRELESS COMMUNICATIONS FACILITIES**

### **5.6.3.10. Wireless communications facilities (WCF).**

**(1) Purpose.** The purpose of this section is to regulate the placement of wireless communications facilities, limited to monopoles (towers), and related equipment and structures, telephone and cable television equipment and related equipment and the



**addition of communication equipment to existing structures. For the purpose of this section lattice towers and guyed towers are not permitted. The regulations serve to establish a procedure for application of Special Use Permits, establish development standards and location requirements and to encourage the co-location of equipment onto existing structures.**

ATC is proposing a Monopole

**The goals of this section are to:**

**a. Address the public safety concerns associated with the siting of wireless communications facilities;**

The Facility will comply with all applicable building codes, laws, regulations and standards, including the FCC limitations relating to radio frequency emissions.

**b. To preserve the character, appearance, property values, natural resources and historic sites of the town.**

The Facility is proposed in an area of the Site already cleared in the Manufacturing zoning district. The adjacent parcel to the Site contains the Tank previously containing wireless facilities already installed and operating. The Tank is being refurbished and the wireless facilities were removed from the Tank to undertake that project. The Facility will allow the Carriers to maintain critical wireless services, including emergency communications. The Facility will not have a negative impact on property values. Natural resources and historic sites of the Town of North Smithfield will be preserved because the installation of the Facility will have no impact on same.

**c. Minimize the number of new facilities by encouraging co-location and use of "friendly" sites;**

The Monopole will provide co-location for all three (3) Carriers currently operating from the Tank. There is room for a fourth colocator.

**d. Limit the height of telecommunication facilities;**

The Monopole is at the minimum height necessary to replicate the coverage from the coverage provided by the Carriers from the Tank and to avoid interference from the Tank itself.

**e. Encourage the siting of new facilities on town-owned properties which meet the criteria listed in subsection (5)(B)1., "Permitted Uses," when co-location is not possible and in areas where "friendly" sites are not suitable; and,**

The parcel which contains the Tank was initially considered and preferred, but it is not large enough to support the Facility while the Tank is refurbished.

**f. Enhance the ability of carriers of telecommunication services to provide such services to the community quickly, effectively, and efficiently.**

The Carriers will be able to maintain their wireless coverage quickly, effectively and efficiently by using the Facility. There is minimal construction required, thereby minimal disruption to the area.

**(2) Applicability:**

**(A) New towers and facilities.** The requirements set forth in this section shall govern the location of all new telecommunication facilities and related equipment that exceed, and antennas that are installed at a height in excess of, the height limitations specified for each zoning district. The height limitations applicable to buildings and structures shall not apply to towers and antennas.

ATC has submitted this Application in accordance with this provision of the Ordinance and is not exempt.

**(3) General guidelines and requirements:**

**(A) Submittals.** The following submittals shall be provided as part of the application for site plan review and special use permit:

**1. A report provided by a professional radio frequency engineer describing the general design and capacity of the proposed installation, including:**

**a. A description of the tower and the technical, economic and other reasons for the tower design.**

Please see the attached Plans, structural reports, fall zone letter and reports of radio frequency engineers, including the coverage maps. The Facility was designed to accommodate all of the Carriers previously operating from the Tank.

**b. Describe the capacity of the tower including the number and type of transmitters and receivers that it can accommodate and the basis for the calculation of capacity.**

The Monopole was designed to accommodate the antennas and equipment of the three (3) Carriers previously collocated on the Tank and includes space for a fourth colocator. Please see the Plans for details of the equipment, the associated structural reports and the reports from the radio frequency engineers.

**c. Demonstrate that the tower and site comply with this regulation.**

Please see the evidence submitted and the narrative statements above and below.

**2. A site plan prepared by a Rhode Island licensed professional engineer at a scale of 1:40 which will show the following:**

Please see the Plans which provide details sufficient for an informed decision in light of the nature of the Facility.

