



City of Huntington Beach Planning Department
STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning
BY: Jill Arabe, Assistant Planner JA
DATE: January 12, 2010

SUBJECT: APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF CONDITIONAL USE PERMIT NO. 09-015 (T-MOBILE WIRELESS COMMUNICATIONS FACILITY)

APPLICANT: Monica Moretta, Sequoia Deployment Services, Inc., One Venture, Suite 200, Irvine, CA 92618

PROPERTY

OWNER: Duane Hurtado, Community United Methodist Church of Huntington Beach, 18700 Beach Blvd., Suite 260, Huntington Beach, CA 92648

LOCATION: 6666 Heil Avenue, 92647 (south side of Heil Avenue, east of Edwards Street)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS:

This item represents an appeal filed by a group of Huntington Beach residents of the Zoning Administrator's approval of Conditional Use Permit (CUP) No. 09-015 on November 4, 2009. Conditional Use Permit No. 09-015 represents a request to permit the construction of a 55 foot high wireless communications facility disguised as a church bell tower pursuant to Section 230.96(E) of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). A copy of the appeal letter, filed November 16, 2009, is provided as Attachment No. 1.

A wireless permit application was submitted on April 20, 2009, for the construction of a 55 foot high wireless communications facility designed as a palm tree "monopalm" with associated above-ground equipment surrounded by a seven (7) foot-six (6) inch high blockwall. On May 12, 2009, the wireless permit application was conditionally approved with the determination that the proposed facility is subject to approval of a Conditional Use Permit by the City's Zoning Administrator (ZA) and review by the Design Review Board (DRB). The approval of a wireless permit demonstrates that the proposed wireless facility is located in the least obtrusive location feasible so as to eliminate any gap in service.

BACKGROUND

A public hearing before the Zoning Administrator was held on September 30, 2009. The ZA reviewed the applicant's request for a wireless communications facility designed as a palm tree "monopalm" with associated above-ground equipment surrounded by a 7 foot-6 inch high blockwall. The applicant and T-Mobile representatives, property owner, and 24 members of the public were present at the hearing. Prior to public comments, the ZA announced that the public may speak about potential health risks but

federal law prohibited him from considering health concerns. Five people, including the applicant and property owner, spoke in favor of the request. One speaker on behalf of T-Mobile, representing the National Council on Radiation Protection and Measurements, gave a brief presentation on the health effects of cellular radiation. A majority of the residents spoke in opposition citing various reasons as addressed in their letters (refer to Attachment No. 5). Additional written comments were submitted at the public hearing. The ZA continued the item with the public hearing open to the October 28 meeting to provide the applicant an opportunity to prepare revised plans for a completely stealth facility that would screen all aspects of the wireless communications facility.

On October 28, 2009, the project was continued to the November 4 meeting at the applicant’s request for additional time to prepare plans and have the plans reviewed by staff.

On November 4, 2009, staff presented revised plans as requested by the ZA. The revised plans proposed a replacement of the existing 52 foot high bell tower with a new 55 foot high bell tower structure, disguising the wireless antennas within the proposed bell tower. The number of panel antennas was reduced from 12 to six. Other aspects of the project, such as the above-ground equipment surrounded by a 7 foot-6 inch high blockwall and the trash enclosure relocation, were not revised. Staff received 11 public comments in opposition of the project citing concerns with the radio frequency exposure, aesthetics and detriment to property values, false coverage maps, noise, and Federal Communications Commission (FCC) regulations. A T-Mobile representative, the property owner, and two residents spoke in favor of the project. A total of 19 residents spoke in opposition of the project as addressed in their letters (refer to Attachment No. 5). Additional written comments were submitted at the meeting. The ZA approved the proposed wireless communications facility within a 55 foot tall church bell tower and conditioned that the equipment be located underground as recommended by staff.

CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property	P(RL) – (Public (underlying residential))	RL (Residential Low Density)	church
South, West, East of the Subject Property	RL-7 – (Residential Low Density – 7 du/ac)	RL	single family residential
North of the Subject Property (across Heil Ave.)	RL-7	RL	single family residential

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

August 24, 2009

MANDATORY PROCESSING DATE(S):

November 22, 2009 (includes 30-day extension)

The ZA approved CUP No. 09-015 on November 4, 2009 in compliance with mandatory processing times. The appeal is scheduled for the Planning Commission public hearing on January 26, 2009.

CEQA ANALYSIS/REVIEW

The proposed project is Categorically Exempt pursuant to Section 15301, Class 1, of the California Environmental Quality Act, which states that projects consisting of the minor alteration of an existing

structure are exempt from further environmental review. The minor alteration is the replacement of a bell tower at an existing church building.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The Departments of Building & Safety and Public Works have reviewed the application and identified applicable code requirements in Attachment No. 4.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

In addition to the Zoning Administrator meetings, the DRB reviewed the initial design of the wireless communications facility as a palm tree “monopalm” on September 10, 2009, and recommended the following modifications to the Zoning Administrator:

- The equipment enclosure materials shall be composed of split-face block at the base, two maximum courses of precision block, and a decorative cap.
- The existing wall located on the westerly side of the monopalm shall be connected to the equipment enclosure.
- The wireless communication pole shall be designed as a date palm with the maximum amount of fronds as deemed necessary by the Planning Department.
- A 30 ft. high date palm shall be planted within the landscaped planter adjacent to the monopalm.

T-Mobile held two community meetings at the subject site to address residents’ concerns related to the project. The first meeting was held on September 24, 2009, prior to the initial ZA meeting. The second meeting was held on December 9, 2009, after the appeal was filed. The City was not involved in the meetings.

Staff has received a total of 57 public comments: seven letters supporting the project and 50 letters and emails opposing the establishment of the wireless communications facility. The opposition cited concerns for potential health effects involving the children at the pre-school, aesthetics and visibility, and the negative effects of the facility on property values. A copy of all public comments received to date is provided as Attachment No. 5 to this report.

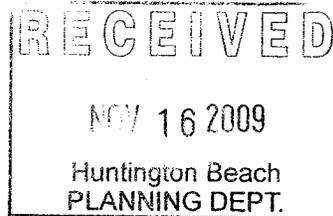
PLANNING ISSUES

The primary issues for the Planning Commission to consider when analyzing this appeal are potential detrimental impacts to the general welfare of the community, compatibility with the surrounding uses, and the appeal letter citing reasons such as impacts to property values and violations of code requirements.

Attachments:

1. Appeal Letter from HB residents, received and dated November 16, 2009
2. Vicinity Map
3. Zoning Administrator Notice of Action – CUP 09-015 dated November 4, 2009
4. Departments of Building & Safety and Public Works Code Requirements
5. Public Comments
6. Information on Cell Towers (Commissioner Scandura) received and dated January 5, 2010

City of Huntington Beach
 Planning Department
 2000 Main Street
 Huntington Beach, CA 92648



RE: CUP 2009-015 for T-Mobile's proposed cell tower at Community United Methodist Church (CUMC) and Pre-School located at 6666 Heil Avenue, Huntington Beach, CA 92647

A group of concerned neighbors, parents of CUMC Pre-School students and CUMC members wish to appeal the November 4, 2009, Zoning Administrator's ruling to grant Conditional Use Permit (CUP) No. 2009-015 for T-Mobile's proposed cell tower at CUMC.

The following is a partial list of reasons we feel that this ruling should be overturned and CUP 2009-015 should be denied:

T-Mobile failed to meet Finding #1 for the Conditional Use Permit.

241.10 Required Findings

A. For All Conditional Use Permits.

1. The establishment, maintenance and operation of the use will not be detrimental to the general welfare of persons working or residing in the vicinity nor detrimental to the value of the property and improvements in the neighborhood;

- Decrease in property value - Statements by appraisers and real estate journal articles were submitted into evidence stating that property values decrease if the home is in close proximity to a cell tower. The cell tower would have to be disclosed during a sale. Many people do not want to live or raise a family near a cell tower. Less demand = less market value.
- Impact on Pre-school - A survey of CUMC Pre-School parents revealed that 50% of the parents would remove their children if the cell tower is built. The pre-school, which rents/leases space from the CUMC church, would probably close or move to another location. The children could lose a good learning and development center; the parents could lose this excellent neighborhood resource; the pre-school staff could lose their jobs; and, the church could lose the pre-school income.
- Noise from the equipment is a major concern based on observing other below-ground and above-ground equipment at three nearby T-Mobile cell tower sites.

T-Mobile failed to prove a need for the cell tower.

- Adequate T-Mobile cell phone coverage already exists in this area.
- T-Mobile submitted erroneous cell phone coverage maps as justification for the cell tower.

ATTACHMENT NO. 1.1

- A cell phone coverage test conducted by T-Mobile users proved that T-Mobile's cell coverage maps were inaccurate.
- Many T-Mobile users stated that they currently have adequate cell coverage in their homes.
- T-Mobile's own website and Billshrink.com website both show that T-Mobile has excellent coverage in this area.
- An independent study should be required to determine if there is a need for this facility. There are four T-Mobile facilities within a mile of CUMC, and two are only ½ mile away.

T-Mobile failed to meet the requirements of Zoning and Subdivision Ordinance 230.96 D1. (Chapter 230 Page 50 of 55)

230.96 Wireless Communication Facilities

D. Wireless Permit Required.

1. Demonstrate existing gaps in coverage

- The HB Zoning and Subdivision Ordinance 230.96 D1 states that an existing gap in coverage must be demonstrated.
- Since T-Mobile failed to "demonstrate existing gaps in coverage," T-Mobile failed to meet the requirements of the city's Zoning and Subdivision Ordinance.

T-Mobile failed to meet the requirements of the Wireless Permit Application.

- Application requirement 6.07 demands a "technically expansive and detailed explanation supported as required by comprehensive radio frequency data".
- The most technical phrase on T-Mobile's Attachment 6.07 ("Site Justification Study for LA33421-A Community UMC") is "a hole in network coverage".
- The required technical explanation supported by "comprehensive radio frequency data" was not included, therefore, T-Mobile failed to meet the requirements of the Wireless Permit Application.

Plans showing the cell tower project as most currently proposed were not submitted to the Zoning Administrator or made available to the public prior to the November 4 Public Hearing.

- T-Mobile verbally informed the Zoning Administrator at the beginning of the public hearing that the project plans had changed – to an underground vault housing the equipment. The vault would be located in the grassy area (in the pre-school playground?). This location is adjacent to the wall that separates the church property and the neighbors' back yards.
- The prior submitted plans showed above-ground equipment enclosed by a wall on the Heil Avenue side of the church property by the current trash enclosure.
- The public did not have a chance to review modified plans showing the verbal changes.

ATTACHMENT NO. 1.2

The Zoning Administrator did not review the 30+ pages of new written evidence submitted at the public hearing before making a ruling.

Please read T-Mobile's applications and the evidence submitted at the two public hearings. I urge you to overturn the Zoning Administrator's ruling of November 4, 2009, and deny Conditional Use Permit 2009-015.

Sincerely,

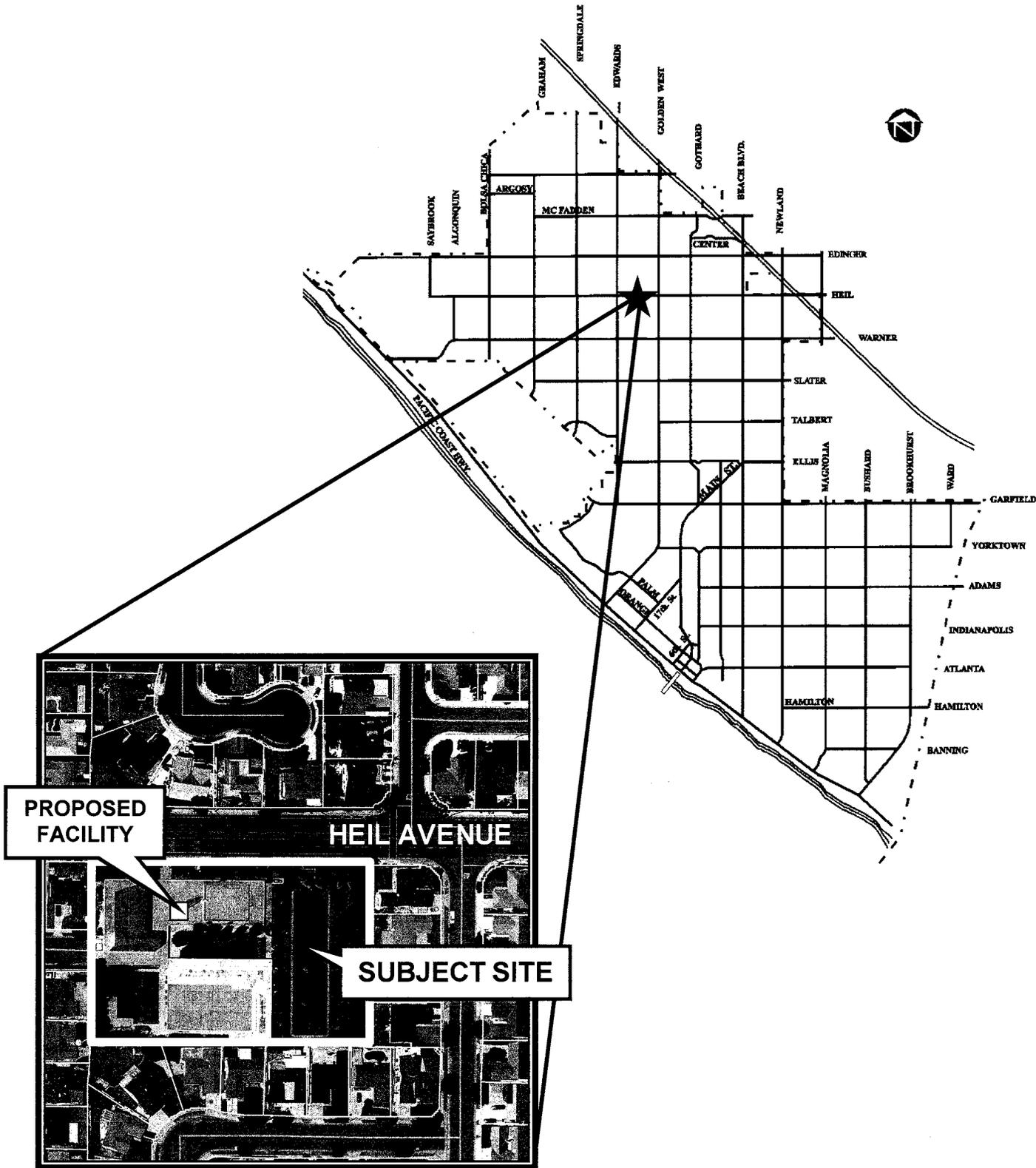


Dianne Larson

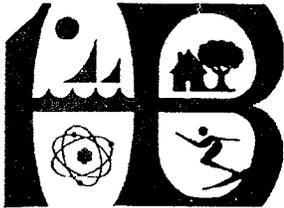
on behalf of the nearly 350 concerned neighbors, CUMC Pre-School parents and CUMC members who signed the petition to stop this proposed cell tower.

Attached: a check for \$2002.00 for the appeal filing fee

ATTACHMENT NO. 1.3



VICINITY MAP
CONDITIONAL USE PERMIT NO. 09-015
(T-MOBILE WIRELESS COMMUNICATIONS FACILITY – 6666 HEIL AVENUE)



