

September 24, 2018

**VIA EMAIL**

Webster Planning Board  
c/o Ann Morgan,  
Director of Planning and Economic Development  
Town of Webster  
350 Main Street  
Webster, MA 01570

**RE: New Cingular Wireless PCS LLC ("AT&T") – Request for Determination of a Minor Modification and Eligible Facilities Request to Modify Transmission Equipment on a Communications Tower Located at 0 Goya Drive, Webster MA 01570 (Assessor's Parcel ID 96\_A\_2\_3) (AT&T Site MA3330 Webster Goya Drive)**

Dear Honorable Members of the Webster Planning Board:

On behalf of AT&T, while reserving all rights, we are pleased to submit this Request for Determination of a Minor Modification and Eligible Facilities Request to the Town of Webster Planning Board (the "Board") in support of AT&T's request to add, remove, modify and replace Transmission Equipment on an existing telecommunications tower (the "Tower") located at 0 Goya Drive, Webster, MA 01451 (Assessor's Parcel ID 96\_A\_2\_3) (AT&T Site MA3330-Webster Goya Drive) (the "Site"). Capitalized terms not defined herein shall have the same meaning as provided in the Spectrum Act and Regulations (defined below).

As noted on the attached plans (the "Plans"), AT&T has an existing facility consisting of nine (9) panel antennas located on the 250' above ground level ("AGL") Tower at the 200' AGL antenna centerline mark. AT&T proposes to modify its existing base station by collocating three (3) additional antennas at the same centerline height as the existing antennas. AT&T's equipment cabinets are located on the ground level near the base of the Tower on an existing concrete pad located within a fenced area. Although AT&T will replace and add electronic equipment inside existing cabinets and on the existing platform, AT&T is not proposing the addition of any equipment cabinets and the equipment cabinets will remain in their existing locations on the existing concrete pad. AT&T will slightly shift the position of the existing antennas at the same centerline on the Tower, in order to accommodate the separation requirements of the replacement antennas to avoid interference issues. AT&T will also collocate remote radio units. AT&T has performed similar modifications in the past having received building permits on January 24, 2013 and August 15, 2016 for prior system upgrades.

AT&T's Facility has and continues to comply with all applicable terms and conditions of the Bylaw. As the antennas of the Facility are mounted on the existing Tower, there are no undue adverse impacts upon historic resources, scenic views, residential property values or man-



made resources and the aesthetic qualities of the Town of Webster are preserved. The Facility is passive in nature and does not generate unreasonable noise, odors, smoke, waste, or significant amounts of traffic. This is an unmanned facility and does not have negative effects upon adjoining lots. The Facility has and will continue to comply with all applicable federal, state and local laws, regulations and guidelines, including applicable radio frequency emissions standards.

### **ELIGIBLE FACILITIES REQUEST**

On behalf of AT&T, while reserving all rights, we seek approval of the site modifications as depicted on the Plans as a Minor Modification through an Eligible Facilities Request. As you may know, Section 6409(a) of the “Spectrum Act” (copy attached) mandates that state and local governments “may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” [emphasis added]. Under Section 6409(a)(2)(A)-(C), an Eligible Facilities Request is any request to modify a Tower or Base Station that involves “collocations of new Transmission Equipment,” “removal,” or “replacement” of Transmission Equipment. Federal law now preempts many of the permit application requirements that the Town of Webster would previously have required from an applicant and provides for a limited, administrative review of AT&T's Eligible Facilities Request application.

This Eligible Facilities Request involves an effort to collocate, remove, modify, or replace Transmission Equipment on and adjacent to an Existing Tower used by an FCC licensed wireless carrier. The Existing Tower is an Eligible Support Structure that is 250' high supporting wireless Transmission Equipment. AT&T seeks administrative approval for the proposed modifications which is clearly an Eligible Facilities Request which does not substantially change the physical dimensions of the Eligible Support Structure pursuant to Section 6409 of the Spectrum Act. AT&T proposes to: install three (3) additional panel antennas at the same antenna centerline height as the existing panel antennas; collocate remote radio units; install mount modifications; and other associated Transmission Equipment as depicted on the Plans. The replacement antennas and equipment will not exceed the existing height of the Tower.