**3. Between the date of advertisement of the public meeting date, and the scheduled public meeting date, a balloon may be required to be deployed at the height of the proposed tower. All cost associated with balloon deployment will be borne by applicant.**

ATC respectfully requests a waiver of the balloon test in this instance. ATC and the Carriers have worked cooperatively with the Town of North Smithfield to remove the wireless facilities from the adjoining Tank parcel. In light of the height of the existing Tank and the nature of the Facility, there is minimal benefit to conducting a balloon test in this instance. Likewise, there is an existing 146' AGL temporary monopole located on the Site to provide a visual prospective. The Monopole will be located approximately 290' in a northeasterly direction from the temporary monopole, significantly further away from the residential condominium project across Comstock Road. The Monopole is required to maintain critical wireless coverage in the area and is of a height necessary to do so, while also avoiding interference from the Tank itself. However, we are willing to work cooperatively with the Board at the first hearing and undertake to schedule and perform a balloon test if necessary.

**4. Applicants proposing to erect wireless communication towers, accessory facilities and structures on land or structures shall provide evidence of contractual authorization from the owner(s) to conduct wireless communications services on the property. Applicants other than licensed carriers shall provide evidence that a licensed carrier will locate on the proposed facility once erected.**

Please see a redacted copy of the lease agreement between ATC and the Owner. The Owner has also provided a letter of authorization to file the Application. Also, see letters of intent from each of the Carriers.

**(B) Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. In a Manufacturing (M) zone, telecommunication facilities shall be allowed as a principal use or, as an accessory use should there already be a principal use. In all zones other than the Manufacturing (M), only one principal use is allowed on a lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure. Towers and base facilities may not take away required parking spaces of an existing building.**

The Site is located in the Manufacturing zone. The Facility will not eliminate away any required parking spaces.

**(C) Cell grid map. Each applicant shall submit a map depicting the proposed cell grid, the coverage ring and site search ring for all existing, proposed wireless telecommunication facilities for North Smithfield, and for an area within ten miles of the border of North Smithfield. A map indicating the location of all "friendly" sites in North Smithfield (i.e.,**

**existing telecommunication towers, water towers, steeples, smokestacks, electric transmission towers, radio and fire towers).**

Based on the reports from the radio frequency engineers and testimony at the upcoming public hearing(s), a wireless facility must be located in close proximity to the temporary wireless facility in order to replace the existing coverage. In this instance, considering areas within ten miles of the border of North Smithfield would not be relevant to replicating the coverage so ATC respectfully requests a waiver in this instance in light of the circumstances and the nature of this Facility.

**(D) Evaluation of "friendly sites". Each applicant shall submit an evaluation of "friendly" sites within the search area or within one mile of the proposed site whichever is greater. Specific information about location, height and design capacity of each site. Proof that owners of "friendly" sites within the search area have been contacted and that permission was sought to install a device on those structures, and that permission was denied, or that such locations do not satisfy requirements to provide the service needed. Failure to present evidence of a good faith effort on the part of the applicant to utilize existing facilities shall be grounds for denial of the application.**

Based on the reports from the radio frequency engineers and testimony at the upcoming public hearing(s), a wireless facility must be located in close proximity to the temporary wireless monopole in order to replace the existing coverage when the temporary wireless facilities are removed. In this instance, considering areas within one mile of the Site would not be relevant to replicating the existing coverage and ATC respectfully requests a waiver in this instance in light of the circumstances and the nature of this Facility.

Obviously, the Tank is a "friendly site" in the area, but ATC and the Carriers needed to relocate from the Tank as it is being refurbished. When approached by the Town of North Smithfield to work to find another facility for the Carriers, ATC did consider a number of potential alternatives in the area for the Facility.

- 40 Comstock Road – This is the Town-owned parcel containing the Tank. ATC worked with the Town to remain on this parcel, but it is just not large enough to allow for the installation and operation of a facility and to refurbish the Tank.
- 125 Industrial Drive - ATC considered this parcel initially which is owned by Jarvis Enterprises Inc. The distance from the Tank to this parcel is significant and there is a significant drop in ground elevation which would not allow the Carriers to replicate the existing coverage from the Tank.
- Comstock Road. Parcel: M:0005 L:0421. This parcel was a possibility due to the proximity to the Tank and Laidlaw Transit, Inc. was amenable to an installation but was not amenable to a permanent facility. This site would have required clearing, significant utility costs, be further from the Tank and would have a much greater impact on the area than the use of the proposed Site.