**OFFICE of the ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH • CALIFORNIA**

~~~~~  
P.O. BOX 190

CALIFORNIA 92648

(714) 536-5271

**NOTICE OF ACTION**

November 4, 2009

Monica Moretta  
Sequoia Deployment Services, Inc.  
One Venture, Suite 200  
Irvine, CA 92618

**SUBJECT:                   CONDITIONAL USE PERMIT NO. 2009-015 (T-MOBILE  
WIRELESS COMMUNICATIONS FACILITY)**

**APPLICANT:               Monica Moretta, Sequoia Deployment Services, Inc.**

**REQUEST:                 To permit the construction of a 55 ft. high wireless  
communications facility designed as a palm tree "monopalm"  
with 12 panel antennas and one (1) GPS antenna, including  
associated equipment surrounded by a 7 ft. 6 in. high  
blockwall. The request includes the relocation of a 5 ft. high  
block wall trash enclosure.**

**PROPERTY OWNER:      Duane Hurtado, Community United Methodist Church of  
Huntington Beach, 18700 Beach Blvd., Suite 260, Huntington  
Beach, CA 92648**

**LOCATION:                 6666 Heil Avenue, 92647 (south side of Heil Avenue, east of  
Edwards Street)**

**PROJECT PLANNER:     Jill Arabe**

**DATE OF ACTION:       November 4, 2009**

On Wednesday, November 4, 2009, the Huntington Beach Zoning Administrator took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion

**ATTACHMENT NO. 3.1**

of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the Secretary of the Planning Commission within ten (10) calendar days of the date of the Zoning Administrator's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand Five Hundred Thirty-Four Dollars (\$1,534.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Two Dollars (\$2,002.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is November 16, 2009, at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has begun.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact Jill Arabe, the project planner, at (714) 374-5357 or via email at [JArabe@surfcity-hb.org](mailto:JArabe@surfcity-hb.org) or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,



Ricky Ramos  
Zoning Administrator

RR:JA:kdc  
Attachment

c: Honorable Mayor and City Council  
Chair and Planning Commission  
Fred Wilson, City Administrator  
Scott Hess, Director of Planning  
William H. Reardon, Division Chief/Fire Marshal  
Herb Fauland, Planning Manager  
Steve Bogart, Acting Principal Civil Engineer  
Gerald Caraig, Permit-Plan Check Manager  
Judy Demers  
Duane Hurtado, Community United Methodist Church of Huntington Beach  
Project File

ATTACHMENT NO. 3.2

**ATTACHMENT NO. 1**

**FINDINGS AND CONDITIONS OF APPROVAL**

**CONDITIONAL USE PERMIT NO. 2009-015**

**FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of the minor alteration of an existing structure, involving no expansion of the existing church use.

**FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 2009-015:**

1. Conditional Use Permit No. 2009-015 for the establishment, maintenance and operation of a 55 ft. high wireless communications facility disguised as a bell tower with six (6) panel antennas and one (1) GPS antenna, including completely stealth associated equipment will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed facility will replace an existing 52 ft. high bell tower with a new bell tower structure. The structure will be setback more than 125 ft. from the adjacent residences located to the south, east, and west of the site. The design of the tower will disguise the associated antennas from public view. The project will not generate noise, traffic, or demand for additional parking above that which already exists on the subject site. As a condition of approval, the wireless communication equipment will be underground. The proposed height will enhance wireless communications in the community by improving signal transmission and reception in the project vicinity.
2. The conditional use permit will be compatible with surrounding uses because the wireless communications facility and support structure will be designed as a bell tower to blend into the surrounding environment including the existing church located on site. The project involves the replacement of a bell tower with a tower of similar height and at an identical location onsite. The bell within the tower will be operational. The antennas will not be visible from public view as they will be concealed within the tower structure. All associated equipment, as conditioned, will be underground to further eliminate visual impacts of the wireless communications facility along Heil Avenue and on the property.
3. The proposed conditional use permit will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance. Wireless communication facilities are permitted to exceed the maximum height of 35 ft. for the base zoning district with approval of a conditional use permit.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Public on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Land Use Element

Goal - LU 2: Ensure that development is adequately served by transportation infrastructure, utility infrastructure, and public services.

Policy LU 2.1.1: Plan and construct public infrastructure and service improvements as demand necessitates to support the land uses specified in the Land Use Plan (as defined in the Circulation and Public Utilities and Services Elements of the General Plan).

B. Utility Element

Policy U 5.1: Ensure that adequate natural gas, telecommunication and electrical systems are provided.

Policy U 5.1.1: Continue to work with service providers to maintain current levels of service and facilitate improved levels of service.

The proposed facility will enhance wireless communications in the community by improving signal transmission and reception in the project vicinity. In addition, the proposed completely stealth facility is designed as a bell tower and will replace the existing bell tower onsite. The location of associated equipment will be underground so as to eliminate any visual impacts to surrounding uses. As conditioned, the project will have minimal visual impacts because the wireless communications equipment will be underground and the new bell tower will match the previous.

**CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 2009-015:**

1. The photo simulations dated October 27, 2009 and site plans and elevations dated October 28, 2009, shall be the conceptually approved design.
2. All associated equipment to the wireless communications facility shall be underground.
3. The existing trash enclosure shall not be relocated and the existing block wall enclosure shall not be removed.
4. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

**INDEMNIFICATION AND HOLD HARMLESS CONDITION:**

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

ATTACHMENT NO. 3.5



## CITY OF HUNTINGTON BEACH

### PUBLIC WORKS INTERDEPARTMENTAL COMMUNICATION

#### PROJECT IMPLEMENTATION CODE REQUIREMENTS

**DATE:** NOVEMBER 2, 2009  
**PROJECT NAME:** WIRELESS FACILITY  
**PLNG APPLICATION NO:** 2009-0188  
**ENTITLEMENTS:** CUP 09-15, DR 09-21  
**DATE OF PLANS:** OCTOBER 27, 2009  
**PROJECT LOCATION:** 6666 HEIL AVENUE  
**PROJECT PLANNER:** JILL ARABE, ASSISTANT PLANNER  
**TELEPHONE/E-MAIL:** (714) 374-5357 / [JARABE@SURFCITY-HB.ORG](mailto:JARABE@SURFCITY-HB.ORG)  
**PLAN REVIEWER:** JOSH MCDONALD, CIVIL ENGINEERING ASSISTANT   
**TELEPHONE/E-MAIL:** 714-536-5509 / [JOSHUA.MCDONALD@SURFCITY-HB.ORG](mailto:JOSHUA.MCDONALD@SURFCITY-HB.ORG)

**PROJECT DESCRIPTION:** TO PERMIT THE CONSTRUCTION OF A 55 FT. HIGH WIRELESS COMMUNICATIONS FACILITY DESIGNED AS A BELL TOWER, INCLUDING SIX (6) ANTENNAS AND ONE (1) GPS ANTENNA AT AN EXISTING CHURCH SITE. THE FACILITY INCLUDES ASSOCIATED EQUIPMENT SURROUNDED BY A SEVEN FT. SIX INCH HIGH WALL ENCLOSURE, AND RELOCATING A FIVE FT. HIGH TRASH ENCLOSURE.

The following is a list of code requirements deemed applicable to the proposed project based on plans as stated above. The items below are to meet the City of Huntington Beach's Municipal Code (HBMC), Zoning and Subdivision Ordinance (ZSO), Department of Public Works Standard Plans (Civil, Water and Landscaping) and the American Public Works Association (APWA) Standards Specifications for Public Works Construction (Green Book), the Orange County Drainage Area management Plan (DAMP), and the City Arboricultural and Landscape Standards and Specifications. The list is intended to assist the applicant by identifying requirements which shall be satisfied during the various stages of project permitting, implementation and construction. If you have any questions regarding these requirements, please contact the Plan Reviewer or Project Planner.

#### THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO PRIOR TO COMMENCEMENT OF ONSITE CONSTRUCTION:

1. Contractor shall call Dig-Alert prior to any trenching.

ATTACHMENT NO. 4.1

2. If the facility use is discontinued, the equipment and antenna shall be removed within 30 days.
3. The proposed wireless facility shall obtain its electrical feed from SCE independently and not from the Community United Methodist Church.

**THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO FINAL INSPECTION OR OCCUPANCY:**

1. Complete all improvements as shown on the approved landscape plans. (MC 17.05)
2. An encroachment permit is necessary for any work performed in the public right-of-way.
3. Standards for Wireless Communications Facilities shall apply (Chapter 230.96 of the Zoning and Subdivision Ordinance).
4. All applicable Public Works fees shall be paid at the current rate unless otherwise stated, per the Public Works Fee Schedule adopted by the City Council and available on the city web site at [http://www.surfcity-hb.org/files/users/public\\_works/fee\\_schedule.pdf](http://www.surfcity-hb.org/files/users/public_works/fee_schedule.pdf) . (ZSO 240.06/ZSO 250.16)

**ADDITIONAL COMMENTS:**

1. The proposed wireless system shall not operate on the 800 MHz frequency in order to eliminate any interference with the City's voice and data radio frequency.

ATTACHMENT NO. 4.2



**CITY OF HUNTINGTON BEACH  
BUILDING AND SAFETY DEPARTMENT  
PROJECT IMPLEMENTATION CODE REQUIREMENTS**

**DATE:** 11/16/2009  
**PROJECT NAME:** T-MOBILE WIRELESS TELECOM. FACILITY  
**ENTITLEMENTS:** CONDITIONAL USE PERMIT NO. 2009-015  
**DATE OF PLANS:** 10/28/2009  
**PROJECT LOCATION:** 6666 HEIL AVENUE, HUNTINGTON BEACH  
**PROJECT PLANNER:** JILL ARABE, ASSISTANT PLANNER  
**PLAN REVIEWER:** EDWARD S. LEE, PLAN CHECKER II  
**TELEPHONE/E-MAIL:** (714) 374-1538 / ELEE@SURFCITY-HB.ORG  
**PROJECT DESCRIPTION:** TO PERMIT THE CONSTRUCTION OF A 55 FT. HIGH WIRELESS COMMUNICATIONS FACILITY DESIGNED AS A BELL TOWER INCLUDING 6-ANTENNAS AND 1-GPS ANTENNA AT EXISTING CHURCH SITE. THE FACILITY INCLUDES ASSOCIATED EQUIPMENT SURROUNDED BY A 7'-6" HIGH WALL ENCLOSURE AND RELOCATING A 5' HIGH TRASH ENCLOSURE.

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The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated 10/28/2009. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. Electrical, plumbing, and mechanical items are not included in this review. If you have any questions regarding these comments, please contact the plan reviewer. Compliance is required prior to building permit issuance and all applicable items must meet the Huntington Beach Municipal Code (HBMC) and the California Code of Regulations (CCR or Title 24).

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**GENERAL:**

1. The codes in effect are the: 2007 California Building Code ('07CBC), 2007 California Plumbing Code ('07CPC), 2007 California Mechanical Code ('07CMC), 2007 California Electrical Code ('07CEC) and 2007 California Energy Efficiency Standards as adopted by the City.
2. A building permit shall be required for the proposed work based on 2007 CBC. (Structural plans & calculation prepared by a California registered engineer shall be required for the 55 ft. high bell tower, antennas & 7'-6" high masonry enclosure.)- Mechanical, electrical & plumbing work shall be under separate permits if applicable.
3. If existing disabled parking spaces including the curb ramps are going to be affected by the proposed work, they shall be updated to comply with Chapter 11B, CBC'07.

**Arabe, Jill**

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**From:** Mr Bill Kettler [bill\_kettler@yahoo.com]  
**Sent:** Tuesday, September 22, 2009 10:24 AM  
**To:** Arabe, Jill  
**Subject:** RE: Conditional Use permit # 2009-015 (CUMC/T-Mobile Cell Tower)

Resending after using spell check:)

Good Morning Jill,

My name is Bill Kettler. I'm a home owner (16592 Dale Vista Lane) that parallels the CUMC Church. I can see the church from my front and backyard. This is a nice church/Preschool and currently has been a nice feature to our community. But adding a 55ft Cell Tower to this landscape will negatively effect the aesthetics of what I see outside my home and will not be a positive feature to a prospective buyer of my home if I ever decide to sell.

I'm not in favor of this Cell Tower on the CUMC property. Bottom line it's a Cell Tower not a palm tree.

Aesthetically, this is going to be an "Eye Sore" and this location is not a good fit for our community. Please relocate this Cell Tower to a more desirable location: For Example: behind "Big Lots" or in the "Stater Bros" location. A Cell Tower in a neighborhood is a terrible idea and not considerate of the neighbors who surround CUMC.

Respectfully,

Bill Kettler  
16592 Dale Vista Lane  
Huntington Beach, CA

9/25/2009

ATTACHMENT NO. 5.1

**Arabe, Jill**

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**From:** rjones2325@verizon.net  
**Sent:** Tuesday, September 22, 2009 12:39 PM  
**To:** Arabe, Jill  
**Subject:** Proposed CUMC Cell Tower

Hello Mrs. Arabe,

My name is Nancy Jones and I live at 16611 Dale Vista Lane. I am writing to let you know that my family and I live directly behind the CUMC, and are vehemently opposed to the proposed 55 ft. cell tower. Whether or not it is disguised as a palm tree, it will be a huge eyesore, and one which will adversely affect my home value. T-Mobile can find a location for there tower in a business area, not a neighborhood community like ours. I know that my neighbors all feel the same way, and we are talking about starting a petition. Please let me know any information you have on the matter. I appreciate your time and assistance.

Best,

Nancy Jones

Ryon & Nancy Jones  
[rjones2325@verizon.net](mailto:rjones2325@verizon.net)

9/25/2009

ATTACHMENT NO. 5.2

**Arabe, Jill**

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**From:** Diane Anderson [deladuke2000@yahoo.com]  
**Sent:** Thursday, September 24, 2009 5:16 PM  
**To:** Arabe, Jill  
**Subject:** RE: Conditional Use Permit#2009-015 (CUMC/T-Mobile Cell Tower)

Jill,

My name is John Anderson. I have lived directly behind the CUMC church for many years. My wife and I have worked very hard to raise our family of two boys and give them a good life.

We live in a fine neighborhood and have done our best to maintain a nice home there. The Church has always made my wife feel safe and was a source of comfort to her.

However, the proposal to build a huge 55 foot cell phone tower is an absolutely unacceptable idea. This eye sore, no matter how one dresses it up, would be detrimental to my property value and make it less appealing to potential buyers. I do not want this structure towering over my house and neighborhood. It does nothing to enhance the area and is an invasion of my privacy. It can be seen from my front and back yards.

Please reconsider this proposal and find a different location. May I suggest somewhere other than an established neighborhood consisting of many homes.? I respectfully request that the City of Huntington Beach not approve an increase in building heights for this zone.

Regards,

John \*Duke\* Anderson  
6651 Mason Drive  
Huntington Beach, CA 92647

9/25/2009

ATTACHMENT NO. 5.3

**Arabe, Jill**

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**From:** carol [carolsettimo@yahoo.com]  
**Sent:** Friday, September 25, 2009 7:37 AM  
**To:** Arabe, Jill  
**Subject:** Fw: Conditional Use permit # 2009-015 (CUMC/T-Mobile Cell Tower)

**Miss Jill Arabe,**

**We are Carol Settimo and Tom Point who live at 16542 Cooper Lane (for 40+ years) and we back up to CUMC school yard, where the proposed T Mobile cell tower is proposed to be going up. We do not want to see another pole, covered up and looking like a palm tree :<), go up in our neighborhood. There are enough wires and poles in our older neighborhood as it is! We are worried also about property values possibly going down because of this additional cell tower being placed in our backyards. Thank you for hearing our comments on this cell tower we would like to be placed somewhere else!**

**Carol Settim/Tom Point  
16542 Cooper Lane  
714-847-2029**

**PSWhat about the children who daily attend CUMC nursery school, is this tower something we want to have close to our innocent children who we are suppose to protect?**

---

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 8.5.409 / Virus Database: 270.13.112/2393 - Release Date: 09/24/09 18:00:00

ATTACHMENT NO. 5.4

9/25/2009

**Arabe, Jill**

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**From:** bmaguin@verizon.net  
**Sent:** Friday, September 25, 2009 8:36 AM  
**To:** Arabe, Jill; maguin@verizon.net  
**Subject:** Fwd: cell phone tower at CUMC

I am writing to express my extreme disagreement with the T-Mobile Cell Phone Tower Proposed at CUMC Church. From a planning perspective, it is the wrong location for the tower. A preschool and residential area is not an appropriate place to put the tower. Within a quarter mile, there is a retail center, that is both more aesthetically pleasing location. It is also my understanding that the tower height will be in excess of the allowable height, and that an exemption must be made to erect the proposed tower. Along with many fellow residents, I urge the Planning Department to keep the interests of all residents in mind, and ensure T-Mobile erect the tower in a more appropriate location.

Respectfully,  
Brad Maguin

----- Forwarded message -----

From: bmaguin@verizon.net  
Date: Sep 25, 2009  
Subject: cell phone tower at CUMC  
To: jarabe@surfcity-hb.org

9/25/2009

ATTACHMENT NO. 5.5

**Arabe, Jill**

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**From:** Hetherington, Michelle [MHETHERINGTON@OCSD.COM]  
**Sent:** Friday, September 25, 2009 10:23 AM  
**To:** Arabe, Jill  
**Subject:** Conditional Use permit # 2009-015 (CUMC/T-Mobile Cell Tower)

Jill,

My name is Michelle Hetherington. I'm a home owner on Abbott Dr. which is the street next to the CUMC Church. We have church access from our street and is what we see at the end of our street. I love my neighbors, neighborhood and living in Huntington Beach.

The church adding a 55ft Cell Tower to the landscape will negatively affect the aesthetics of our neighborhood and will reduce the property value of my home. I have read articles when T-mobile was installing the cell tower at Harbour View. The city voted to spend up to \$50,000 for T-mobile to move the tower to a more suitable location. How can the middle of a neighborhood be a suitable location? The demonstration which prompted the city to move the tower at a cost to the city shows that people do not want to live by cell towers. Why can't the tower be in a commercial area, not residential. The city should consider make a ruling on the location of cell towers for aesthetics and property values to protect the residents in Huntington Beach.