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



As you may also know, the FCC adopted a Report and Order, In re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, FCC Docket No. 13-238, Report and Order No. 14-153 (October 17, 2014) Final Rule codified at 47 CFR Parts 1 and 17 promulgating regulations (the "Regulations") interpreting and implementing the provisions of the Spectrum Act, which Regulations became effective on April 8, 2015 (with certain provisions effective on May 18, 2015). The Regulations determined that any modification to an Eligible Support Structure, in this case the Tower, that meets the following six criteria does not substantially change the physical dimensions of the existing Tower and, therefore, is an Eligible Facilities Request which must be granted:

The modifications to the Transmission Equipment do not increase the height of the Tower by more than twenty feet (20') or ten percent (10%), whichever is greater.

The modifications to the Transmission Equipment do not protrude from the edge of the Tower by more than twenty feet (20').

The modifications to the Transmission Equipment do not involve the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four.

The modifications to the Transmission Equipment do not entail any excavation or deployment outside of the Site.

The modifications to the Transmission Equipment do not defeat any existing concealment elements of the Eligible Support Structure.

The modifications to the Transmission Equipment comply with prior conditions of approval of the Base Station, unless the non-compliance is due to an increase in height, increase in width, addition of equipment cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds in numbers 1-4 above.

As evidenced on the Plans, this Eligible Facilities Request satisfies each of the six review criteria enumerated by the FCC in the Regulations. In accordance with the Spectrum Act and the Regulations, AT&T's proposed modifications will not increase the height of the Eligible Support Structure, in this case the Tower, by more than twenty feet (20') nor protrude from the edge of the Tower by more than twenty feet (20'). AT&T does not propose excavating outside of the Site and is not adding any additional equipment cabinets. Lastly, AT&T's modifications do not defeat any concealment elements because the modifications will all be on the Tower at the same centerline mounting height as AT&T's existing antennas. AT&T's modifications to the Transmission Equipment at the Eligible Support Structure contained in this Eligible Facilities Request fully conform to Section 6409(a) of the Spectrum Act.

While the Webster Zoning Bylaw may provide that a special permit or other zoning relief is required for modifications and colocations, such a discretionary process is contrary to the guidance issued by the FCC in its Public Notice (the "Public Notice") dated January 25, 2013



and the Massachusetts Office of the Attorney General (the "Attorney General") in response letters to municipalities granting approvals of bylaw amendments.

In its Public Notice, the FCC determined that the relevant government entity may require the filing of an application for "administrative approval" only. Additionally, pursuant to Section 1.40001(c)(1) of the Regulations, "when an applicant asserts in writing that a request for a modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section." The Regulations provide that applicants are not required to justify a need for the facility. Further, the Regulations also require that local governmental approvals must be granted for eligible facilities requests within 60 days of the date that the application is submitted. Clearly, this review may not be subject to a discretionary special permit process with the associated public hearing and appeal period provisions. Likewise, the Attorney General has issued a number of letters to municipalities reflecting that same opinion and warning municipalities that such qualifying requests under Section 6409 cannot be subject to a discretionary special permit process. We are confident that you will agree that AT&T's proposed modifications do not substantially change the physical dimensions of the Eligible Support Structure or Base Station at the Site, as enumerated in the Regulations.

### CONCLUSION

AT&T is committed to working cooperatively with the Town of Webster and all jurisdictions around the country, to secure expeditious approval of requests to modify existing personal wireless service facilities. We respectfully request that the Board review AT&T's proposed modifications and determine that the modifications do not "substantially change the physical dimensions of the Base Station" pursuant to Section 6409 of the Spectrum Act.

AT&T respectfully requests that the Board approve this Request for Determination of a Minor Modification and Eligible Facilities Request. Please do not hesitate to contact me should there be any questions.

Respectfully,

**BROWN RUDNICK LLP**

A handwritten signature in blue ink, appearing to read 'E. Pare, Jr.', is written over a horizontal line.

Edward D. Pare, Jr., Esq.



## ATTACHMENTS

1. Section 6409 (47 U.S.C. §1455)
2. FCC Regulations
3. FCC Public Notice
4. Representative Letter from the Attorney General
5. Prior Permits
6. Plans