**(E) Co-location.** Each applicant shall demonstrate to the reasonable satisfaction of the planning board and zoning board that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower can accommodate the applicant's proposed antenna may consist of any of the following:

ATC reviewed the area and states that there are no existing towers or structures in the area of the Site which could accommodate the wireless facilities of the Carriers. The Facility needs to be in proximity of the Tank to maintain critical wireless coverage.

**(F) Site justification statement.** Every application for special use permit shall be accompanied by a description of the narrowing process that eliminated other potential sites. The applicant shall also provide a written statement from a radio frequency engineer justifying the height of the proposed facility.

See response to subsection (D) above.

**(G) Building codes; safety standards.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in the state building codes as amended from time to time. If upon inspection, the building official concludes that a tower fails to comply with such codes and standards; and constitutes a danger to persons or property, then the building official shall proceed in accordance with Chapter 27.3 of Title 23 of the RIGL entitled state building codes.

Please see structural reports submitted with the Application. The Facility will comply with all applicable codes and safety standards.

**(H) ANSI standards.** Upon completion of construction, the applicant shall submit an annual report to the town building inspector which provides quantified electromagnetic field (EMF) measurements to current federal and American National Standards Institute (ANSI) standards or subsequent standards. If the project does not meet federal and ANSI standards, the permit may be modified or revoked.

The Facility will comply with all applicable standards and, to the extent not preempted by federal laws or regulations, ATC will comply with this provision of the Ordinance. Please see the Calculated Radio Frequency Emissions Report submitted with this Application which concludes that the cumulative percent of maximum permissible exposure is only 21.26% of the maximum, already established by the FCC using conservative methods.

**(I) Federal requirements.** Demonstrate that the tower complies with all applicable standards of the federal and state governments. A copy of the requests made by the applicant to the Federal Aviation Administration (FAA), Federal Communications Commission (FCC) to provide a written statement that the proposed tower complies with applicable regulations administered by the agency or that the tower is exempt from those regulations and a copy of the response from each agency shall be included. If such response is not received within 60 days, the application will be considered incomplete. The applicant shall send a subsequently received agency statement, if any, to the planning board.

The Facility will comply with all applicable standards, and to the extent not preempted by federal laws or regulations, ATC will comply with this provision of the Ordinance. Copies of any requests sent to federal agencies, along with any responses, will be submitted to the Board.

**(J) Carrier notification. All applicants shall send certified mail announcements to all other licensed carriers located in Rhode Island, declaring their sharing capabilities and siting needs. Except in cases where mechanical, structural or regulatory factors prevent them from sharing, applicants cannot be denied or deny space on a tower.**

ATC has worked with the Carriers to relocate from the Tank and onto the temporary monopole and facility and have made the Carriers aware of this Application. Based on those discussions, please see the letters of intent from the Carriers. ATC also provided notice to DISH Wireless which is licensed in Rhode Island, see copy of attached email.

**(K) Abutter notification. Abutters within one-quarter mile of the facility base shall receive notice by certified mail "return receipt requested" a minimum of 21 days in advance of the hearing for special use permit. The applicant shall compile and send notice to abutters and provide the building official with a detailed list of notifications sent and acknowledgments of receipt. A list of the completed mailings as outlined above, must be returned to the building official no less than seven days in advance of the hearing date. All cost associated with the abutter notification shall be borne by the applicant.**

ATC will notify the abutters in accordance with this provision of the Ordinance and will deliver the list as required.

**(4) Procedures:**

ATC has complied with the required procedures.

**(D) Building permits are required for all telecommunications towers, antenna and equipment shelters.**

Building permits will be obtained as required if the Application is approved by the Board.

**(5) Permitted uses:**

The use chart in the Ordinance provides that the Monopole is a permitted use to a height of 125', subject to Development Plan Review (see Section 5.4.7.18 of the use chart).