I'm not in favor of this Cell Tower on the CUMC property.  
Please relocate this Cell Tower to a more desirable location. A Cell Tower in a neighborhood is bad for the community of Huntington Beach.

Michelle Hetherington  
6561 Abbott Dr.  
Huntington Beach, CA

9/25/2009

ATTACHMENT NO. 5.6

**Arabe, Jill**

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**From:** GBean37467@aol.com  
**Sent:** Friday, September 25, 2009 11:41 AM  
**To:** Arabe, Jill  
**Subject:** Cell phone tower @ Community Methodist Church

I was given your email address last night at a meeting at Community United Methodist Church where I attended a meeting last night regarding the proposed cell phone tower to be placed on their property. The meeting was actually a session put on by T-Mobile and was not meet with much acceptance by the local residents. It was more of an information session with only their materials similar to a marketing push. Most of the residents were quite upset which was understandable since most of them did not even receive any notice of this. There was a couple who's backyard faces the parking lot of the church who went door to door in the neighbor to inform the people of this proposal. Also, there was not notice to any of the parents of the preschool that is on the premises to the parents. Based on an article that was in the OC Register on Monday, April 27 pertaining to the cell phone tower being built next to the Harbor View school I thought the City council was going to change the rules and notify parents when a cell phone tower was going to be placed near a school. T-mobile last night said they did not have to notify anyone other than residents at least 300 ft from the property - I think they forgot or did not consider the nursery school on the premises.

What can the parents and residents do to fight this move proposal.

Thank you for your assistance.

Sincerely,  
Ginny Bean  
concerned grandmother

9/25/2009

ATTACHMENT NO. 5.1

**Arabe, Jill**

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**From:** Diane Anderson [deladuke2000@yahoo.com]  
**Sent:** Friday, September 25, 2009 9:31 PM  
**To:** Arabe, Jill  
**Cc:** deladuke2000@yahoo.com  
**Subject:** Conditional Use Permit no.2009-015T-Mobile Wireless Tower

Jill

My name is Diane Anderson and I live at 6651 Mason Drive. I have lived behind CUMC for over fifteen years. I was very shocked that CUMC was allowing T-Mobile to put a cell phone tower in my neighborhood. The cell phone tower will be an eye sore and it does not belong in a neighborhood.

T-Mobile wants to put this cell phone tower in my neighborhood to improve their service but customers in my neighborhood claim they already receive a strong signal. The cell phone tower will be directly behind my home. T-Mobile claims that property values will not be affected. Will T-Mobile and the City of Huntington Beach guarantee to buy my home for its current value before the tower is installed should we be unable to sell it? Or pay the difference in property value decrease that results from the cell phone tower?

The notice of public hearing states a relocation of a five-foot high block wall trash enclosure . Will the relocation be closer to the homes? Trash bins closer to the homes will bring the property values down and raises lots of health concerns.

T-Mobile claims the Cell Phone Tower is harmless to human health. In fact, some studies have shown the opposite to be true. A Cell Phone Tower near a preschool and neighborhood children, including my own, is gambling with their lives.

Thank you

Diane Anderson

9/28/2009

**ATTACHMENT NO. 5.8**

**Arabe, Jill**

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**From:** marleymom2@verizon.net  
**Sent:** Saturday, September 26, 2009 1:11 PM  
**To:** Arabe, Jill; cumchb@cumchb.org  
**Subject:** CUMC Cell Tower 2009-15

Dear Ms. Arabe,

My home is located on Kettler Lane only 1 block from CUMC and while I will not be able to see the "palm tree" tower when I stand on my front lawn, as many of my friends and neighbors will, I will have to look at it each time I leave my neighborhood. Prior to purchasing our home on Kettler we leased a home on the corner of Dale Vista and Mason, a home that is directly behind CUMC and will be greatly impacted by the tower, while we were living there we fell in love with this neighborhood and the people who live here. So much so that we were please when we were able to purchase a home in the neighborhood. By allowing CUMC to erect this tower you will be directly effecting the property values of all of the homes in this neighborhood, not just those that are adjacent to CUMC. I ask you, would you allow this 55 foot tower to be erected in your neighborhood?

As for CUMC, they have been always been a blessing to this neighborhood, their neighborhood! We love hearing the church bells every Sunday and the kids playing in the school yard and enjoy the Christmas cards they send. How could they think to do something that will impact the whole neighborhood without getting the approval of the other members of the neighborhood?

I respectfully request that the City of Huntington Beach and T Mobile seek out an alternate, non-residential area to erect this tower. If the people of Huntington Harbour don't want it in their neighborhood what makes anyone believe we want it in ours.

Jennie Bolotin  
16732 Kettler Lane  
Huntington Beach, CA

9/28/2009

ATTACHMENT NO. 5.9

**Arabe, Jill**

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**From:** adamrodell@aol.com  
**Sent:** Sunday, September 27, 2009 9:41 AM  
**To:** bill\_kettler@yahoo.com; aburris@ocregister.com; Arabe, Jill  
**Subject:** CMUC Preschool Parent

Hi Bill:

I received a call from a concerned neighbor yesterday. I asked her to forward me something in writing. I am forwarding this to you, Jill, and Annie. Please forward this on to the group as others with children at the CMUC Preschool may feel more comfortable about "speaking out against the Tower" as they learn that other parents are just as concerned.

Adam Rodell

-----Original Message-----

**From:** LitMermade@aol.com  
**To:** AdamRodell@aol.com  
**Sent:** Sat, Sep 26, 2009 6:05 pm  
**Subject:** Cell phone tower

ATTN: Adam, Annie, Jill

I cannot attend the public hearing at city hall on Sept. 30, 2009 regarding the prospective building of a T-Mobile cell tower due to my work schedule & the inadequate short notice given for the meeting. I also was not able to attend the T-mobile meeting at CUMC due to the short notice & a schedule conflict.

I am a parent of a preschooler that attends CUMC preschool. I am completely against a cell phone tower being built in this location. Ironically, I just read an article from The environmental working group (ewg.org) on the health risks of cell phone use. According to what I read, these towers send high power signals out & these signals "bathe the body in low levels of sustained radiation." "Scientists do not yet understand the effects of long-term exposure to cell phone tower radiation-the necessary studies have not yet been completed."

Why take any risks with our children? Their brains are in the developing stage & are more vulnerable to radiation. I'm sure that there are other locations that would be suited better for the purpose. I know many other parents that are just finding out about the prospective cell tower are upset about it. I even heard talk about pulling their children out of the preschool. That would indeed be a shame because CUMC preschool is a lovely school with a wonderful caring director and staff. The children are more than blessed to be in such good care. I hope the church will reconsider allowing a T-mobile tower on its property as they find that parents are very concerned about the potential health risks.

Sincerely,  
Jamie White

**ATTACHMENT NO. 5.10**

9/28/2009

**Arabe, Jill**

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**From:** adamrodell@aol.com  
**Sent:** Sunday, September 27, 2009 9:54 AM  
**To:** Arabe, Jill; cumchb@cumchb.org  
**Subject:** Fwd: CUP 2009-015 Concerns

-----Original Message-----

From: adamrodell@aol.com  
To: Jarebe@surfcity-hb.org; aburris@ocregister.com; cmuchb@cmuchb.org  
Sent: Sun, Sep 27, 2009 9:47 am  
Subject: CUP 2009-015 Concerns

Dear Jill and Annie:

My name is Adam Rodell. I am a resident in the immediate neighborhood (16631 Fountain Lane) where the proposed installation of a T-Mobile Cell Tower is being considered. Before I begin, I just want to thank both of you personally for reading this as I know you've been receiving quite a bit of correspondence from many concerned neighbors over the last several days. Yes, I too stongly oppose this location as well. Many of the obvious reasons have already been mentioned in these prior communications (i.e., safety, aesthetics, property values, etc.). I will certainly be joining many of my neighbors at this coming Wednesday's meeting to voice my objection and reasons for concern.

I just felt it was necessary to ask both of you, in your special capacities, to understand that this neighborhood's concerns are emanating from an overall feeling of frustration that we have been intentionally mislead and exempted from the "information" loop leading up to this hearing. This neighborhood was given literally less than ten days notice that there was even a proposal in existence for such a tower to be installed in the first place. Combining that lack of notice and ability for an organized opposition to gather pertinent information regarding this matter seems unconscionable, doesn't it? Furthermore, T-Mobile's attempt to seem concerned with our neighborhood and community's interest seems most contradictory to the blatant "less than junk mail quality" delivery of a notice inviting residents to a meeting that was no more than a huge "one-way, self-promotion without any benefit of true talking points, structure, or qualified officials present to answer our real questions. The CMUC was even less concerned with our local community as they did absolutely nothing to notify the immediate neighborhoods of this proposal.

I write this letter with the hopes that you will assist all of us who are very concerned about this matter to convey our concerns and ask that The City of Huntington Beach, T-Mobile, and CMUC please slow down and allow us an opportunity to hear their sides and respectfully voice our concerns. To this point, it seems that this proposal has been railroaded through the process without any regard to the citizens who are likely to be negatively impacted the most.

Respectfully,

Adam Rodell

9/28/2009

ATTACHMENT NO. 5.11

**Arabe, Jill**

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**From:** Michele Keith [michelek@ci.garden-grove.ca.us]

**Sent:** Sunday, September 27, 2009 11:07 AM

**To:** Arabe, Jill

**Subject:** OPINION RE: Proposed cell tower on Heil

I wish to voice my concern over the T-Mobile intent to build a cell tower in/around my neighborhood.

I am a T-Mobile cell phone customer (for over 10 years). When I first got my cell phone service the reception at home in Huntington Beach was unsatisfactory. I had to go into my backyard (on Kendrick Circle) and find the "spot" to stand and not move as I made my cell phone call. Too often the call was dropped.

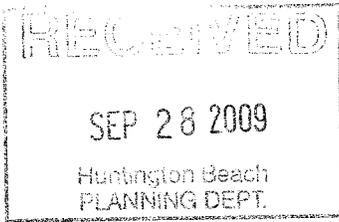
This is not the case today. There is perfect reception in and around my home and neighborhood. I prefer to use my cell phone in my house rather than my land line because of the perfect connectivity. For the past 2 years I have been impressed with the ability to phone anywhere at anytime.

I object to more cell towers being built anywhere un-necessarily.

Michele Keith  
Kendrick Circle  
Huntington Beach, CA

9/28/2009

ATTACHMENT NO. 5.12



16521 Fountain Lane  
Huntington Beach, CA 92647  
September 25, 2009

Zoning Administrator  
2000 Main Street  
Huntington Beach, CA 92648

Re: Conditional Use Permit No. 2009-015  
(T-Mobile Wireless Communication Facility)

Dear Zoning Administrator:

I live on Fountain Lane, next to the Community United Methodist Church. It's a great location - - BUT - - I'm very concerned about the possibility of a communications tower being built on church property. It would be extremely close to many homes.

Several studies have shown the health risks associated with proximity to such towers. My neighbors and I would be subjected to radiation from the tower 24 hours a day, seven days a week.

Please consider the health of the residents on Fountain Lane and adjacent streets, and do not allow the construction of the proposed communications tower at the Community United Methodist Church on Heil Avenue.

Sincerely,

A handwritten signature in cursive script that reads "Carla Smetana".

Carla Smetana

**Arabe, Jill**

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**From:** Betty [bmcfarland2@verizon.net]  
**Sent:** Monday, September 28, 2009 4:34 PM  
**To:** Arabe, Jill  
**Subject:** CELL TOWER

We wish to express our opposition to the cell tower at Community United Methodist Church on Heil Avenue in Huntington Beach. We have great concerns, not only from the radiation hazards of the microwave transmitters, but also the ascetics and the very likely loss of property values in our neighborhood. Our home on, Mason Drive, adjoins the church property.

Don and Betty McFarland

ATTACHMENT NO. 5.14

9/28/2009

**Arabe, Jill**

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**From:** summer powers [summer.powers@me.com]  
**Sent:** Monday, September 28, 2009 6:23 PM  
**To:** Arabe, Jill  
**Subject:** CUMC cell tower

Hello Jill,

We live 2 houses from the church and my husband and I feel that a residential neighborhood is not the place for a cell tower. T-Mobile has also been denied at Harbour View school and feel our neighborhood deserves the same. No cell tower in our back yards. We will definitely be able to see it clear as day from our backyard. I personally do not want to see that when I am relaxing in my Jacuzzi.

Thank You,

Summer Powers  
6601 Abbot dr.

ATTACHMENT NO. 5.15

**Arabe, Jill**

**From:** debbie zentil [dzvirtual@msn.com]  
**Sent:** Monday, September 28, 2009 9:00 PM  
**To:** Arabe, Jill  
**Subject:** T-Mobile Cell Tower at CUMC

This is in response to T-Mobile's request to be granted a conditional use permit for a cell tower. This permit has had to be requested as the tower will stand 50 feet tall which exceeds Huntington Beach codes.

I have done some research into the safety of these types of towers. The American Cancer Society ("ACS") has declared that these towers do not pose any harm for persons or structures that do not come in direct contact of the waves that they send out. Their study was done on **based stations that "usually range in height from 150-270 feet."** Here, we are talking about a station that is to be 50 feet high with antenna starting at 45 feet; up to 225 feet lower than the towers studied by the ACS.

The ACS article goes on to state: "Public exposure to radio waves from cellular phone antennas is slight for several reasons. The power levels are relatively low, **the antennas are mounted at high above ground level...**" Again, this study was done on towers ranging 150 to 270 feet high. Here, we would have the reverse, an antenna which was substantially closer to the surrounding homes and structures. The closer the home to the antenna the more waves that home and its tenant would receive.

Again, the ACS, talking about standards of much taller stations states: "Exposures that exceed these recommended standards can sometimes be encountered on the rooftops of buildings where base stations are mounted. If this is the case, **access to these areas should be limited.**" If the studies the ACS is basing its results on are taken from towers 3 or more times higher than the one proposed to be put in here, than our homes are, at a minimum, going to receive three times the exposure and "access to [those] areas should be limited!"

The legal standard to be applied here is: Does the utility outweigh the potential danger/risk. When I interviewed the T-Mobile representative at the meeting at CUMC I was advised that the cell tower "would service no more than 15 callers at one time." I do not believe that benefiting an additional 15 callers to cell phone service outweighs the potential exposure of an entire neighborhood and its visitors (the regulars at CUMC) to cancer, sleepless nights worrying about getting sick and decreased property values.

In addition, our neighborhood has conducted its own neighborhood survey. Of those who used T-Mobile (myself included [unless the tower goes in then I become a former T-Mobile user and the need lessens for the tower]) **everyone received adequate service.** Again, the utility here does not outweigh the risk.

As a long-time resident and home owner of Huntington Beach I am pleading that this tower does not go in. I have had three small bouts with cancer and am considered high risk for future cancer. I simply cannot intentionally put myself in situations that may cause cancer and I love my home and do not want to leave.

9/29/2009

ATTACHMENT NO. 5.16

Please give great thought to the necessity of this tower and the safety of the residents of Huntington Beach. We love our Huntington Beach and we love our neighborhood; please reciprocate.

**Debbie Zentil**  
**Legal Assistant**  
**Phone: (714) 293-1216**

**Arabe, Jill**

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**From:** millar0125@aol.com  
**Sent:** Monday, September 28, 2009 11:01 PM  
**To:** Arabe, Jill; cumchb@cumchb.org  
**Subject:** T mobile Cell phone tower

I would like to express my concern over a proposed cell phone tower installed at the Community Methodist Church on Heil Ave.

Concerns listed below:

- Possible health effects to children attending pre-school at the Church
- Health impact to residents living close to the tower (appears there is conflicting information regarding health impact of these towers)
- Eye sore
- Find a better location with less impact to neighborhood (less populated)

Appears this issue was previously addressed at a local school back in April.

I would believe that some of the arguments used to cancel the construction of that tower could but used with this situation as well.

Although this would be constructed on Church property, the impact extends beyond into the neighboring community.

Thank you for your consideration.

Marilyn Millar  
16691 Dale Vista Ln  
Huntington Beach, CA 92647

ATTACHMENT NO. 5.1B

- A T-Mobile customer next to me says her reception is fine so it sounds like T-Mobile is wanting to install the tower for the revenue to be gained by sub-leasing to other carriers.

Shame on CUMC and T-Mobile for wanting to install a radiation emitting cell tower over our neighborhood, our children, and the children who attend their church and pre-school. I would be livid if I had a child attending that pre-school.

This is dispicable!

Please have this STOPPED Jill and do please forward my email of concerns to whomever in your organization you feel needs to understand the breadth of the disgust our neighborhood has for this proposal. We are absolutely nauseated and beside ourselves.

Jill, in my opinion, this should have already been shot down by the city, or there should already be laws on the books prohibiting churches that were given these special zoning permits to bring community services to the neighborhood from utilizing them in this sad, destructive, dangerous and predatorial manner.

Please feel free to give me a call and tell me what I can do further to help STOP this. I was out of town when the notices were mailed. We have not had enough time to gather all the petition signatures of those who object and I will be pounding the streets this evening along with another neighbor.

I look forward to meeting to you Jill. I have had many great experiences at the HB planning department, but I have dealt almost primarily with Hayden Beckman. I know you are looking out for property owners - and appreciate you and your team.

Thanks much!

Ronald M. Passmore, MBA, PMP  
Senior Project Manager  
949-355-9612

**Arabe, Jill**

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**From:** Blanca Evans [bevans@combanca.com]  
**Sent:** Tuesday, September 29, 2009 3:08 PM  
**To:** Arabe, Jill  
**Subject:** Seek to Stop the Building of the T-Mobile Cell Tower in the Community United Methodist Church of Huntington Beach & Preschool Property!

Let these be recorded as our concerns regarding the building of a T-Mobile cell tower in the Community United Methodist Church of Huntington Beach (CUMC) & Preschool property.

My husband Richard S. Evans and I live right behind the CUMC and Preschool, at 6641 Mason Drive, Huntington Beach 92647, for over 25 years.

We seek to stop the building of T-Mobile's cell tower at the Church and Preschool property for the following reasons:

- 1) "Potential negative impact on the brain development cycle in children" (Children are still children whether they are in a public school or private school.)
- 2) "Parallels between cell tower radiation and their potential effects on children"
- 3) "Close proximity of the proposed cell tower and the pre-school site and its potential negative impact on the children."
- 4) "Potential connection between environmental elements and the negative health risk of exposures." (For the pre-school children and residents around the area.)
- 5) "Adequate notice to adjacent residents." (A matter of this magnitude should be addressed with more time and not two weeks prior to the hearing. After all, T-Mobile (and this is a fact) has had at least 5 months to prepare. My husband and I were gone for a two-week vacation returning on September 23<sup>rd</sup>. Notice went out just the week before. We actually received notice of 8 days! Our neighbors were also out on vacation and did not receive any notice from the City. Parents of the children in the affected Pre-school were notified only 2 weeks before the hearing—a parent of a child going to this Pre-school can testify to that. Lack of consideration and lack of care to protect the safety of the children involved.)
- 6) "A cell tower may negatively affect local property values"

Now, please note that our concerns are very similar to the concerns of those residents and parents recorded in the Minutes of the Council/RDA Special Meeting of April 27, 2009, and subsequently, the Council **approved to stop the construction of the cell tower at Harbour View Park.**

*I must remind you that the City does have a responsibility to maintain a high quality of life for all residents in the City of Huntington Beach—children and adults of all races alike, all beliefs alike, whether residents are rich, poor, and whether children are going to public or private school!!*

**WE DEFINITELY OPPOSE THE CONSTRUCTION OF THE PROPOSED CELL TOWER.**

Blanca D. Evans  
 Cell: 714-269-2221

P.S. I would like to speak at the hearing of September 30<sup>th</sup>, 2009, to be held at 1:30 p.m. Thank you

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ATTACHMENT NO. 5.20

9/29/2009

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This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. The information contained in this message is proprietary and/or confidential. If you are not the intended recipient, please: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.

**Arabe, Jill**

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**From:** dalia brunner [daliabru@yahoo.com]  
**Sent:** Tuesday, September 29, 2009 7:25 PM  
**To:** Arabe, Jill  
**Subject:** Cell Tower

Dear Jill,

I was just notified by a neighbor that T-mobile is planning to put up a cell tower at CUMC which is a block from my house.

I am really upset about this. The plant nurseries in the area who are under the cell towers warn people about radiation risks.

Please don't put our children in harms way. Let's do the right thing and protect our city and the children.

Thank you.  
Dalia Brunner  
714-492-9128

9/30/2009

ATTACHMENT NO. 5.22

**Arabe, Jill**

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**From:** Tonya Wick [tonyawick@gmail.com]  
**Sent:** Tuesday, September 29, 2009 9:50 PM  
**To:** Arabe, Jill  
**Cc:** Bill Wick  
**Subject:** Opinion for Conditional Use Permit No. 2009-015  
**Attachments:** CellTower\_CityHall.doc

Dear Jill,

Thank you very much for speaking with me today (September 29, 2009) about Conditional Use Permit No. 2009-015 (T-Mobile Wireless Communication Facility). Attached is a letter voicing our strong opposition to issuing the permit to Duane Hurtado, Community United Methodist Church. Thanks,

Tonya & William Wick

9/30/2009

ATTACHMENT NO. 5.23

William & Tonya Wick  
18102 Wellbrook Circle  
Huntington Beach, California 92647  
(714) 235-0822 cell  
(714) 375-5307 home

## William & Tonya Wick

September 30, 2009

City of Huntington Beach  
Office of the Zoning Administrator  
Huntington Beach, California 92648

Dear Zoning Administrator,

We are the parents of a young child that attends nursery school at the proposed T-Mobile cell phone tower site on the property of the Community United Methodist Church (CUMC) at 6666 Heil Avenue, Huntington Beach. As the parents of a young child in the direct vicinity of the proposed site, we want to voice our strong opposition to issue a conditional permit (No. 2009-015) to CUMC. We have serious concerns about cell tower radiation and its effect on young children. We are concerned that the cell tower radiation may exceed FCC acceptable standards. We have also been following the city's failed attempts to place towers on the public properties of Harbour View Elementary and Bolsa View Park. We hope that you take our concern for our child, and those of other concerned citizens of past failed attempts into consideration when issuing the permit to CUMC.

Thank you for your time,

William & Tonya Wick

**Arabe, Jill**

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**From:** Ron Kuga [rkuga@hotmail.com]  
**Sent:** Tuesday, September 29, 2009 9:53 PM  
**To:** Arabe, Jill  
**Subject:** Cell Tower Proposal Heil Av

To Whom It May Concern:

Yes I am **against** a cell tower being built in my neighborhood. I would like to have been notified much earlier about this construction so I could have evaluated the pros and cons of this cell tower. But it seems that the notification I received by mail and the time the hearing on this matter on Sep. 30th, 2009 shows the true "TRANSPARENCY" of the church involved with this matter. I think I've had enough of "TRANSPARENCY" talk from the federal government and now this in my neighborhood! I presume the church will be getting some financial gain to have this cell tower built on its property. So the Almighty Dollar seems to be the true root for this church to go ahead with this project...wonder what the true "**ALMIGHTY**" would say about the endeavors of this church. God does not need a cell phone to speak to all of us... I'm sure God has no cell phone... I'm sure God does not "text" also... so why does a church need a cell tower built on its property and to put a blight in my neighborhood. I can see the church from my home... I do not need to see a cell tower!

NO CELL TOWER IN MY NEIGHBORHOOD !!!

Ron Kuga

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Hotmail® has ever-growing storage! Don't worry about storage limits. [Check it out.](#)

9/30/2009

ATTACHMENT NO. 5.25

**Arabe, Jill**

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**From:** Kathy Utley [utley\_kathy@yahoo.com]  
**Sent:** Wednesday, September 30, 2009 11:56 AM  
**To:** Arabe, Jill  
**Cc:** bill\_kettler@yahoo.com; hutley@loyolahs.edu  
**Subject:** Opposition to T-Mobile cell tower at CUMC

Dear Ms. Arabe,

My name is Kathy Utley, and I live at 16661 Dale Vista Lane which is approximately 45 yards from the Community United Methodist Church. From our driveway, we can see the church, and pass by the property on our way to and from our home. It's as if it marks the entrance to our neighborhood.

I am writing you to voice my husband's and my concerns and **opposition** to the proposed T-Mobile cell tower at the CUMC. We feel that it will not only be an aesthetic "eye-sore" entering into the tract, but also fear it will depreciate our property value. One local appraiser, Tina Burke, has said that "any industrialization of an area such as a cell tower will result in lower property values". Over the last 12 years that we've lived in this neighborhood, we've only seen improvements in property value, the quality of homes, our neighbors and the proposed enhancement of Irby park. We feel it is unjust to allow the CUMC to collect income at the expense of the surrounding homeowners.

In addition, the CUMC houses one of best preschools in the City of Huntington Beach. It has been developing and preparing our young children for success in school and getting along in life for over 35 years. Our family has had a tenure of 8 years at the CUMC nursery school. The staff are experienced, loving and knowledgeable, and the facility has always felt inviting and safe. With the addition of a RF radiation emitting cell tower, whether it be disguised as a palm tree or not, I fear for the health of the children. Children are most susceptible to genetic damage from RF radiation used by the frequency of mobile towers due to their thinner skulls and rapid rate of growth (Chopra, Rajesh). Mount Shasta Bioregional Ecology Center states that studies have shown that even at low levels of radiation, there is evidence of cell tissue and DNA damage and links to brain tumors. Finally, a study by Bruce Hocking in Australia, found that children living near RF radiation producing towers similar to cell towers had twice the rate of leukemia than children living more than 7 miles away. Therefore, the CUMC nursery school will not be a safe place for children. What will become of the magnificent institution that has been serving our young people for so long?

Even though we can not see, hear, touch, taste or smell RF radiation, it is still all around us and in high doses. We are being polluted by it everyday, just as we would smog, noise or litter. Do not polluted my neighborhood or depreciate it's value.

Please do not allow the CUMC to build a cell tower.

Thank you,

Kathy Utley  
16661 Dale Vista Lane  
Huntington Beach, CA 92647  
(714)848-2818

9/30/2009

ATTACHMENT NO. 5.26

**Arabe, Jill**

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**From:** Marilyn Kuga [marilyn@kuga.tv]  
**Sent:** Tuesday, September 29, 2009 2:48 AM  
**To:** Arabe, Jill  
**Subject:** STOP! CELL PHONE TOWER NOT WANTED IN HUNTINGTON BEACH

To Whom It May Concern:

I am against any proposal for installation of a cell phone tower at the Community United Methodist Church (CUMC) site on Heil Avenue between Goldenwest and Edwards in Huntington Beach.

- Future health concerns.
- Another money-making project for CUMC?
- Beginning of many, many more towers in residential neighborhoods?
- Property values would be adversely affected by the greed of an irresponsible church and a telecommunications corporation. What's in it for them? Is that their only concern?

Sincerely,

Marilyn Kuga

ATTACHMENT NO. 5.27

9/29/2009

**Arabe, Jill**

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**From:** Laura Harris [laurah3@verizon.net]  
**Sent:** Tuesday, September 29, 2009 1:17 PM  
**To:** Arabe, Jill  
**Subject:** Cell Tower - NO!

Ms. Arabe,

I am a resident of Huntington Beach on Dale Vista Lane, not a full block from the proposed site for the T-Mobile Cell Tower at CUMC. I am writing you to express my passionate disagreement regarding the building of this tower. As a T-Mobile user myself, I have no problem with my cell sites from my home or locally. I see this eyesore as being unnecessary. Why this tower needs to be in the middle of a neighborhood verses in an industrial area is beyond my understanding.

Also, there has been much debate over the negative health risks that these sites can have on residents. I have a daughter who currently goes to CUMC Preschool and another child on the way. My concerns over this issue would definitely influence my preschool choices now and in the future. We would even consider moving from a home and neighborhood we love.

Thank you for hearing my arguments against the Cell Tower. I am confident that my opinion will be weighted and heard.

Sincerely,

Laura Harris

16682 Dale Vista Lane

ATTACHMENT NO. 5.2B

9/29/2009

**Arabe, Jill**

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**From:** Ron Passmore [ron\_passmore@yahoo.com]  
**Sent:** Tuesday, September 29, 2009 3:57 PM  
**To:** Arabe, Jill  
**Cc:** Bill Kettler  
**Subject:** Cell Tower - CUMC/T-Mobile, 6666 Heil Avenue, HB

Dear Jill,

I live at 16632 Dale Vista Lane in HB and I vehemently oppose the building of the cell phone tower by T-Mobile on the property of Community United Methodist Church (CUMC) @ 6666 Heil Ave.

- There is very strong evidence that the radiation from these towers is dangerous to my health and the health of our children.
- The tower is an absolute eyesore and has no business in the middle of our neighborhoods.
- It is a commercial installation and has no business in our neighborhoods, and the city is obligated to protect us from this type of encroachment.
- CUMC was given a zoning permit to bring their community services to our neighborhood, and they should not be allowed to utilize a loophole to install this ugly and dangerous commercial installation.
- T-Mobile should be restricted to developments in pure commercially zoned properties. Home owners in the tract aligning commercial zones typically buy their homes at a discount due to the proximity to the commercial zone.
- This cell phone tower will immediately cause all surrounding properties to appraise lower, and we will lose money on the investment we made in our property, and HB.
- CUMC and T-Mobile are trying to profit at my expense and the expense of my neighbors.

9/29/2009

ATTACHMENT NO. 5.29

**Arabe, Jill**

**From:** larsondj@verizon.net  
**Sent:** Monday, September 28, 2009 1:13 PM  
**To:** Arabe, Jill  
**Subject:** OPPOSE T-Mobile CUP 2009-015  
**Attachments:** council\_minutes\_042709.pdf

Hello Jill,

I am a homeowner and I live within 500 feet of the proposed T-Mobile 12-antenna cell tower at Community United Methodist Church (CUMC) and pre-school.

I AM OPPOSED TO THIS CELL TOWER !!!!!!!

I wish to speak at the public hearing before the Zoning Administrator on Wed, Sep 30 at 1:30 PM.

I am very concerned about the health risks due to long-term exposure to cell tower emissions. The CUMC students and staff would be exposed 8 hours a day, 5 days a week. But the local neighbors will be exposed 24 hours a day, 7 days a week!

The research regarding this danger is ongoing. Higher incidences of cancer, childhood leukemia, neurological problems, etc. are associated with people living near sources of these emissions than for people living farther away.

Responsible environmental decisions need to be made now in order to minimize potential negative health impacts later.

I urge that HB city codes be modified to require a much longer prior notification period, and a much larger notification area.

In addition, I also urge that HB city code modifications include required notification to the parents of students who attend a school near a proposed cell tower – regardless of whether the school is public, private or a pre-school.

I am attaching a document that I want entered into the public minutes of the Zoning Administrator hearing. The document is the Minutes of the April 27, 2009, City Council / Redevelopment Agency special meeting.

I feel that the April 27 minutes should be included because it shows:

- a history of public concern and outrage about the attempts by Omnipoint Communications, Inc. (A T-Mobile USA, Inc., Subsidiary) ("T-Mobile") to site a cell tower near Harbour View Elementary School.
- that people are aware of and concerned about the negative health risks of long-term emissions from cell towers.
- that citizens want modifications to the city codes regarding length and extensiveness of public notification, and want additional modification to protect children from cell tower emissions.
- a pattern of T-Mobile attempting to build cell towers near schools even though T-Mobile is aware of the public concern and outrage.

Thank you.  
Dianne Larson

9/28/2009

ATTACHMENT NO. 5.30

**Minutes  
Council/RDA Special Meeting  
City of Huntington Beach**

Monday, April 27, 2009  
5:00 PM - Room B-8  
6:00 PM - Council Chambers  
Civic Center, 2000 Main Street  
Huntington Beach, California 92648

**A video recording of the 6:00 PM portion of this meeting  
is on file in the Office of the City Clerk and is archived at  
[www.surfcity-hb.org/government/agendas/](http://www.surfcity-hb.org/government/agendas/)**

5:00 PM - CALL TO ORDER

Mayor Pro Tem Green called the special meeting of the City Council/Redevelopment Agency to order at 5:00 PM.

ROLL CALL

Present: Carchio, Dwyer, Green, Bohr (arrived at 5:07 PM), Coerper, Hardy, and Hansen (arrived at 5:01 PM)  
Absent: None

ANNOUNCEMENT OF LATE COMMUNICATION PERTAINING TO SPECIAL MEETING  
CLOSED SESSION ITEM ONLY - None.

PUBLIC COMMENTS PERTAINING TO SPECIAL MEETING CLOSED SESSION ITEM ONLY  
(3 Minute Time Limit) - None.

RECESS TO CLOSED SESSION

A motion was made by Coerper, second Green to recess to Closed Session. The motion carried by the following roll call vote:

AYES: Carchio, Dwyer, Green, Coerper, Hardy, and Hansen  
NOES: None  
ABSENT/OUT OF ROOM: Bohr

CLOSED SESSION

(City Council) Litigation - Pursuant to Government Code Section 54956.9, the City Council recessed into Closed Session to confer with the City Attorney regarding the following lawsuits (and potential lawsuits):

Pursuant to *Government Code* Section 54956.9(b)(3)(A), the City Council recessed to Closed Session to confer with its attorney regarding potential litigation. Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet

known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.  
Number of Potential Cases: Unknown at this time. Subject: Potential Litigation re: Site

License Agreement with Omnipoint Communications, Inc. (A T-Mobile USA, Inc., Subsidiary) for  
Wireless Telecommunication Facility at Harbour View Park.

#### 6:00 PM - RECONVENE CITY COUNCIL SPECIAL MEETING

Mayor Bohr reconvened the special meeting of the City Council at 6:02 p.m.

#### ROLL CALL

Present: Carchio, Dwyer, Green, Bohr, Coerper, Hardy, and Hansen  
Absent: None