**(6) Special use permits:**

As noted in our response to subsection (5) above, the use chart in the Ordinance provides that the Monopole is a permitted use, subject to Development Plan Review. ATC is also requesting a special use permit due to the proposed height of the Monopole and has provided the following responses accordingly.

**(A) General. The following conditions shall require the application for a special use permits:**

**1. If the tower or antenna is not a permitted use under subsection 5 of this article or permitted to be approved administratively pursuant to subsection 5 of this article, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.**

Please see response to subsection (5) above that the use is a permitted use. ATC has requested a special permit due to the height of the Monopole.

**2. In granting a special use permit, the zoning board of review may impose conditions, to the extent the board concludes such conditions are necessary, to minimize any adverse effect of the proposed tower on adjoining properties.**

ATC is willing to work cooperatively with the Board and consider any reasonable conditions of approval.

**3. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by Rhode Island licensed professional engineer.**

Please see the Plans and other materials certified by a Rhode Island licensed professional engineer.

**4. Any extension, addition of cells or construction of new or replacement towers or transmitters shall be subject to site plan review and amendment to the special permit, following the same procedure as for an original grant of a special use permit.**

This section is not applicable to this Application.

**(B) Factors considered in granting special use permits. The zoning board shall consider the following factors in determining whether to issue a special use permit, although the board may waive or reduce the burden on the applicant of one or more of these criteria if they find that the goals of this section are better served thereby.**

**1. Height of the proposed tower;**

The height of the Monopole is necessary to replicate the previous coverage from the Tank and from the temporary monopole and to avoid interference from the Tank itself. Please see the submitted reports of radio frequency engineers and the associated coverage maps for the Carriers.

**2. Proximity of the tower to lot boundaries;**

The Monopole is placed to be in close proximity to the Tank and the temporary monopole to replicate the coverage and to avoid any interference with the Tank. Likewise, to avoid disturbing the uses on the Site, the Monopole was located near a property line. Please see the submitted fall zone letter to address any possible safety concerns. The Facility and

Monopole will comply with all applicable building codes. To the extent required, ATC has requested any variances necessary.

**3. Nature of uses on adjacent and nearby properties;**

The Site is located in the Manufacturing zoning district and abuts other commercial uses and the parcel with the Tank. Across Comstock Road are condominiums which are largely screened by existing trees and vegetation. The Monopole will be located over 290' northeast of the temporary monopole, significantly further away from the condominiums. We note that this is also a replacement wireless facility to maintain critical wireless coverage in the area.

**4. The opportunity for natural screening of telecommunications facilities through a combination of reduced facility height due to site elevation, lot depth, natural vegetation or, topography.**

As noted above, the height is driven by the need to replicate the existing coverage and to avoid any interference from the Tank.

**5. Design of the tower, with particular references to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;**

As noted above, the design is driven by the need to replicate the existing coverage from the Carriers.

**6. Proposed ingress and egress; and**

There is an existing access drive off of Comstock Road which will be used for ingress and egress for the minimal visits by the Carriers.

**7. Availability of suitable existing towers for co-location and other structures as discussed in subsection (3)(C) and (D) of this article. The applicant shall submit a co-location statement as well as an evaluation of "friendly sites" as called for in subsection (3)(C).**

The Facility has been designed for maximum co-location opportunities in accordance with the Ordinance. All three Carriers on the temporary monopole will co-locate on the Monopole and ATC has designed the Monopole to provide space for a fourth colocator.

**(7) Design standards. The following design standards shall apply to all towers and antennas.**

**(A) Setbacks and separation:**

**1. Towers must be set back from any residential structure or lot line a minimum distance of 500 feet or three times the height of the tower whichever is greater.**

Due to the nature of this wireless facility and in light of the TCA, ATC request dimensional variance relief. There are no parcels in the area near the Tank that could satisfy these setback requirements. The Monopole is located 289' from the nearest residential property line, which is Comstock Road.



**2. Towers must be set back a distance equal to one and one-half (1 1/2) the height of the tower from the lot line of any adjoining commercial or manufacturing structure or use.**

Due to the nature of this wireless facility and in light of the TCA, ATC request dimensional variance relief. The monopole will be located 69' from the nearby commercial property line. Please see the fall zone design submission to address any safety concerns. In this instance, based on the design of the Monopole, the approximate fall zone radius is 19'. There are no feasible parcels in the area near the Tank that could satisfy these setback requirements and provide the necessary replacement coverage.

**3. Towers shall not be located within 1,000 feet of a school facility.**

There is no school facility within 1,000 feet of the Monopole.

**4. Accessory facilities must satisfy the minimum zoning district setback requirements for accessory structures.**

The equipment cabinets will satisfy the minimum zoning district setback requirements as noted on the Plans.

**(B) Landscaping and screening. The applicant must demonstrate that the tower or antennas are located within a given site so as to minimize the visual impact. Existing on-site vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for the landscaped screening requirement. Appropriate screening shall be installed at all tower sites to screen views from adjacent properties and streets. Planting shall be of such a height and density to ensure screening. Screening shall consist of plant and/or tree material accepted by the town planner. Screening shall occupy ten percent of the minimum established setback requirement but shall not be less than five feet in width unless located in or abutting a residential district or historic district which will require that it not be less than ten feet in width. Screening may be waived on those sides or sections which are adjacent to undevelopable lands. The owner of the property shall be responsible for all maintenance and shall replace any dead plantings within 30 days.**

No landscaping or vegetation will be removed due to the installation of the Facility. ATC will provide fencing around the Facility. Due to the nature of the Facility and uses at and near the Site, ATC respectfully asserts that additional landscaping and screening are not necessary in this instance.

**(C) [Traffic ways.] Traffic associated with the tower and accessory facilities shall not adversely affect abutting ways and access shall be provided to a site by a roadway which respects the natural terrain, does not appear as a scar on the landscape, and is approved by the zoning board of appeals and the fire chief to assure emergency access at all times. Consideration shall be given to design which minimizes erosion, construction on unstable soils and steep slopes.**

Access to the Facility will not adversely affect abutting ways. Access to the Facility will be from Comstock Road using an existing paved drive. The location and design minimize erosion and construction of unstable soils and will be on a relatively flat area of the Site.

**(D) [Fencing.] Communication towers shall be enclosed by a fence with one inch wire mesh no less than eight feet in height or more than ten feet in height from finished grade. Access shall be through a locked gate.**

The Facility will be enclosed by a fence with access through a locked gate; please see the Plans submitted with the Application.

**(E) [Lighting.] Communication towers shall not be artificially lighted except as required for public safety purposes, by the Federal Aviation Administration (FAA), or by the Town of North Smithfield.**

The Monopole will not be lighted except as required by the FAA or the Town of North Smithfield. The Monopole does not require lighting as noted in the Federal Airways and Airspace Study submitted with the Application.

**(F) [Signs.] No signs shall be allowed on any communication tower except as required for public safety purposes, by the Federal Communication Commission (FCC) or by the town. All signs shall conform with the sign requirements of the Zoning Ordinance.**

The Facility will comply with the provisions of this section of the Ordinance.

**(G) [Equipment shelters.] Equipment shelters shall be limited to one per provider but shall not exceed ten shelters per tower. If more than one use, the equipment shelters shall be connected by a common wall. Each shelter shall not exceed 275 square feet in size and ten feet in height and shall be of the same design and color as each other.**

The Facility will comply with the provisions of this section of the Ordinance. The Carriers will use outdoor equipment cabinets.

**(H) [Color.] The color of the paint or finish is to be determined by the planning board.**

ATC will work cooperatively with the Board. The color is a nonreflective gray color which is standard.

**(I) [Designed to maximize uses. The tower shall be designed to accommodate the maximum number of uses technologically practical.**

The Facility will comply with the provisions of this section of the Ordinance.

**(8) Removal of abandoned telecommunication facilities. All unused telecommunication facilities and structures which have not been used for one year shall be considered abandoned and shall be dismantled and removed at the owner's expense. The owner of such facility shall remove same within 90 days of receipt of notice from the building official. The applicant shall post a bond which shall be re-evaluated every two years, to cover the cost of removal and restoration of the site if appropriate. If such antenna or tower is not**

**removed within 90 days, the town may take the necessary action to remove the facility at the owner's expense.**

ATC agrees to post a removal bond. Please see attached estimated cost for removal submitted with the Application and the associated removal bond.