#### ANNOUNCEMENT OF LATE COMMUNICATION

Pursuant to the Brown "Open Meetings" Act, City Clerk Joan Flynn announced the following  
communications to the City Council received after distribution of the agenda packet:

Communications received regarding Administrative Item #1 - Wireless Telecommunication  
Facility at Harbour View Park: 1) Anonymous, 2) Heather Lenore, 3) Lisa Vallefucoco Bayley, 4)  
Cindy and Jeff Busche, 5) Suzie Slope (2), 6) Kevin Veal, 7) Lisa Veal, 8) Barbara Hamilton  
Howard, 9) Ron and Jen Johnson, 10) Mary Ellen Houseal, 11) Todd and Deborah Rosenlof,  
12) The Parkin Family, 13) Drew Kovacs, 14) Lisa and Tony Rudy, 15) JoAnne Flory, 16) Ana  
Youngsma, 17) Diana Rovano, 18) Joan Smith, and 19) Dan and Linda Fillet.

#### COMMUNICATIONS RECEIVED DURING THE MEETING

Communication submitted by Traci White, dated April 26, 2009, voicing opposition to  
Administrative Item #1 - Wireless Telecommunication Facility at Harbour View Park.

Petition entitled *Reject the Cell Tower* submitted by Julia Lucas, undated and containing  
119 signatures.

#### CITY ATTORNEY REPORT OUT OF CLOSED SESSION ITEM(S)

The City Attorney announced that in regard to the settlement agreement between the City of  
Huntington Beach and T Mobile, by a vote of 7-0, the Council directed staff to renegotiate the  
existing license agreement with T Mobile for Harbor View Park, and agreed to reimburse  
appropriate expenses in an amount not to exceed \$50,000.

Mayor Bohr added that T-Mobile representatives committed verbally that they will not proceed  
with the construction on the cell site at Harbour View Park.

PLEDGE OF ALLEGIANCE - Mayor Bohr led the Flag Salute.

PUBLIC COMMENTS PERTAINING TO SPECIAL MEETING ITEM (3 Minute Time Limit)

(The numbers following speakers' comments reflect the approximate point in time in the archived video the speaker appears at <http://www.surfcity-hb.org/government/agendas>)

James M. Jackson, M.D., resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He noted the parallels between cell tower radiation and their potential effects on children. (00:06:09)

Gracey Van Der Mark, concerned parent, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She noted that the cell tower radiation may wind up exceeding FCC acceptable standards and thanked the Council for voting to remove the tower. (00:09:34)

Fred "Skip" Booth, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. Mr. Booth referenced a book by a neurosurgeon who studied brain cancer and its causes in children. He also referenced policies from neighboring jurisdictions that limit cell tower construction. (00:11:30)

Mike Thermos, Homeowners of Huntington Beach, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He noted the close proximity of the proposed cell tower and the adjacent school site and its potential negative impact on the students. (00:13:14)

Tay Norton spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She thanked the City Council for their efforts and decisions related to the proposed cell tower site. She further suggested that the Council conduct public hearings before they make any policy decisions on matters where students or school sites are impacted. (00:15:32)

Heather Lenore, resident of Huntington Harbor, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She noted the negative impacts of cell towers on the brain development cycle in children. She thanked the Council for their decision in moving the cell tower. (00:17:38)

Ralph Bauer, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He suggested the Council conduct public hearings on these types of matters in the future. He also noted that Measure "C" may come into play when considering policy decisions relative to parks and referenced the City's subdivision Ordinance. (00:20:00)

Patrick Munoz thanked Council for their decision to reconsider a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He thanked the Council for listening to the community on this issue. (00:22:25)

Cindy Osterhout, principal of Harbor View School, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She thanked the Council, City staff, representatives from T-Mobile, and the students and families of Harbor View School for their work in this matter and for keeping students and staff safe. (00:22:52)

Mary Busche, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She mentioned her children and grandchildren who attended Harbor View School, the future consequences of potentially harmful environmental decisions, and the community's support for removal of the cell tower equipment. (00:25:37)

Jim Shaffer, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He expressed concerns that this item was initially considered on the Consent Calendar rather than at a public hearing. (00:28:35)

Annalisa Phantumabamrung, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She expressed concerns that the community did not receive adequate notice regarding the proposed cell tower. (00:29:48)

Christina Tsimerekis, parent of Harbor View student, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She thanked the Council for their work in cancelling the contract with T Mobile, however, she also expressed concerns with the Council's due diligence in this matter. She also referenced the apparent lack of proper notice to adjacent residents and the school site. (00:33:42)

Mayor Bohr reiterated the City Council's decision in Closed Session regarding this matter.

Debi Windle, parent of Harbor View student, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She thanked the Council for tonight's decision and suggested the City adopt certain provisions to their zoning code to protect students and children from such future cell tower construction. (00:36:46)

Tim Branoff, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He suggested a modification to the City's development application process as to proactively determine potential impacts to school sites. (00:39:48)

Margaret Tracy, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She expressed concerns and made inquiries as to placement of a cell tower near Bolsa View Park. (00:41:19)

Diane Rector, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility

at Harbour View Park. She mentioned how a neighborhood element, such as a cell tower, may negatively affect local property values. (00:41:44)

Jerry Rich, resident, spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He noted the City's efforts in maintaining a high quality of life for residents and supported tonight's decision. (00:42:49)

Norm Westwell, President, Ocean View School District, thanked Mayor Bohr and Councilmember Carchio for attending a community meeting held on April 23, and spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. He encouraged the Council to consider widespread public notification when a matter of this magnitude is to be discussed. (00:44:24)

Jodie Arendt spoke in opposition to a site license agreement with Omnipoint Communications, Inc. (T-Mobile USA, Inc. Subsidiary) for a wireless telecommunication facility at Harbour View Park. She referenced a personal cancer diagnosis and the potential connection between environmental elements and the negative health risk of exposures. (00:45:53)

Deane McDaniel, resident, inquired as to whether the Council will be considering action to remove other existing cell sites in the City. (00:47:24)

Noting that there were no further speakers, Mayor Bohr closed public comments.

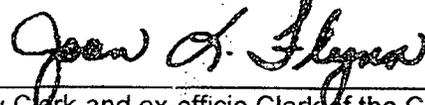
#### ADMINISTRATIVE ITEMS

1. (City Council) Reviewed status of site license agreement with Omnipoint Communications, Inc. (a T-Mobile USA, Inc. Subsidiary) for wireless telecommunication facility at Harbour View Park.

A motion was made by Bohr, second Hardy to direct staff to bring back a Zoning Text Amendment that addresses the permitting and entitlement of cell sites located within 500 feet of school sites to require a Conditional Use Permit and public notice. The motion carried by the following roll call vote:

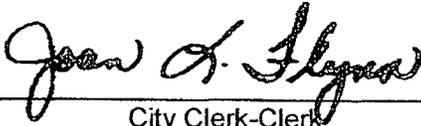
AYES: Carchio, Dwyer, Green, Bohr, Coerper, Hardy, and Hansen  
NOES: None

ADJOURNMENT - Council adjourned at 6:50 p.m. to the next regularly scheduled meeting on Monday, May 4, 2009, at 4:00 PM, Civic Center, 2000 Main Street, Huntington Beach, California.



City Clerk and ex-officio Clerk of the City Council of the City of Huntington Beach and Clerk of the Redevelopment Agency of the City of Huntington Beach, California

ATTEST:

  
City Clerk-Clerk  
Mayor-Chair

**Arabe, Jill**

**From:** Ramos, Ricky  
**Sent:** Wednesday, September 30, 2009 5:22 PM  
**To:** Arabe, Jill  
**Subject:** FW: Cell phone tower @ Community Methodist Church

One more for the file.

**From:** GBean37467@aol.com [mailto:GBean37467@aol.com]  
**Sent:** Wednesday, September 30, 2009 5:08 PM  
**To:** Ramos, Ricky  
**Subject:** Fwd: Cell phone tower @ Community Methodist Church

Dear Mr. Ramos,

My husband attended the meeting today in my behalf since I had to work. He took very good notes of the proceedings today. I am a member of CUMC and attend church on Sunday. I have never been informed of this decision by our finance committee and Mr. Hurtado said there were meetings involving this decision by the church. They probably had Finance meetings but the congregation was never informed about this proposed cell phone tower, I think this was something that was discussed in their meetings.

I realize that this is a very sensitive issue and we are not supposed to make it personal with health concerns, but....when we make precedence by not having them near parks or schools it should still hold for private schools and after school programs at a church and residential neighbors. The Canadian government banned any cell phone towers within 1000 feet of any school, what do they know that we don't?

We all know in our generation how different medical findings and big business can skew reports and doctors can be paid to be consultants. Do we not all remember cigarettes, asbestos, lead paint, 3 Mile Island and dumping chemicals in to local rivers where not supposed to affect our health let alone our future in our children.

I oppose this permit and as a member of the church and resident of HB when does big business lose?

Sincerely,  
 Ginny Bean

**From:** GBean37467  
**To:** jarabe@surfcity-hb.org  
**Sent:** 9/25/2009 11:40:50 A.M. Pacific Daylight Time  
**Subj:** Cell phone tower @ Community Methodist Church

I was given your email address last night at a meeting at Community United Methodist Church where I attended a meeting last night regarding the proposed cell phone tower to be placed on their property. The meeting was actually a session put on by T-Mobile and was not meet with much acceptance by the local residents. It was more of an information session with only their materials similar to a marketing push. Most of the residents were quite upset which was understandable since most of them did not even receive any notice of this. There was a couple who's backyard faces the parking lot of the church who went door to door in the neighbor to inform the people of this proposal. Also, there was not notice to any of the parents of the preschool that is on the premises to the parents. Based on an article that was in the OC Register on Monday, April 27 pertaining to the cell phone tower being built next to the Harbor View school I thought the City council was going to change the rules and notify parents when a cell phone tower was going to be placed near a school. T-mobile last night said they did not have to notify anyone other than residents at least 300 ft from the property - I think they forgot or did not consider the nursery school on the premises.

9/30/2009

ATTACHMENT NO. 5.37

What can the parents and residents do to fight this move proposal.

Thank you for your assistance.

Sincerely,  
Ginny Bean  
concerned grandmother

**Arabe, Jill**

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**From:** BeauBlondy@aol.com  
**Sent:** Sunday, October 11, 2009 11:54 AM  
**To:** cumchb@cumchb.org  
**Cc:** Arabe, Jill  
**Subject:** T-MOBILE CELLULAR TOWER AT THE CHURCH

OCTOBER 11, 2009

RESPECTFULLY, ATTENTION REQUESTED:  
COMMUNITY UNITED METHODIST CHURCH,  
CITY OF HUNTINGTON BEACH: website; cumchb@cumchb.org

CC: CITY OF HUNTINGTON BEACH  
JILL ARABE, Project Planner; jarabe@surfcity-hb.org

I am an average person that watches TV news like most in the evening, with thoughts and opinions. My interest was peaked with a story that aired about your church, COMMUNITY UNITED METHODIST CHURCH, and the cellular conglomerate, T-MOBILE. A story about a cellular tower that is proposed to stand on the Church's property as well as among the community, neighborhoods, and schools. Have these people within these companies no respect for anything or anyone anymore that they hunt even within the sacred homes of worship? *Shame on them.*

What is wrong with the Church? Aside from the researched and documented dangers posed by cellular towers, emitted to the environment and the people, are you that desperate for money? Is the greed that great that you would place your community, your congregation, your members, your CHILDREN for heavens sake, in harms way? For a buck? What other reason would there be? Better cell service for the Church?

It is said that the devil works in clever ways. That through greed many will fail and fall to his Will. Seems you may be slipping into that pocket, if you are seriously considering taking this offer. *Shame on you.*

I believe the Church to be a place, and for some a last resort, to turn to for Hope and to have Faith, to feel protected. I am getting the sense, based on the criticism and protests by the people of your Community, that these folks DO NOT WANT THIS TOWER IN THEIR BACKYARDS. Are you not listening, or are you intentionally turning a deaf ear, only hearing "show me the money!" ???

There have to be other ways that the Church can raise money, instead of putting people and their health in harms way. Listen to the people of your community, to the members of your congregation, to people outside the City who are appalled by this story, and stand on their side as they have stood with you. They are they ones who come to your

10/21/2009

ATTACHMENT NO. 5.39

House of Worship every day, every week, every month, every year, faithful and supportive.

If you are torn, ask GOD and listen hard, he will provide the answer. I would have to believe it will not be based on greed or money ...or better cell service.

Respectfully submitted,  
Nansea Hernandez

Sent from my iPhone

Thank you,  
Keith Bohr

Begin forwarded message:

**From:** summer powers <summer.powers@me.com>  
**Date:** October 6, 2009 4:48:36 PM PDT  
**To:** [kbohr@surfcity-hb.org](mailto:kbohr@surfcity-hb.org)  
**Subject:** CUMC Cell Tower

Hello Mayor Bohr,

We live at 6601 Abbott Dr. We are 2 houses from the preschool. We have lived here for close to 10 years and are not planning on leaving. We absolutely do not want the cell tower in our backyard. T-Mobile said it would not be visible from our house. When in fact we will have a plain sight view from our back yard.

We feel this cell tower is better suited at Murdy Park or behind Stater Bros. Why is anyone even thinking of putting it in a complete residential area. I know the Church is zoned for commercial. But come on it is surrounded by houses only.

Please don't let them bring our property value down. Please can't this be put in a safer area that is not occupied all the time. I am a housewife and stay home with our two boys.

Thanks,

Summer Powers

10/21/2009

ATTACHMENT NO. 5.41

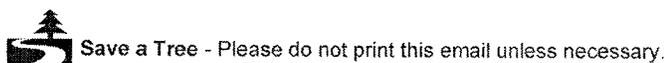
**Arabe, Jill**

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**From:** Monica Moretta [monica.moretta@sequoia-ds.com]  
**Sent:** Wednesday, October 07, 2009 4:01 PM  
**To:** Arabe, Jill  
**Subject:** RE: Re: CUMC Cell Tower

Thank you, Jill. I have forwarded the information to T-Mobile.

Monica Moretta | Land Use Planner  
Sequoia Deployment Services, Inc.  
One Venture, Suite 200 | Irvine, CA 92618  
☎ (949) 241-0175 | ☎ (949) 753-7203  
✉ [monica.moretta@sequoia-ds.com](mailto:monica.moretta@sequoia-ds.com)



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**From:** Arabe, Jill [mailto:jarabe@surfcity-hb.org]  
**Sent:** Wednesday, October 07, 2009 3:52 PM  
**To:** Monica Moretta  
**Subject:** FW: Re: CUMC Cell Tower

Monica -  
Below is a copy of the email I sent to a resident in response to an email she wrote to the Mayor. I will forward the resident's email shortly.

*Jill Ann Arabe*  
Assistant Planner  
City of Huntington Beach  
(P) 714.374.5357

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**From:** Fauland, Herb  
**Sent:** Wednesday, October 07, 2009 3:39 PM  
**To:** Arabe, Jill  
**Subject:** RE: Re: CUMC Cell Tower

Please forward to applicant

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**From:** Arabe, Jill  
**Sent:** Wednesday, October 07, 2009 10:20 AM  
**To:** summer powers  
**Subject:** Re: CUMC Cell Tower

Summer,

On behalf of the Mayor, this email is being provided in response to your written correspondence dated October 6, 2009. The City appreciates your concerns with regards to the proposed wireless communications facility at the Community United Methodist Church site. Your comments will be forwarded to the Zoning Administrator (ZA) for consideration.

Please be advised that the project was scheduled for a public hearing before the ZA on September 30, 2009, at 1:30pm in Room B8, Lower Level, City Hall. The ZA continued the item to the October 28, 2009, meeting in

order for the applicant to provide a completely stealth design of the project. Pursuant to Section 230.96.B.3 of the Huntington Beach Zoning and Subdivision Ordinance, examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards.

If you have any further questions or concerns, please feel free to contact me at (714) 374-5357 or via email at jarabe@surfcity-hb.org.

*Jill Ann Arabe*  
Assistant Planner  
City of Huntington Beach  
(P) 714.374.5357

rec'd at

October 19, 2009

Council mtg.

Huntington Beach City Council:

I am Dianne Larson, a Huntington Beach resident, and I am **OPPOSED** to T-Mobile's proposed cell tower at Community United Methodist Church (CUMC) which is near the intersection of Heil Avenue and Edwards Street.

There are **MAJOR INCONSISTENCIES** and what I personally consider to be **INTENTIONAL MISREPRESENTATION** and **FALSIFICATION** of facts presented to the public and submitted to the City of Huntington Beach in T-Mobile's application for Conditional Use Permit (CUP) No. 2009-015 for a cell tower at CUMC.

Three areas of concern include:

- the **Coverage Objective area**,
- **Alternative Site locations** and
- **verification of an actual need**.

Based on T-Mobile's inconsistencies and what I believe to be intentional falsification, I believe that this cell tower should be stopped.

I also urge the City Council to modify city codes to require an independent study of current cell phone coverage before applications for permits are even considered.

Thank you.

### **Coverage Objective Area**

I have submitted T-Mobile documents that specify different Coverage Objective areas for this cell tower.

1. "**T-Mobile LA33421A Coverage Objective**" is an aerial view with a yellow oval indicating an area:
  - just over 1 mile east to west (from just west of Goldenwest to the west side of Springdale) and
  - just over  $\frac{3}{4}$  mile north to south (from the north side of College View Elementary School to just north of Warner).
2. "**T-Mobile's Alternative Location Map**" is another aerial view showing a much smaller Coverage Objective area.
  - This pdf was emailed to me after I requested to see the Alternate Locations T-Mobile had researched.
  - approximately .4 mile east to west
  - approximately .3 mile north to south
  - This document specifically identifies **College View Elementary School, College View Park, Spring View Middle School, and Irby Park**
  - states that the school district and city will not lease space to wireless carriers
  - states that these locations are "**outside of the coverage objective.**"
3. "**Coverage for LA33421A**" "**Attachement 6.03**" (misspelling copied from T-Mobile document)

- This document shows the **most intense cell tower coverage level (“In Building”)** completely blanketing **College View Elementary School, College View Park, the playground at Spring View Middle School** and the **northern half of Irby Park**
- All of which were specifically identified as being “outside of the coverage objective” on T-Mobile’s Alternative Location map.
- **Mid-level cell tower coverage (“In Vehicle”)** extends north to Edinger Ave where T-Mobile has an existing cell tower site at McDonalds; east of Goldenwest just beyond T-Mobile’s existing cell tower at Murdy Park; south almost to Warner; east almost to Springdale
- **Lowest level cell tower coverage (“Outdoor”)** extends even further.

### **Alternative Site Locations**

I have submitted T-Mobile’s “Wireless Permit Application Form” and attachments received by the Huntington Beach Planning Department on April 20, 2009.

4. **“6.00 Candidate Sites”** (page 7 of 9) of application:
  - 6.02 indicates that no other “leases, lease-options or similar formal or informal agreements” were “attempted.”
5. **“Site Justification Study”** (LLA33421-A Community UMC Site\_Justification) (paragraph 3) states that **“alternative candidates were ruled out due to the lack of interest to lease space, and height restrictions that will not satisfy T-Mobile’s coverage objective.”**
6. **“Project Description”** (paragraph 3)
  - Despite T-Mobile’s statement that the “coverage objective is primarily the residential neighborhoods located to the north ,south, east and west of the intersection of **Main Street and Palm Avenue,**” (*emphasis mine*),
  - T-Mobile claimed research of alternative locations included **“Redeemer Lutheran Church, St. Bonaventure Roman Catholic Church, and even city parks.”**
7. **“T-Mobile’s Alternative Location Map”** (discussed in Coverage Objective Area 2.)
  - This document specifically identifies **College View Elementary School, College View Park, Spring View Middle School, and Irby Park** and
  - states that the school district and city will not lease space to wireless carriers

**If no other leases or informal agreements were attempted, how did T-Mobile rule out at least six “alternative candidates... due to the lack of interest to lease space”?**

### **Verification of Actual Need**

I have submitted an additional T-Mobile coverage document, an enlargement of a portion of the Thomas Guide map book for the area surrounding the intersection of Heil and Edwards, and a spreadsheet showing results of a simple cell phone coverage test.

8. T-Mobile's "LA33421A Predicted Coverage Without the Proposed Site" was available to the public at CUMC on September 24, 2009.
- This document shows a portion of T-Mobile's "Coverage Without LA33421A" (Attachment 4.02) which was submitted with their application.
  - "4.00: Radio Frequency Coverage Maps" (page 5 of 9) states that Attachment 4.02 is to be a "map of **existing** RF coverage" (so why is the hand-out titled "predicted"?)
  - These hand-out and Attachment 4.02 show coverage in the CUMC area as only strong enough for "Outdoor" use of T-Mobile cell phones and not strong enough for "In Vehicle" or "In Building" cell phone usage.
  - I am able to make, call and maintain calls without being dropped inside my home.
  - The other T-Mobile cell phone users I have spoken with who reside in this area also claim adequate cell phone coverage.
9. Using a blow-up of the Thomas Guide map of this area, Debbie Zentil, my neighbor and fellow T-Mobile cell phone user, and I conducted a simple test of In-Vehicle cell coverage.
- On October 17, 2009, a T-Mobile IN-VEHICLE cell phone coverage test was conducted by two Huntington Beach residents.
  - Calls were made on Saturday morning, October 17, 2009, between 10:55 AM and 11:45 AM. Late Saturday morning was chosen because most people would be home and cell phone use would potentially be at its highest in this residential neighborhood.
  - Ten IN-VEHICLE phone calls were made / received between two T-Mobile cell phone users in the Coverage Objective specified by T-Mobile's proposed cell tower site LA33421A at CUMC.
  - Test locations included next to College View Park, next to Spring View Middle School's playground, and near Irby Park. (These locations are potentially Emergency 911 locations.)
  - The locations of the cars during the test are marked on the Thomas Guide map.
  - All calls were made & received inside vehicles which were pulled over to the side of the road and while the engines were running.
  - Calls lasted from a few seconds to over two minutes in duration.
  - All ten IN-VEHICLE cell phone calls were made, received and maintained (call not dropped) without any problems.
  - The quality of all the calls was excellent.
10. A spreadsheet titled "October 17, 2009 T-Mobile IN-VEHICLE cell phone coverage test conducted by two Huntington Beach residents" shows the details and results of this test.
11. T-Mobile's "Site Justification Study" (LLA33421-A Community UMC Site\_Justification) (paragraph 2) states that the CUMC "facility is needed to correct a hole in network coverage."

The simple, 1-hour In-Vehicle test shows that T-Mobile's "Coverage Without LA33421A" (Attachment 4.02) coverage map is incorrect, and therefore invalid, as justification for the cell tower at CUMC.

Areas that T-Mobile shows as only strong enough coverage for "Outdoor" cell phone calls is actually robust enough for "In Building" cell phone usage.

At best, T-Mobile's coverage map reflects old, outdated coverage data and does not accurately represent current coverage conditions.

More testing would be necessary to determine if there is any inadequate coverage at all.

**CITY OF HUNTINGTON BEACH  
WIRELESS PERMIT APPLICATION FORM**

This form is designed to elicit required technical information in support of an application for a new or modified permit (generally, the "Permit") for a wireless site within the City of Huntington Beach.

This application is a mandatory element of the application process. No application for a new wireless site Permit or for a modification of an existing wireless site Permit shall be considered for determination of completeness until this form and required attachments are provided to the City of Huntington Beach.

Every page of this form, including this page, must be completed and submitted to the City of Huntington Beach, and each page must be signed and/or initialed where indicated.

Questions about this form or the required information to be provided should be directed to the City Planner assigned to your project or to the Director of Planning at (714) 536-5271 for the City of Huntington Beach.

You are advised to be familiar with the City's Municipal Code and Zoning and Subdivision Ordinance, which establishes standards and guidelines for the installation of wireless communications facilities in the City of Huntington Beach.

<Continue to next page>



1.00: **Applicant Information**

1.01: Project Address: Community United Methodist Church located at  
6666 Heil Ave.

1.02: Project Assessors Parcel Number: 146-483-29  
Omnipoint Communications, Inc. a subsidiary

1.03: Name of Applicant: of T-Mobile USA, Inc. ( T-Mobile).

1.04: Name of Property Owner: (Ms.) Pastor Jan Wiley, Senior Pastor

1.05: Applicant is: \_\_ Owner xx Owner's representative \_\_  
Other

1.06: Applicant's Address Line 1: Agent Representative for T-Mobile  
One Venture, Suite 200, Irvine CA 92618

1.07: Applicant's Address Line 2: 3 Imperial Promenade, Santa Ana CA 92707

1.08: Applicant's Address Line 3: \_\_\_\_\_

1.09: Applicants Address Line 4: \_\_\_\_\_

1.10: Applicant's Phone number: 714.850.2414

1.11: Applicant's Mobile number: 949.350.5376

1.12: Applicant's Fax number: 714.850.6630

1.13: Applicant's Email address: joe.thompson@T-Mobile.com

|                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Please contact:<br>Monica Moretta<br>Phone No: 949.241.0175<br>Fax No: 949.753.7203<br>monica.moretta@sequoia-ds.com<br>Applicant Representative |
|--------------------------------------------------------------------------------------------------------------------------------------------------|

If Applicant is the Property Owner and the name and contact information above is the same, initial here \_\_\_\_\_ and proceed to 3.01.

<Continue to next page>

2.00: **Project Owner Information**

2.01: Disclose the Names, Addresses, contact persons, and telephone numbers for all Project Owners (use additional sheets if required and mark as "Attachment 2.01"): Omnipoint Communications, Inc. a subsidiary

2.02: Project Owner Name (i.e., carrier or licensee): of T-Mobile USA, Inc. ( T-Mobile).

2.03: Address (line 1): 3 Imperial Promenade, Santa Ana CA 92707

2.04: Address (line 2): One Venture, Suite 200

2.05: City: Irvine State: CA Zip: 92618

2.06: Contact Person Name: Monica Moretta

2.07: Contact Person's telephone number/extension: 949.241.0175

2.08: If the Applicant is not the project owner, attach a letter of agency appointing the Applicant as representative of the Project Owner(s) in connection with this application. Designate the letter of agency as "Attachment 2.08".

Initial here MM if Attachment 2.08 is attached to this application, and continue to 3.00.

2.09: If the Applicant is not the property owner, attach a letter of agency appointing the Applicant as representative of the Property Owner in connection with this application. Designate the letter of agency as "Attachment 2.09".

Initial here MM if Attachment 2.09 is attached to this application, and continue to 3.00.

<Continue to next page>

3.00: **Project Purpose**

3.01: Justification. Provide a non-technical narrative, accompanied by written documentation where appropriate, which explains the purpose(s) of the proposed Project.

3.02: Indicate whether the dominant purpose of the Project is to add additional network capacity, to increase existing signal level, or to provide new radio frequency coverage (check only one).

Add network capacity without adding significant new RF coverage area

Increase the existing RF signal level in an existing coverage area

Provide new radio frequency coverage in a significant area not already served by existing radio frequency coverage by the same Owner or affiliated entity (such as a roaming agreement with an affiliated entity for a cellular or PCS carrier).

Other

3.03 If the answer in 4.02 is not "Other" proceed to 5.00.

3.04 Attach a statement fully and expansively describing the "Other" dominant purpose of this project. Designate this attachment, "Attachment 4.04".

Initial here \_\_\_\_\_ to indicate that Attachment 4.04 is attached to this application.

<Continue to next page>

4.00: **Radio Frequency Coverage Maps**

4.01: Where a licensee intends to provide radio frequency geographic coverage to a defined area from the Project (including applicants in the cellular, PCS, broadcast, ESMR/SMR categories), the coverage maps and information requested below are required attachments. All others proceed to 7.00.

For the coverage maps required here, the following mandatory requirements apply:

1. The size of each submitted map must be no smaller than 8.5" by 11", and all maps must be of the same physical size, scale, and depict the same geographic area. Include major streets and street names on each map. All maps must share a common color scheme.
2. If the FCC rules for any proposed radio service define a minimum radio frequency signal strength level, that level must be shown on the map in a color easily distinguishable from the base paper or transparency layer, and adequately identified by RF level and map color or gradient in the map legend. If no minimum signal level is defined by the FCC rules you must indicate that in the legend of each RF coverage map. You may show other RF signal level(s) on the map so long as they are adequately identified by objective RF level and map color or gradient in the map legend.
3. RF coverage maps with labels such as, "In-Building" "In-Car" and "Outdoor" or referencing a link budget without corresponding signal strengths in units of "dBm" will be rejected.
4. Where the City of Huntington Beach determines that one or more submitted maps are inadequate, it reserves the right to require that one or more supplemental maps with greater or different detail be submitted.

4.02: Map of existing RF coverage within the City of Huntington Beach on the same network, if any (if none, so state). This map should not depict any RF signal coverage to be provided by the Project. Designate this map "Attachment 6.02".

Initial here MM to indicate that Attachment 6.02 is attached to this application.

4.03: Map of RF coverage to be provided only by the Project. This map should not depict any RF coverage provided by any other existing or proposed wireless sites. Designate this map "Attachment 6.03".

Initial here MM to indicate that Attachment 6.03 is attached to this application.

4.04: Map of RF coverage to be provided by the Project and by other wireless sites on the same network should the Project be approved. Designate this map "Attachment 6.04".

Initial here MM to indicate that Attachment 6.04 is attached to this application.

<Continue to next page>

**5.00: Project Photographs and Photo Simulations**

5.01: Where an Applicant proposes to construct or modify a wireless site, the Applicant shall submit pre-project photographs, and photo simulations showing the project after completion of construction, all consistent with the following standards:

1. Minimum size of each photograph and photo simulation must be 8.5" by 11" (portrait or landscape orientation);
2. All elements of the project as proposed by the Applicant must be shown in one or more close-in photo simulations.
3. The overall project as proposed by the Applicant must be shown in five or more area photos and photo simulations. Photos and photo simulation views must, at a minimum, be taken from widely scattered positions separated by an angle of no greater than 72 degrees from any other photo location.
4. For each photograph and photo simulation, show on an area map the location and perspective angle of each photograph and photo simulation in relationship to the Project location.
5. All 'before' and after photos and photo simulations must be of the same scale. For example, do not place a smaller 'before' photo in a box on the same page as a large 'after' photo simulation.

The number of site photos, and photo simulations, and the actual or simulated camera location of these photos and photo simulations are subject to City of Huntington Beach determination. The Applicant must submit photos and photo simulations consistent with these instructions, and be prepared to provide additional photos and photo simulations should they be requested by the City of Huntington Beach.

<Continue to next page>

6.00: **Candidate Sites**

6.01: For applicants in the cellular, PCS, broadcast, ESMR/SMR categories, and others as requested by the City of Huntington Beach, the information requested in Section 8 is required. All others proceed to 9.00.

6.02: Has the Applicant or Owner or anyone working on behalf of the Applicant or Owner secured or attempted to secure any leases or lease-options or similar formal or informal agreements in connection with this project for any sites other than the candidate site identified at 1.01 and 1.02?  Yes  No

6.03: If the answer to 8.02 is NO, proceed to 8.05.

6.04: Provide the physical address of each such other location, and provide an expansive technical explanation as to why each such other site was disfavored over the Project Site. Designate this attachment "Attachment 8.04".

Initial here \_\_\_\_\_ to indicate that Attachment 8.04 is attached to this application.

6.05: Considering this proposed site, is it the one and only one location within or without the City of Huntington Beach that can possibly meet the objectives of the project?  
 Yes  No

6.06: If the answer to 8.05 is NO, proceed to 9.00.

6.07: Provide a technically expansive and detailed explanation supported as required by comprehensive radio frequency data fully describing why the proposed site is the one and only one location within or without the City of Huntington Beach that can possibly meet the radio frequency objectives of the project. Explain, in exact and expansive technical detail, all of the objectives of this project. Designate this attachment, "Attachment 8.07".

Initial here MM to indicate that Attachment 8.07 is attached to this application.

<Continue to next page>

7.00: **Identification of Key Persons**

7.01: Identify by name, title, company affiliation, work address, telephone number and extension, and email address the key person or persons most knowledgeable regarding:

7.10 (1) The site selection for the proposed project, including alternatives;  
7.11 Name: Monica Moretta  
7.12 Title: Agent Representative  
7.13 Company Affiliation: Sequoia Deployment Services, Inc.  
7.14 Work Address: One Venture, Suite 200 Irvine, CA 92618  
7.15 Telephone / Ext.: 949.241.0175  
7.16 Email Address: monica.moretta@sequoia-ds.com

7.20 (2) The radio frequency engineering of the proposed project;  
7.21 Name: Jose Pena  
7.22 Title: RF Engineer  
7.23 Company Affiliation: T-Mobile  
7.24 Work Address: 3 Imperial Promenade Santa Ana, CA 92707  
7.25 Telephone / Ext.: 310.279.9925  
7.26 Email Address: Pena, Jose [Jose.Pena@T-Mobile.com]

7.30 (3) Rejection of other candidate sites evaluated, if any;  
7.31 Name: Jose Pena  
7.32 Title: RF Engineer  
7.33 Company Affiliation: T-Mobile  
7.34 Work Address: 3 Imperial Promenade Santa Ana, CA 92707  
7.35 Telephone / Ext.: 310.279.9925  
7.36 Email Address: Pena, Jose [Jose.Pena@T-Mobile.com]

7.40 (4) Approval of the selection of the proposed site identified in this project.  
7.41 Name: Joe Thompson & Duan Dao  
7.42 Title: Zoning Manager & District Manager  
7.43 Company Affiliation: T-Mobile  
7.44 Work Address: 3 Imperial Promenade Santa Ana, CA 92707  
7.45 Telephone / Ext.: 714.850.2414  
7.46 Email Address: joe.thompson@T-Mobile.com //

7.5 If more than one person is/was involved in any of the four functions identified in this section, attach a separate sheet providing the same information for each additional person, and identifying which function or functions are/were performed by each additional person. Designate this attachment "Attachment 7.5".

Initial here MM to indicate that the information above is complete and there is no Attachment 7.5, or initial here \_\_\_\_\_ to indicate that Attachment 7.5 is attached to this application.

<Continue to next page>