**(9) Exemptions. The following types of wireless communications towers are exempt from this section 5.6.3.10:**

- 1. Amateur radio towers used in accordance with terms of any amateur radio service license issued by the Federal Communications Commission, provided that: a. The tower is not used or licensed for any commercial purpose; and**
- 2. Towers and antennas erected on land or structures owned by the Town of North Smithfield for public safety and other telecommunication purposes.**

The Facility is not exempt pursuant to this section of the Ordinance.

## **SPECIAL USE PERMIT STANDARDS**

### **Section 9.2. Special use permits; conditions governing applications; procedures.**

**To hear and decide only such special-use permits as the Board is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether special-use permits should be granted; and to grant special-use permits with such conditions and safeguards as are appropriate under this ordinance, or to deny special-use permits when not in harmony with the purpose and intent of this ordinance.**

As demonstrated herein, the Facility is in harmony with the purpose and intent of the Ordinance. The Site is located within the Manufacturing (M) zoning district and is a permitted use up to 125' AGL. ATC has respectfully requested a special use permit for the 140' AGL Monopole. The Carriers are licensed by the FCC to provide wireless communications in the area and previously operated wireless facilities collocated on the Tank and the temporary monopole. The Town of North Smithfield requested, through ATC, that the Carriers remove their wireless facilities from the Tank. ATC and the Carriers have worked cooperatively with the Town of North Smithfield for many months to accommodate this request at significant cost and disruption. In order to remove the Carriers' wireless facilities from the Tank, a temporary monopole was proposed, approved by the Board and installed at the Site. The permanent Monopole is proposed to maintain critical wireless coverage in the area.

Maintaining wireless coverage in the area through the use of the Facility is critical to and will not be a threat to public health, safety and welfare. In fact, ATC submits that the Facility aids in public safety by maintaining these critical wireless communication services for the residents, businesses, commuters, and emergency personnel utilizing wireless communications near the Site and along the nearby roads, all as depicted on the coverage maps submitted. These

wireless services further the public interest of health and safety as they provide wireless 911 services to the community and communication services for the public. This Facility also aligns with the objectives of FirstNet's mission to create a nationwide broadband network for America's public safety first responders. The Carriers operate nationwide wireless communication systems that offer enhanced features such as caller ID, voice mail, e-mail, superior call clarity and high-speed data services. The Carriers are authorized to provide adequate wireless services through licenses issued by the FCC. The Facility is critical to maintaining reliable and cutting-edge wireless communication services in and around the Town of North Smithfield but especially in the area around the Site. To replicate the existing coverage in the area, the Facility must be located within the general vicinity of the Tank and at a similar height and avoid interference from the Tank itself. The Facility will not generate any additional noise, traffic, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. No increase in traffic or hindrance to pedestrian movements will result from the Facility. On average, only one or two round trip visits per month are required to service and maintain the Facility which had already been occurring to service the existing wireless facilities on the Tank. This is an unmanned facility and will have no negative effects on the adjoining lots. The Facility will comply with all applicable building code requirements. The Facility will comply with the maximum permissible levels of emissions using conservative methods and parameters established by the FCC, the exclusive regulatory agency with respect to emissions. The Facility does not require police or fire protection because the Facility has its own monitoring equipment that can detect malfunction and/or tampering.

**The Board shall make a written decision, including findings of fact, certifying compliance with the rules governing that special-use permit, and that satisfactory provision and arrangement has been made, where applicable concerning the following:**

**(1) Ingress and egress to property and proposed structures thereon with particular reference to fire or catastrophe;**

Ingress and egress to the Facility will be from Comstock Road, over an existing paved drive. There is no issue with fire or catastrophe as the Facility will be easy to access in the event of any emergencies.

**(2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the special use permit on adjoining properties and properties generally in the district;**

There is adequate room for parking a technician's vehicle for the infrequent visits to the Facility. There are no negative effects to adjoining properties and those generally in the district in light of the existing uses at the Site.