PROJECT DESCRIPTION  
LA33421-A COMMUNITY UMC  
6666 HEIL AVE  
HUNTINGTON BEACH, CA 92648  
APN: 146-483-29



Omnipoint Communications, Inc. a subsidiary of T-Mobile USA, Inc. (T-Mobile) proposes to construct, operate and maintain a wireless telecommunications facility consisting of twelve (12) panel antennas in three (3) sectors, two (2) GPS antennas, five (5) BTS telecommunication, one (1) BBU equipment cabinets, coaxial cable runs from the antennas to the BTS, and power and Telco utility connections.

In order to completely conceal the wireless facility the panel antennas will be attached to a new fifty five (55) foot wireless facility designed as a palm tree. The facility is located in an area surrounded by mature landscaping as depicted in the attached photo simulations. The equipment cabinets will be located in a lease area inside of a new 6'-7" block wall design to be painted and textured to match the materials of the existing building. All utilities runs for the project will be routed underground. This location also provides for easy maintenance access from Heil Avenue Street. ?

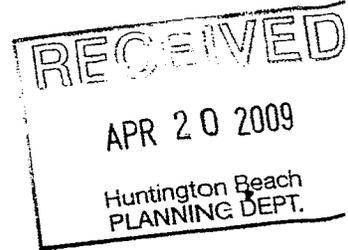
The coverage objective of the site is primarily the residential neighborhoods located to the north, south, east and west of the intersection of Main Street and Palm Avenue. This area suffers a lack of coverage, resulting in poor service for T-Mobile's customers and limited wireless telecommunications service options for the residents and visitors to the area. T-Mobile underwent a search for potential site locations that included properties along Heil Avenue and Edwards Street. T-Mobile research the possibility of a facility in alternative locations such as; Redeemer Lutheran Church, St. Bonaventure Roman Catholic Church, and even city parks. However, both locations were further away from the coverage objective and closer to on-air sites. Community United Methodist Church is the best location considering that coverage objective for this area. The search was limited to these areas because they provide the only potentially zone-able site locations in the search area. The existing landscaping also provided an opportunity to locate the monopalm around existing mature palm trees, and more than 60 ft away from the front property line. The city code preference for disguising the facility and aesthetically integrated into their surroundings determined the site location and design. The properties within other parts of the search area were ruled out do their proximity to residential areas and lease restrictions. T-Mobile was also limited in where the facility could be sited in relationship to other nearby facilities in the area (surrounding facilities are shown on the RF propagation maps included with this application) which limited the ability of the site to be located at the intersection of Heil Avenue and Edwards Street. ? ←

The proposed site is currently developed as a church with a existing mature landscaping and this is the taller structure in the area. The surrounding area of subject site location is characterized by mature trees and thus a monopalm is not an uncommonly seen part of the landscape. The property is completely developed and encompasses the necessary infrastructure to serve both the existing and proposed facilities. The proposed wireless facility is located to approximately 185 feet from the southern property line and at this location it will not block access into the site and site circulation. Proposed access is adequate in serving the parking needs during maintenance visits. The proposed facility will not impact potential development in the surrounding area.

The proposed project will be unoccupied and only require a single maintenance visit per month. The project will make negligible noise that is most often less than the ambient noise level of the area surrounding the equipment. Wireless facilities are passive in nature and have been located in all zoning districts without impacting property values.



SITE JUSTIFICATION STUD. FOR  
LA33421-A COMMUNITY UMC  
6666 HEIL AVE  
HUNTINGTON BEACH, CA 92647  
APN: 146-483-29



Omnipoint Communications, Inc. a subsidiary of T-Mobile USA, Inc. (T-Mobile) selected the proposed location for a needed wireless facility as it was the best location available for the facility when considering the needs of the network, land use patterns in the area, willingness of the landlord to enter into a lease for the facility, and the zoning code requirements of the City of Huntington Beach.

The facility is needed to correct a hole in network coverage created by the local demand on the existing network. As the number of users of the network increases the coverage area of existing sites decreases creating areas where it is difficult to make a call or keep a call connected. The area surrounding the proposed site, approximately at the intersection of Heil Avenue and Edward Street, suffers from this situation. This intersection and surroundings became the target search area for the facility. The facility will increase signal strength and the network capacity in and surrounding the neighborhood adjacent to the site to better serve the communications needs of the residents, workers and visitors in the City of Huntington Beach. Radio-frequency propagation maps shows the existing coverage and the modeled coverage after installation of the facility at the proposed height are attached. Approval of the facility at the proposed height provides the needed coverage for the surrounding neighborhood, providing a high quality signal for both indoor and outdoor users of the network.

The proposed site is zoned Residential Low Density (RL) developed as a church. All adjacent land uses are zoned residential but the facility is located more than 100 ft away from residential developments. In fact, the location was selected since is not developed or used for residential purposes. The alternative candidates were ruled out due to the lack of interest to lease space, and height restrictions that will not satisfy T-Mobile's coverage objective. The current location is best suited for the facility as it offers space for the equipment and antennas, when considering zoning restrictions and design compatibility and offers the best opportunity to screen the installation from public view through the use of screening.

All equipment is proposed to be inside a CMU wall and behind a planter that separated the block wall from the front property line (approximately 20 ft.). This equipment location was selected as the space available created did not altered the functionality/ circulation patterns or character of the existing development.

The proposed facility is an unmanned telecommunications facility and has no habitable or occupied space. The facility will operate (transmit and receive calls) 24 hours per day for residents and visitors of Huntington Beach. The facility has no "employees" or "customers" per se. Customer use does not require any access to the facility and only periodic maintenance is performed on the facility (approximately one hour per month.) Existing streets, access drives, and circulation patterns are adequate to serve the project and will not be impacted by the project.

Letter of Authorization

APPLICATION FOR ZONING/LAND USE ENTITLEMENTS

RECEIVED  
APR 20 2009  
Huntington Beach  
PLANNING DEPT.

Property Address: 6662 Heil Ave, Huntington Beach, CA  
Assessor's Parcel Number: 146-483-29

I/We, the owner(s) of the above-described property, authorize Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., with offices located at 3 MacArthur Place, #1100, Santa Ana, CA 92707, its employees, representatives, agents, and/or consultants, to act as an agent on my/our behalf for the purpose of creating, filing and/or managing any land use and building permit applications, or any other entitlements necessary to construct and operate a wireless communications facility on the above-described property. I/We understand that any application may be denied, modified, or approved with conditions, and that such conditions or modifications must be complied with prior to issuance of building permits.

I/We further understand that signing of this authorization in no way creates an obligation of any kind.

Owner(s): Community United Methodist Church of Huntington Beach, a California corporation

By: Duane Ray Hurtado  
Signature

Print Name: Duane Ray Hurtado

Title: PRESIDENT / TRUSTEES

Date: 12/30/2008

By: \_\_\_\_\_  
Signature

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of California )  
County of Orange )

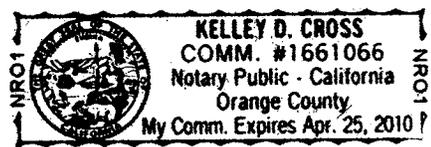
On Dec 30, 2008 before me, Kelley D. Cross, Notary Public, personally appeared

Duane Hurtado who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Kelley D. Cross



T

May 1, 2006



To Whom It May Concern,

Sequoia Deployment Services, its employees and agents are authorized representatives of T-Mobile, USA, Inc. (T-Mobile), and have been contracted to perform real estate leasing, land-use entitlements and architectural and engineering services for T-Mobile's telecommunications facilities.

As an authorized representative of T-Mobile, Sequoia Deployment Services may sign, submit, review land-use applications and permits, represent at meetings and hearings, accept conditions of approval, and negotiate leases on T-Mobile's behalf. All final land use documents are subject to T-Mobile's review and approval. Furthermore, all leases are contingent upon T-Mobile's signature.

If there are any questions or comments, please contact me immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thompson", written over a horizontal line.

Joseph Thompson  
Zoning Manager  
Southern California Market  
T-Mobile USA  
3 Imperial Promenade  
Santa Ana CA, 92707

Desk 714/850-2414  
Mobile 949/350-5376  
Fax 714/850-6630



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**DOCUMENT TRANSMITTAL COVER SHEET**

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TO:  
City of Huntington Beach  
Department Planning  
Case Planner To be Determined

FROM:  
Monica Moretta  
Agent Representative  
Sequoia Deployment Services, Inc.  
on behave of T-Mobile.

---

COMPANY:  
City of Huntington Beach

DATE:  
April 20, 2009

---

SITE IDENTIFIER:  
APN: 146-483-29

ADDITIONAL REFERENCE NUMBER:  
T-Mobile LA33421-A Community UMC

---

RE:  
Wireless Permit Application

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Attached please find the following items:

| Quantity | Title                                            |
|----------|--------------------------------------------------|
| 1        | Check for \$ 149 for Planning Fees.              |
| 1        | One Application for Wireless Permit Application. |
| 1        | One Letter of Authorization.                     |
| 1        | One Copy of Agent Authorization.                 |
| 1        | One Project Description.                         |
| 1        | One Site Justification.                          |
| 1        | One Set of Pictures of the Site.                 |
| 1        | Set of Propagation Maps including RF Report      |
| 3        | Sets of Photo Simulations.                       |
| 3        | Sets of Complete Plans.                          |
| 1        | One Set of Plans reduced to 8 ½ x 11.            |

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NOTES/COMMENTS:

The attached items are being submitted to the City of Huntington Beach for an Application for a Wireless Permit Application on behalf of Omnipoint Communication, Inc. a subsidiary of T-Mobile USA, Inc. (T-Mobile). Please contact: Monica Moretta at (949) 241.0175 or [monica.moretta@sequoia-ds.com](mailto:monica.moretta@sequoia-ds.com) regarding this application.

Thank you,  
Monica Moretta



One Venture, Suite 200  
Irvine, CA 92618  
TELEPHONE: 949.241-0175

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ONE VENTURE, SUITE 200, IRVINE, CA 92618  
TELEPHONE: 949.753.7200

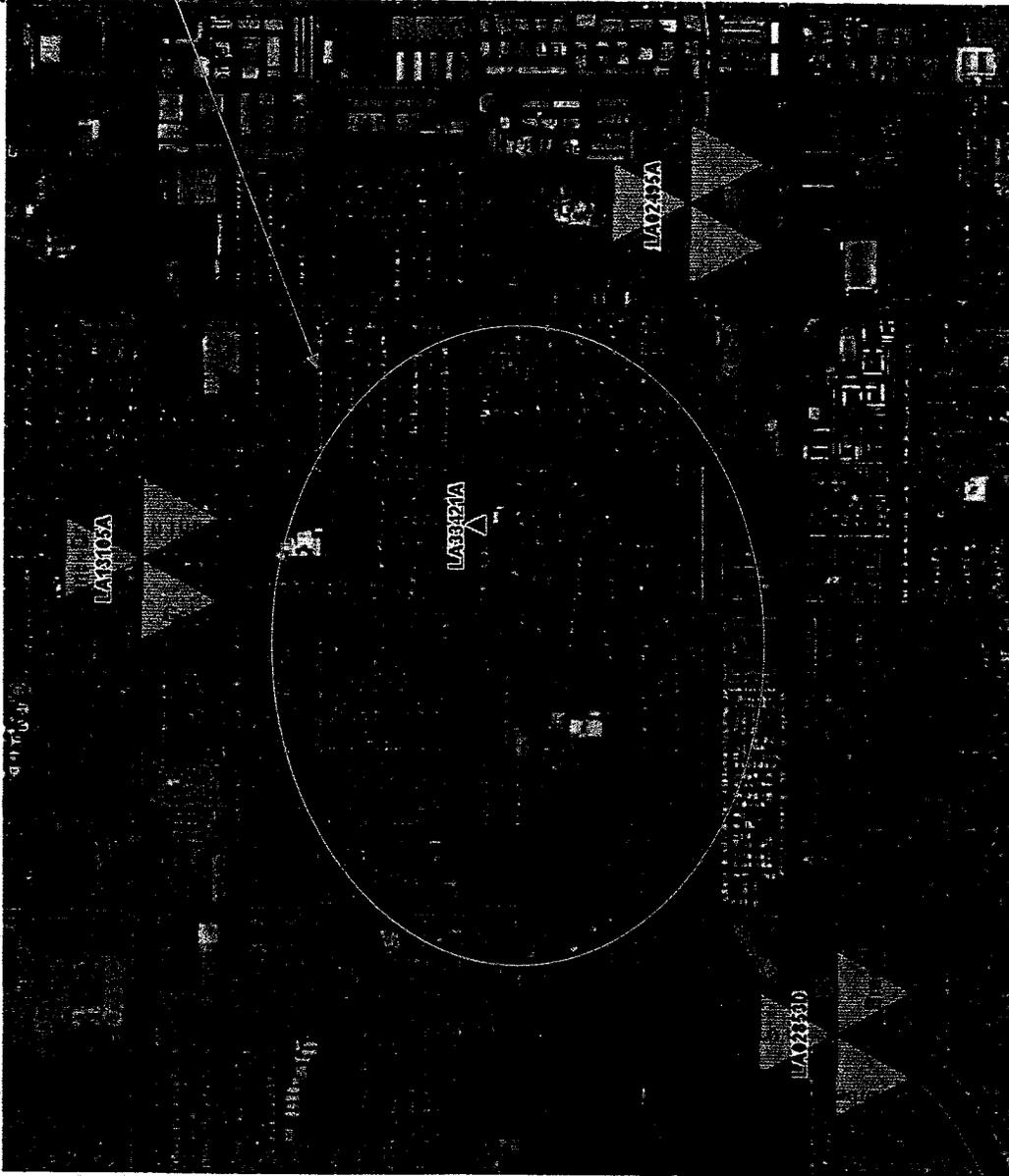
FACSIMILE: 949.753.7203

LA33421-A Community UMC-Transmittal for Wireless permit.doc

ATTACHMENT NO. 559

...T-Mobile...

LA33421A Coverage Objective ?

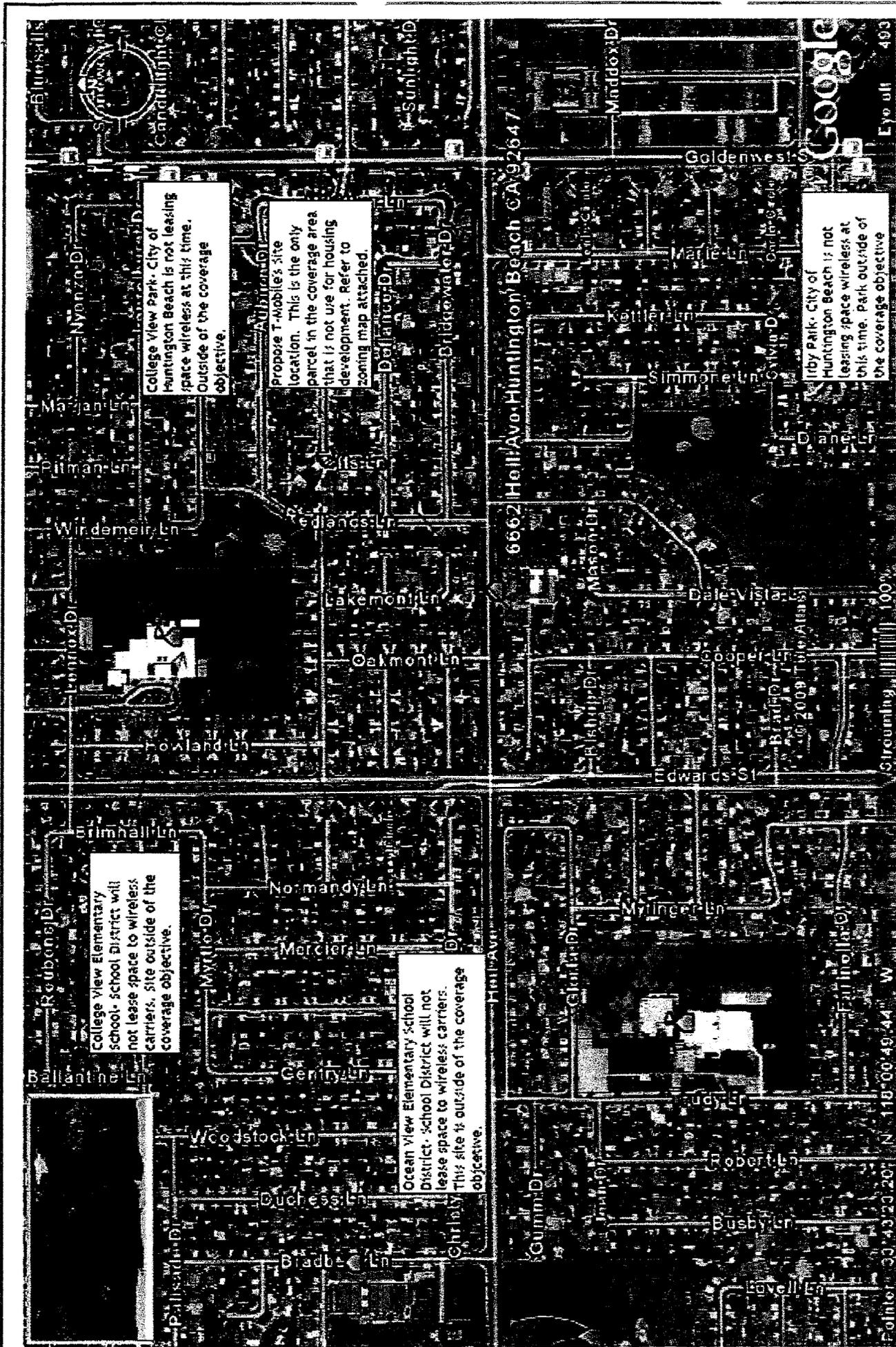


LA33509A mainly designed to improve Residential coverage along the surrounding areas of Edward Street and Heil Avenue in city of Huntington Beach.

There are currently high customer complaint in the area due to weak indoor coverage. This can only be fixed by installing this proposed site.

Site can also be located at the corner of Heil Ave and Edward Street but there was no suitable candidate that will meet a minimum height of 50'.





College View Park- City of Huntington Beach is not leasing space wireless at this time. Outside of the coverage objective.

Propose T-Mobile's site location. This is the only parcel in the coverage area that is not use for housing development. Refer to zoning map attached.

Libby Park- City of Huntington Beach is not leasing space wireless at this time. Park outside of the coverage objective

College View Elementary school- school District will not lease space to wireless carriers. site outside of the coverage objective.

Ocean View Elementary school District- school District will not lease space to wireless carriers. This site is outside of the coverage objective.

Google  
Eye all 403

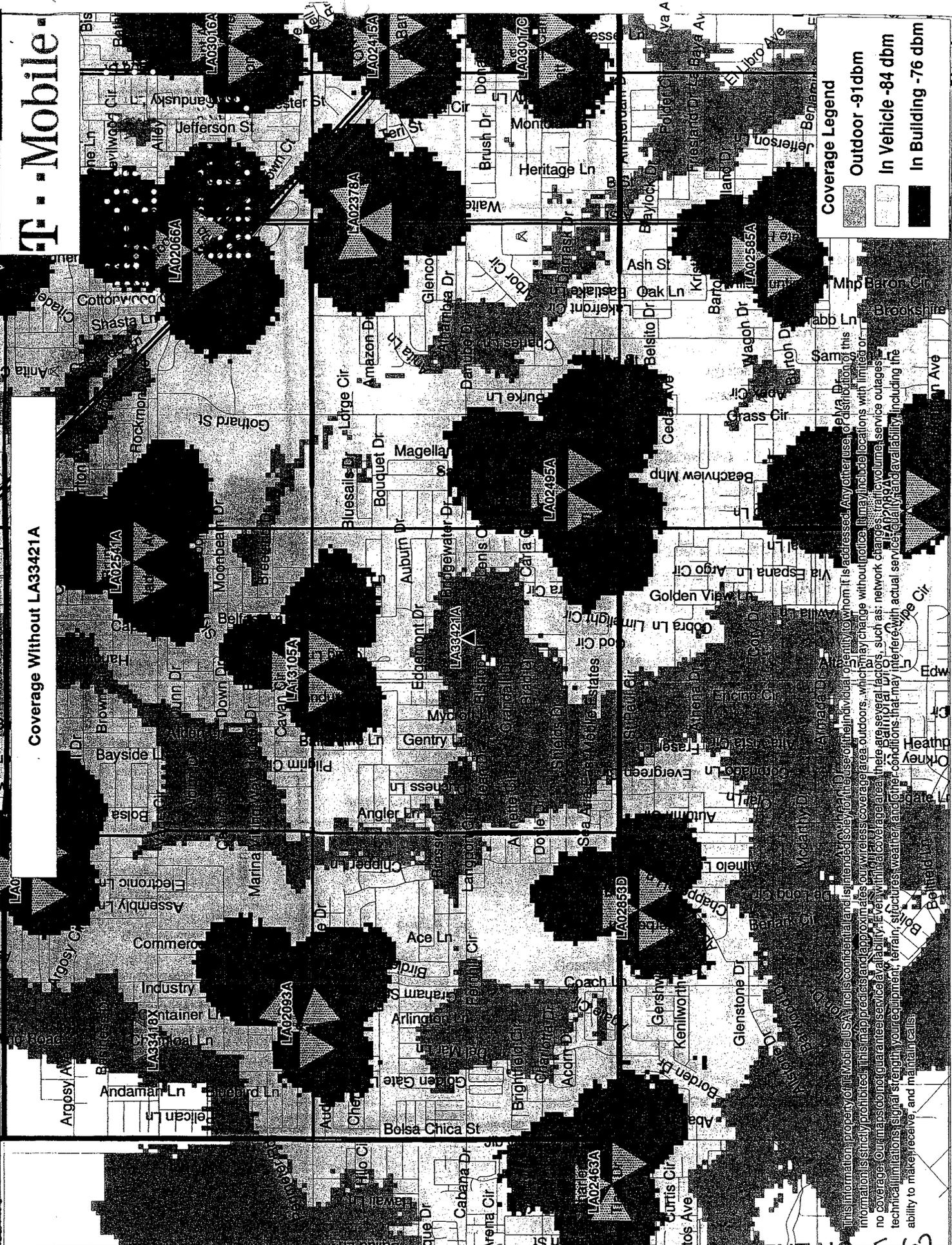
T-Mobile's alternative Locations map

Notes:

Red Circle is the coverage objective of the proposed wireless facility.

# T-Mobile

Coverage Without LA33421A



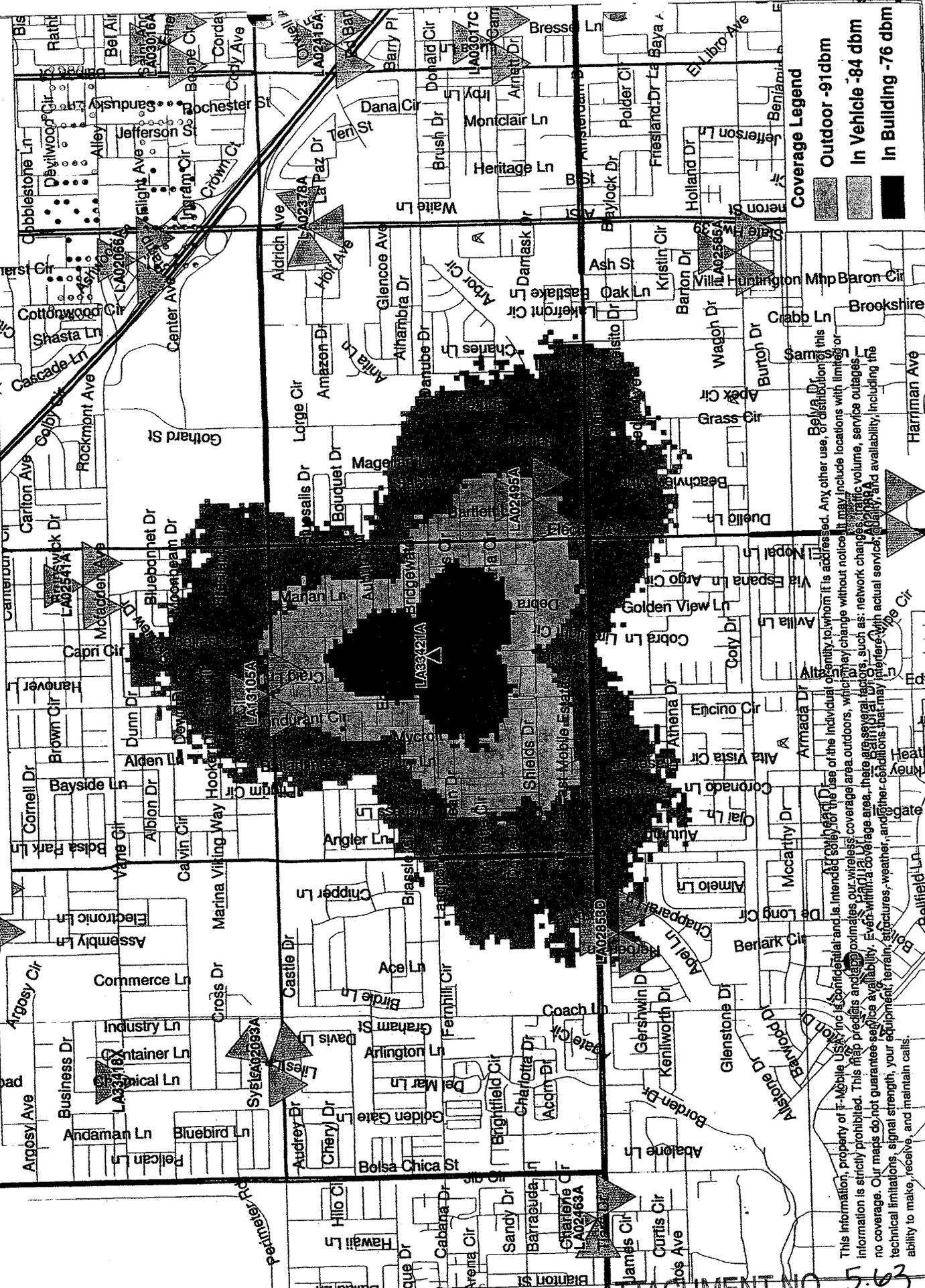
### Coverage Legend

-  Outdoor -91 dbm
-  In Vehicle -84 dbm
-  In Building -76 dbm

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# T-Mobile

## Coverage for LA33421A



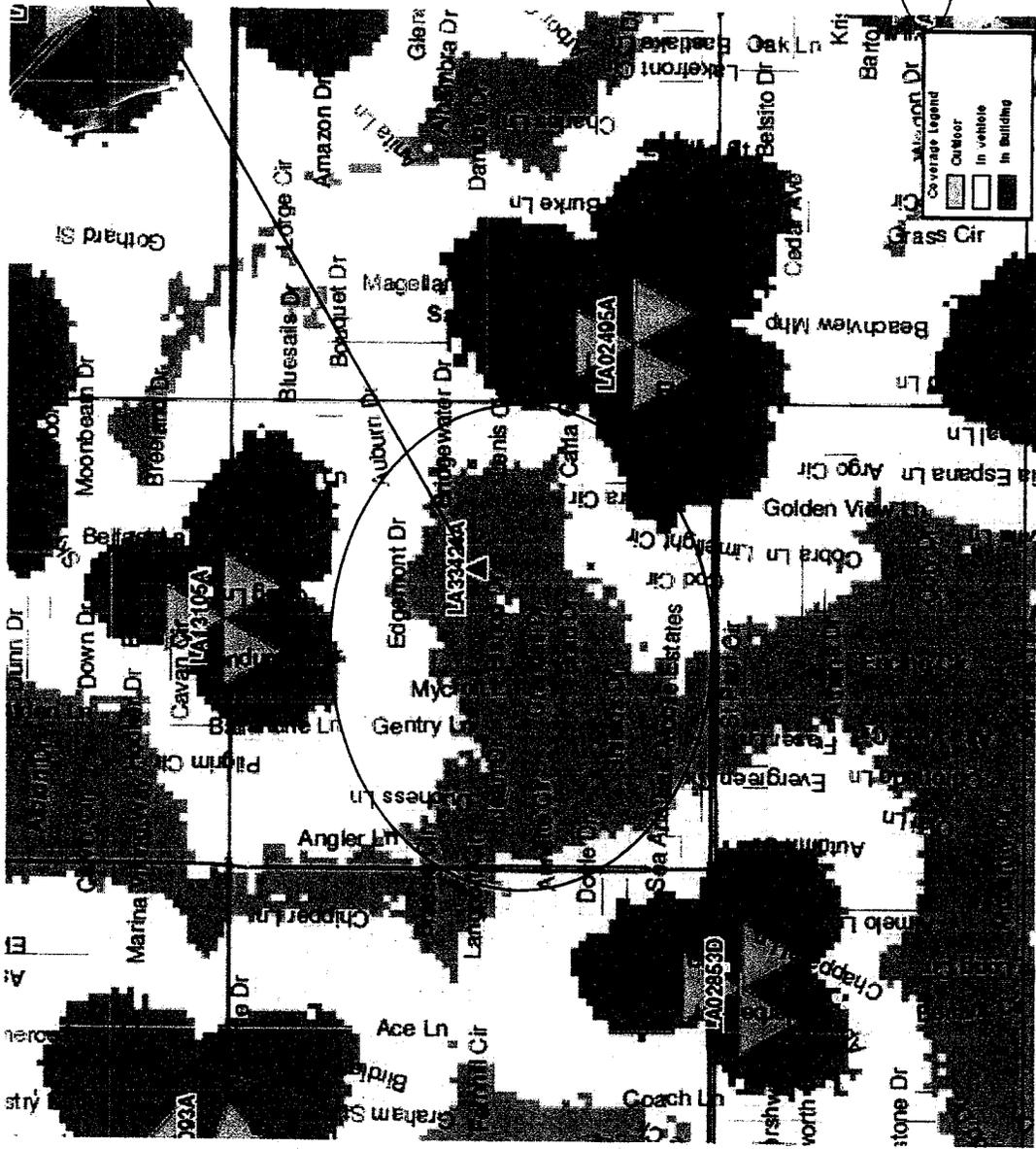
**Coverage Legend**

- Outdoor -91dbm
- In Vehicle -84 dbm
- In Building -76 dbm

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**T-Mobile - LA33421A Predicted Coverage Without the Proposed Site**



Weak coverage on this area (low on In vehicle and In Building Coverage) Existing sites LA13105A, LA02495A, and LA02853D cant provide enough coverage hence LA33421A is being proposed to be installed in Community UMC to provide the needed coverage as well as a balance coverage with existing sites.

Proposed site location is symmetrical with existing sites hence required coverage objective is meet





**October 17, 2009 T-Mobile IN-VEHICLE cell phone coverage test conducted by two Huntington Beach residents**

| PHONE CALL | TIME PLACED | MIN | SEC | MADE / RECEIVED  | PERSON                         | ADDRESS OR NEAREST INTERSECTION                                                      | RESULTS                                          |
|------------|-------------|-----|-----|------------------|--------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------|
| 1          | 10:55 AM    |     |     | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | 16631 DALE VISTA LN, DALE VISTA/FOUNTAIN<br>16641 DALE VISTA LN, DALE VISTA/FOUNTAIN | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 2          | 11:01 AM    | 1   | :52 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | 6352 SHAYNE DR, SHAYNE/MERCIER<br>RUTH DR / PATRICIA LN                              | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 3          | 11:04 AM    |     | :48 | MADE<br>RECEIVED | DEBBIE ZENTIL<br>DIANNE LARSON | 16571 SIMONNE LN<br>16331 NORMANDY LN, NORMANDY/RINGO CR                             | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 4          | 11:08 AM    | 1   | :07 | MADE<br>RECEIVED | DEBBIE ZENTIL<br>DIANNE LARSON | BONNIE DR / KETTLER LN<br>OAKMONT LN / EDGEMONT DR                                   | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 5          | 11:13 AM    | 1   | :16 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | EDGEMONT DR / REDLANDS LN<br>16752 DEBRA CR                                          | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 6          | 11:16 AM    |     | :53 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | DEFIANCE TUFTS LN<br>EDWARDS ST / FARINELLA DR                                       | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 7          | 11:21 AM    | 2   | :06 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | 6811 BRIDGEWATER DR<br>GLORIA DR / TORJIAN LN                                        | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 8          | 11:26 AM    | 1   | :16 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | 6502 OAKGROVE CR<br>7244 HEIL AVE                                                    | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 9          | 11:31 AM    | 1   | :58 | MADE<br>RECEIVED | DEBBIE ZENTIL<br>DIANNE LARSON | BRIDGEWATER DR / HOBART LN<br>6511 ABBOTT DR                                         | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |
| 10         | 11:39 AM    | 2   | :12 | MADE<br>RECEIVED | DIANNE LARSON<br>DEBBIE ZENTIL | 6361 GLORIA DR<br>LAKEMONT LN / EDGEMONT DR                                          | EXCELLENT CALL QUALITY<br>EXCELLENT CALL QUALITY |



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Front Page October 15, 2009  Search Archives

## Alternative sites considered for Agoura Hills cellular tower

City wants facility away from elementary school  
 By Stephanie Bertholdo [bertholdo@theacorn.com](mailto:bertholdo@theacorn.com)

Agoura Hills City Council members will hire an independent consultant to determine whether the public right-of-way on Thousand Oaks Boulevard will make a better location for the proposed cell antenna that was planned for Lindero Canyon Middle School.

Council members heard presentations by T-Mobile representatives and opponents to the project on Sept. 23, and continued the public hearing to Oct. 28.

Representatives from OmniPoint Communications, the parent company of T-Mobile, and SurePoint, a network infrastructure consulting firm, submitted a report to the council outlining alternative sites for the unmanned wireless facility.

SurePoint representative Robert Wheaton said T-Mobile had a "significant gap in coverage" in the area. He said the company had reduced its initial plan of three antennas to one.

Opponents have told the City Council that T-Mobile has exaggerated its need for additional coverage.

Opponents of the Lindero cell tower say children are vulnerable to the health risks posed by radiofrequency (RF) emissions from the antennas and that the Telecommunication Act of 1996 could be revised in Feb., 2010, changing the balance of power from cell companies back to cities.

By law, city councils can only consider the location and aesthetics of cell tower placement, not whether they are harmful to children.

The Federal Communications Commission has deemed that the small amount of RF waves emitted by cell antennas do not pose a health risk to students.

The Las Virgenes Unified School District, a separate government agency, has already contracted with T-Mobile to place the antenna at the school. The district has four cell towers at other schools.

Of the eight alternative sites discussed at the meeting, only one area—a city right-of-way on Thousand Oaks Boulevard—was deemed a viable alternative by the company. Wheaton said that other sites were not acceptable because either they did not meet the company's coverage goals or the city's zoning laws were prohibitive.