**(3) Refuse and service areas, with particular reference to the items in (1) and (2) previous;**

The Facility will not generate any refuse nor require any Town services.

**(4) Utilities, with reference to locations, availability, and compatibility;**

Electrical power and fiber will be provided underground from an existing utility pole to the Facility as approved by the utility provider.

**(5) Screening and buffering with reference to type, dimensions, and character;**

The Facility will be surrounded by a fence. Due to the nature of the Facility, no additional screening is proposed.

**(6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;**

Only signage required by the FCC will be installed and no exterior lighting is proposed.

**(7) Required yards and other open space;**

ATC has requested variance relief from:

Sections 5.6.3.10(7)(A)(1) and (2) for setbacks from: any residential structure or lot line a minimum distance of 500 feet; and setback a distance equal to one and one-half the height of the tower from the lot line of any adjoining commercial or manufacturing structure or use.

**(8) General compatibility with adjacent properties and other property in the district.**

The Site is located in the Manufacturing (M) zoning district. Based on the location and uses on the adjoining parcels and the nature of the Facility, there will be minimal negative impact. The Facility is a passive use and will not cause any nuisance such as unreasonable noise, vibration, smoke, odors, or dust. The Facility will comply with all applicable laws and regulations, including FAA regulations and the FCC requirements relating to exposure to radio frequency emissions. The Facility will maintain critical communication services in the area, including emergency communications. This Facility is also designated as a FirstNet site for our first responders' network. The Facility is screened from the condominium project from the existing vegetation along Comstock Road.

**VARIANCE STANDARDS**

**Section 9.3.1. In granting a variance, the Board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:**

**(a) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;**

The hardship is the significant gaps in the Carriers' coverage in light of the removal of the wireless facilities from the Tank or removal of the temporary wireless facility at the Site. The location of the Site relative to the Carriers' gaps in network coverage renders the proposed location uniquely suited for the Facility to fill the Carriers' significant gaps in coverage, thereby allowing the Carriers the ability to maintain adequate coverage in this area of North Smithfield as part of their networks pursuant to their FCC licenses. Pursuant to developing case law, if local permit granting authorities prevent a wireless service provider from filling a gap in its network coverage, that decision may "prohibit or have the effect of prohibiting the provision of personal wireless services." Courts have recognized the need to fill significant gaps in coverage as a hardship under the traditional variance standard under state and local laws. The subject parcel is an ideal, unique candidate because it can meet the Carriers' identified significant gaps in coverage while also meeting substantially all of the requirements of the Ordinance. The use of the Site for the Facility will enable the Carriers to maintain enhanced wireless communications services in an area in which they would otherwise experience significant gaps in coverage. We also note that an FCC Order redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to engage in activities related to the provision of service. This standard applies to efforts to introduce new or enhance coverage, capacity or service capabilities and notes that regulations that cause a financial burden or competitive disparity can be an effective prohibition. The location of the Site relative to the Carriers' anticipated gaps in coverage and capacity needs in network coverage renders the Site uniquely suited for the Facility.

**(b) That the hardship is not the result of any prior action of the applicant;**

The hardship is not the result of any prior action of ATC, the Carriers or the Owner of the Site.

**(c) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this Zoning Ordinance or the comprehensive plan upon which this ordinance is based;**

The area is mostly in the Manufacturing zoning district. The proposed Facility will be located upon a large parcel of land, significantly set back from residential property lines, and partially screened by existing vegetative growth and existing structures so that potential visual impacts are minimized, and the aesthetic qualities and physical appearance of the Town of North Smithfield are preserved. The Facility is designed to

accommodate the antennas of the Carriers providing wireless coverage from the Tank and the temporary monopole and through collocation upon a single structure, will help to minimize the overall number of towers in the area. The Monopole is designed to provide collocation for a fourth carrier. The Facility is a passive use and will not cause any nuisance such as unreasonable noise, dust, vibration, smoke, odors, waste, glare or significant traffic. Further, the Facility will maintain communication coverage to residents, commercial establishments and travelers through the area and will improve wireless communication services in this area of the Town of North Smithfield. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, ATC and the Carriers submit that the proposed Facility will maintain emergency communications for police and fire personnel. The Facility will comply with all applicable regulations, standards and guidelines with respect to radiofrequency emissions. As will be further demonstrated by ATC by evidence submitted to the Board at the public hearing in connection herewith, such relief is appropriate as the Facility, in light of the TCA, and satisfies the pertinent provisions and standards contained in the Ordinance. We also note that an FCC Order redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to engage in activities related to the provision of service. This standard applies to efforts to introduce new or enhance coverage, capacity or service capabilities and notes that regulations that cause a financial burden or competitive disparity can be an effective prohibition. The location of the Site relative to the Carriers' anticipated gaps in coverage and capacity needs in network coverage renders the Site uniquely suited for the Facility. As noted herein the Facility does not impair the intent or purpose of the Ordinance.

**(e) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.**

The variances will not confer any special privilege that is denied by the Ordinance to other lands or structures in the same district. The Facility must be located in proximity to the Tank and the temporary monopole to maintain wireless communication services in accordance with the TCA.

**The Board shall, in addition to the standards in 9.3.1., require that evidence be entered into the record of the proceedings showing that:**

**(a) In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and**

This provision of the Ordinance is not applicable to this Application.

**(b) In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall**

**amount to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted.** The fact that a use may be more profitable or that a structure may be valuable after the relief is granted shall not be grounds for relief.

Without the requested relief, the Carriers will not be able to fill their significant gaps in coverage in the area of the Site once the temporary monopole is removed. ATC, the Owner and the Carriers will be unable to reasonably enjoy the beneficial and permitted use of the Site and their FCC licenses for the purposes of a wireless communication services facility, a use that benefits the entire community. Under the TCA, if local zoning authority prevents a wireless telecommunications provider from filling its coverage gap, courts have held that such zoning laws “prohibits or has the effect of prohibiting the provision of personal wireless services.” We also note that an FCC Order redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to engage in activities related to the provision of service. This standard applies to efforts to introduce new or enhance coverage, capacity or service capabilities and notes that regulations that cause a financial burden or competitive disparity can be an effective prohibition. The location of the Site relative to the Carriers’ anticipated gaps in coverage and capacity needs in network coverage renders the Site uniquely suited for the Facility.

## **THE TELECOMMUNICATIONS ACT OF 1996**

The Federal TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii). We also note that the FCC Order redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to engage in activities related to the provision of service. This standard applies to efforts to introduce new or enhance coverage, capacity or service capabilities and notes that regulations that cause a financial burden or competitive disparity can be an effective prohibition.

## **CONCLUSION**

As evidenced by the materials submitted with the Application, and as will be further demonstrated by ATC and the Carriers through evidence submitted to the Board at the public hearing(s) in connection herewith, in light of the TCA, the Facility complies with and satisfies the intent and objectives of the Ordinance. ATC respectfully requests that the Board grant all necessary relief to install, operate and maintain the Facility.

We look forward to presenting our Application to the Board at an upcoming public hearing.



Sincerely,

**BROWN RUDNICK LLP**

/s/Edward D. Pare, Jr.  
Edward D. Pare, Jr.

## ATTACHMENTS

1. Application Forms
2. Letter of Authorization
3. Redacted Copy of Lease Agreement Between ATC and the Owner
4. Recorded Deed for the Site
5. Notice to DISH Wireless
6. Written Evidence that the Carriers will Collocate on the Monopole
7. Radio Frequency Reports
8. Radio Frequency Coverage Maps
9. FCC Licenses for the Carriers
10. Emissions Report of Compliance
11. Federal Airways and Airspace Study
12. Expert Planning Report
13. Real Estate Appraiser Report
14. Photographs of Site
15. Structural Reports/Tower Design
16. Fall Zone Letter
17. Fall Zone Radius Report
18. Estimated Cost of Removal for Removal Bond
19. Removal Bond
20. Certificate of Insurance
21. 1A Survey Certification
22. Survey and Plans