A water tank site at Woodglen and Ridgebrook drives in Agoura Hills was considered as an alternative location, but the placement is not allowable under current zoning laws, Wheaton said.

Other areas that were reviewed, but nixed by T-Mobile because of city zoning were the Agoura Hills Recreation Center at St. Paul Lutheran Church, Lindero County Club and the north and south sides of Thousand Oaks Boulevard at Lindero Canyon in Westlake Village.

### Residents still opposed

Agoura Hills resident Rina Baraz Nehdar, representing a group of citizens opposed to the placement of a cell tower at the school, accused T-Mobile of taking advantage of the "anemic school budget and a zoning loophole" to "worm their way into a place where they should not be."

Deborah Lopez, a resident of Agoura Hills, is also opposed to the antenna at the school.

She said St. Paul Lutheran Church "would die to have that income."

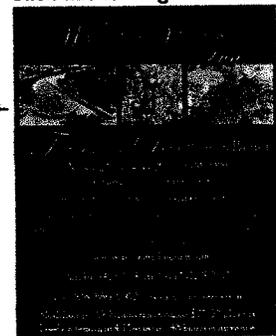
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Nehdar questioned whether T-Mobile has proved they have a significant gap in coverage and whether the company had "chosen the least intrusive (location) for the community."

Nehdar also said the growing awareness about the dangers of RF emissions led the Los Angeles County Board of Supervisors on June 2 to draft a resolution urging the federal government to allow local municipalities to use health and environment factors as criteria for denying cell towers near homes or schools.

Agoura Hills resident and cancer nurse Mary Ann Rush said she didn't believe there were health hazards associated with an antenna the "size of a knitting needle."

**Decision postponed**

Since T-Mobile had already submitted a study indicating the gaps in its coverage, it is now up to the city to prove why it believes the cell phone company is in the wrong, Agoura Hills Attorney Craig Steele said.

Council members agreed to hire an independent consultant to review T-Mobile's information.

The City Council's Dan Kuperberg would like to see how the federal government rules on the revised Telecommunication Act before making a decision about the antenna at Lindero.

"We would have a lack of vision . . . if we passed a law on Monday knowing the law is going to change on Tuesday," Kuperberg said. "The likelihood is that the entire landscape is going to change."

But Steele said T-Mobile's application would not be affected by a change in the FCC law.



ATTACHMENT NO. 5.69

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### T-Mobile accused of installation violations

Seth Rosenfeld, Chronicle Staff Writer  
Sunday, October 5, 2008



Neighbors wondered why workers waited until late on a summer night to erect an antenna atop a building near the Bon Air shopping center in Greenbrae.

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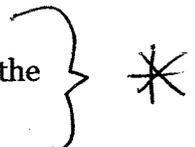
\*Exclusions and additional up charge may apply.

As it turned out, the crew - allegedly working without the required permits - was installing the antenna for T-Mobile, the cell phone giant that has been rushing to set up hundreds of cellular transmission sites around Northern California.

That Marin County installation is one of several in the Bay Area where T-Mobile has been accused of ignoring local zoning rules to set up cell sites, according to building officials and public records.

Other sites allegedly in violation are in San Francisco, Alameda and San Leandro.

In addition, five former employees who helped T-Mobile install antennas told The Chronicle the firm has routinely put up and modified transmission sites without getting permits.



The Chronicle reported last month that the California Public Utilities Commission is investigating whether T-Mobile is violating a commission rule that requires cell phone companies to comply with local zoning and building laws.

The PUC has fined other cell phone firms up to \$4.37 million for violating local building codes. A PUC investigator declined to comment on the case.

T-Mobile spokesman Rod De La Rosa said the company is committed to complying with the rules. "Building and maintaining cell sites to bring the best service to customers is often a complex process," he wrote in an e-mail. "As we learn of issues, we address them."

The commission inquiry comes as T-Mobile introduces its G1 smart phone, based on Google's Android operating system.

#### 'Pressure' from T-Mobile

ATTACHMENT NO. 5.10

According to the former employees, T-Mobile offers its managers bonuses if they meet quarterly goals for putting up new sites. The managers have pressured subcontractors to take shortcuts when installing antennas, they said.

Among the subcontractors was Lee Middleton, who said he worked for Irvine's Delta Groups Engineering Inc. Earlier this year, Middleton was assigned to review records for about 1,033 T-Mobile sites around the Bay Area. "Way more than half" were missing documentation showing that the work had been done properly, he said in an interview.

Middleton brought these discrepancies to the attention of T-Mobile managers, he said, but "no one wanted to take responsibility." He said he felt pressured to sign off on the projects despite the missing records. "I was uncomfortable about that," he said.

Subsequently, Middleton was told not to report back to work at T-Mobile, he said.

Middleton said he told Delta Group managers that he had raised issues with T-Mobile, but they did not support him and he resigned.

De La Rosa said T-Mobile would investigate the allegations. A Delta vice president declined to comment.

In the Greenbrae case, a T-Mobile subcontractor applied for a building permit in July to replace antennas at 1000 Drakes Landing Road.

An official at the Larkspur Planning Department, which covers Greenbrae, wrote in a July 10 letter that a use permit was required and that the installation would encroach on city property.

Later, neighbors noticed the late-night work crew and complained. On Sept. 11 the department notified T-Mobile's representative that the installation had been done "without the proper permits."

De La Rosa said the firm had a permit for this site and does not believe it is encroaching on city property.

Also in Larkspur, T-Mobile antennas on the Tamalpais retirement center were installed improperly, records show. "The new panel antennas and wiring are exposed and unsightly, and lack the approved decorative fiberglass enclosures," senior planner Kristin Teiche wrote on Jan. 22.

T-Mobile also failed to get a required inspection from the building department, she noted.

T-Mobile was told to fix the problem within 30 days, but nine months later the firm has not done so.

"They are the only carrier that we have had trouble in getting them to comply with our permitting requirements," Teiche said.

ATTACHMENT NO. 5.71

## Fixing the problem

When temporary permits expired, T-Mobile continued to operate the antenna for almost two years, said Sonia Urzua, a senior planner with the Alameda County Planning Department. T-Mobile is fixing the problem, she said.

De La Rosa said T-Mobile now has a temporary permit.

In Alameda, T-Mobile got a permit to install a cell phone antenna atop Alameda High School. But the firm operated the site without the final inspection required by the Division of the State Architect, said division spokesman Eric Lamoureux. As a result, the school district could be liable for accidents resulting from the installation, he said.

In San Francisco, T-Mobile installed a panel antenna inside a sign at the Ananda Fuara restaurant on Market Street, one former subcontractor said. T-Mobile never obtained permits, said Jonas Ionin, a senior city planner.

San Francisco officials stopped T-Mobile's installation of two other antennas in North Beach - one on Columbus Avenue and another on Filbert Street - after discovering the temporary permits lacked appropriate review, he said.

T-Mobile failed to submit a complete five-year plan for cell sites in San Francisco, Ionin said, and as a result the city has frozen all of the firm's pending applications. De La Rosa disputed the assertion that T-Mobile was late in filing its plan.

Several Bay Area planning officials said their departments are short staffed and rely on the goodwill of telecommunications firms to follow the rules. Improper installations often come to light only because of complaints, they said.

E-mail Seth Rosenfeld at [srosenfeld@sfchronicle.com](mailto:srosenfeld@sfchronicle.com).

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/05/BUQD134FCV.DTL>

This article appeared on page C - 1 of the San Francisco Chronicle

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ATTACHMENT NO. 5.72

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/05/BUQD134FCV.DTL&type=...> 10/15/2009

Good evening. I am Blanca Evans, a Huntington Beach resident, and I am **AGAINST** the proposed T-Mobile cell tower at Community United Methodist Church (CUMC) which is near the intersection of Heil Avenue and Edwards Street.

I live in a kid-friendly, family-oriented neighborhood where neighbors respect each other and speak to one another, and where residents of different ethnic backgrounds live side by side peacefully. I have lived in my home for almost 30 years and have developed many long-term friendships with my neighbors during those years. I love my neighborhood, my neighbors and my home.

The character of my neighborhood will change if the proposed T-Mobile cell tower is built at Community United Methodist Church. Neighbors are worried about the impact of the proposed cell tower.

- Property values will decrease because we, as homeowners, will have to disclose that the cell tower is located in close proximity – for me, just on the other side of my back wall.
- If my house is less desirable to potential buyers because of its location next to a cell tower, the price goes down.
- People who are aware of the international health concerns of living close to a cell tower will not want their young children to be constantly exposed to the cell tower's emissions.
- If young families, or families-to-be, will not purchase homes, live and raise their children in this neighborhood, the neighborhood will lose its vibrancy and become stagnant.

Neighbors with young children are already talking about moving if the cell tower is built. Now is not a good time to sell a house because home prices are low due to the economy. Some of the neighbors have "upside-down mortgages" and owe more than their home is worth in the current market. Neighbors will have to decide whether they will sell their home and just take the loss, or whether they will try to rent their homes.

I believe that the people who would rent a home next to a cell tower:

- are either unaware of the danger,
- are aware, but don't believe the danger is real enough to take precautions,
- or, don't plan to be in the neighborhood long.

I am worried that this will cause my neighborhood to change in a negative way.

I believe there will be:

- more resident turnover,
- less neighborly interaction,
- more isolation of neighbors who do stay,
- less pride of ownership in the neighborhood,
- and lower market value.

I don't want to lose my neighborhood's warm and friendly feel.

Members of the Huntington Beach City Council, I ask that you place an immediate moratorium on building cell towers within 1500' of school and residential properties.

Thank you for your attention.

**Arabe, Jill**

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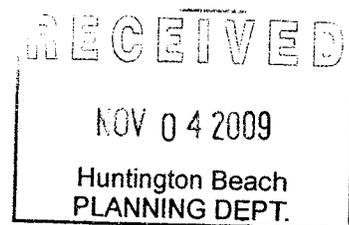
**From:** Don [dmcfarland2@verizon.net]  
**Sent:** Wednesday, November 04, 2009 10:41 AM  
**To:** Arabe, Jill  
**Subject:** T-Mobile  
**Attachments:** FCC-07-177A1.pdf

Please place the attached file in the minits for todays public meting.  
This is from FCC on the NEW requirements for Backup Generators at Cell Sites.

11/4/2009

ATTACHMENT NO. 5.14

Before the  
Federal Communications Commission  
Washington, D.C. 20554



|                                              |   |                      |
|----------------------------------------------|---|----------------------|
| In the Matter of                             | ) |                      |
|                                              | ) |                      |
| Recommendations of the Independent Panel     | ) | EB Docket No. 06-119 |
| Reviewing the Impact of Hurricane Katrina on | ) | WC Docket No. 06-63  |
| Communications Networks                      | ) |                      |
|                                              | ) |                      |

**ORDER ON RECONSIDERATION**

**Adopted: October 2, 2007**

**Released: October 4, 2007**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we consider six petitions for reconsideration and/or clarification (Petitions)<sup>1</sup> of the Order that adopted Section 12.2 of the Commission’s rules which requires that certain local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers have an emergency backup power source for all assets that are normally powered from local AC commercial power.<sup>2</sup> For the reasons set forth below, we grant in part and deny in part the Petitions. We modify Section 12.2 to address several meritorious issues raised in the Petitions. This modification will facilitate carrier compliance and reduce the burden on LECs and CMRS providers, while continuing to further important homeland security and public safety goals.

**II. BACKGROUND**

2. In January 2006, Chairman Kevin J. Martin established the Katrina Panel pursuant to the Federal Advisory Committee Act, Public Law 92-463, as amended.<sup>3</sup> The mission of the Katrina Panel was to review the impact of Hurricane Katrina on communications infrastructure in the areas affected by the hurricane and to make recommendations to the Commission regarding ways to improve disaster

<sup>1</sup> See Petition for Clarification or, Alternatively, Reconsideration filed by The American Association of Paging Carriers (AAPC) on August 10, 2007 (AAPC Petition); Petition for Reconsideration filed by the DAS Forum on August 10, 2007 (DAS Forum Petition); Petition for Clarification and Reconsideration filed by MetroPCS Communications, Inc. (MetroPCS) on August 10, 2007 (MetroPCS Petition); Petition for Clarification or Reconsideration filed by NextG Networks, Inc. (NextG) on August 10, 2007 (NextG Petition); Petition for Reconsideration filed by PCIA – The Wireless Infrastructure Association (PCIA) on August 10, 2007 (PCIA Petition); and Petition for Clarification and/or Reconsideration filed by The United States Telecom Association on August 10, 2007 (USTelecom Petition). See also *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding*, Public Notice, Report No. 2827 (rel. Aug. 14, 2007). CTIA also filed a Petition for Reconsideration but withdrew its Petition on September 28, 2007. See Petition for Reconsideration filed by CTIA – The Wireless Association® (CTIA) on August 10, 2007 (CTIA Petition).

<sup>2</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541 (2007) (*Katrina Panel Order*). See also 47 C.F.R. § 12.2.

<sup>3</sup> 5 U.S.C. App. 2 (1988).

preparedness, network reliability and communications among first responders such as police, fire fighters, and emergency medical personnel.<sup>4</sup> The Katrina Panel submitted its report on June 12, 2006.<sup>5</sup> The Katrina Panel's report described the impact of the worst natural disaster in the Nation's history, as well as the overall public and private response and recovery efforts. The Commission's goal is to take the lessons learned from that disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness.

3. The Commission issued a Notice of Proposed Rulemaking (*Notice*) on June 19, 2006 inviting comment on what actions the Commission should take to address the Katrina Panel's recommendations.<sup>6</sup> On July 26, 2006, the Commission issued a Public Notice asking commenters to address the applicability of the Katrina Panel's recommendations to all types of natural disasters (*e.g.*, earthquakes, tornadoes, hurricanes, forest fires) as well as other types of incidents (*e.g.*, terrorist attacks, influenza pandemic, industrial accidents).<sup>7</sup> The Public Notice also asked parties to address whether the Panel's recommendations are broad enough to take into account the diverse topography of our Nation, the susceptibility of a region to a particular type of disaster, and the multitude of communications capabilities a region may possess.<sup>8</sup> The Commission received over 100 comments and reply comments in response to the *Notice*.

4. In June 2007, the Commission released the *Katrina Panel Order* directing the Public Safety and Homeland Security Bureau (PSHSB) to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel).<sup>9</sup> Among other things, the Commission adopted a rule requiring some communications providers to have emergency/backup power. The backup power rule adopted specifically states:

Local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers should maintain emergency backup power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that are normally powered from local AC commercial power. LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers

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<sup>4</sup> See the Katrina Panel Charter available at <http://www.fcc.gov/eb/hkip/HKIPCharter.pdf> (last visited September 9, 2007); see also the Notice of Establishment of the Commission's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, 71 Fed. Reg. 933 (2006).

<sup>5</sup> Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, June 12, 2006 (Katrina Panel Report).

<sup>6</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Notice of Proposed Rulemaking, EB Docket No. 06-119, 21 FCC Rcd 7320 (2006) (*Notice*).

<sup>7</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 21 FCC Rcd 8583 (2006) (*July 26 Public Notice*).

<sup>8</sup> *Id.*

<sup>9</sup> *Katrina Panel Order*, 22 FCC Rcd 10541 (2007).

with no more than 500,000 subscribers are exempt from this rule.<sup>10</sup>

5. On August 2, 2007, the Commission released an Order that extended the effective date of Section 12.2 of the Commission's rules, the backup power rule adopted in the *Katrina Panel Order*, to October 9, 2007.<sup>11</sup> The Commission did so on its own motion in order to provide additional time to consider the issues raised by CTIA in its Motion for Administrative Stay and to hear from other concerned parties on the issues raised in that motion.<sup>12</sup>

6. As indicated above, seven petitions were filed seeking reconsideration and/or clarification of the backup power rule adopted by the Commission in the *Katrina Panel Order*.<sup>13</sup> The petitioners assert that the Commission should rescind, modify and/or clarify the backup power rule adopted in the *Katrina Panel Order*. The Commission also received five timely comments to these petitions and several additional *ex parte* comments.

### III. DISCUSSION

7. Petitioners argue that the Commission should rescind or substantially modify the backup power rule.<sup>14</sup> Among other things, several petitioners assert that the rule should be modified to implement the Network Reliability and Interoperability Council (NRI) best practice as recommended by the Katrina Panel and that the Commission should clarify that the rule applies only to assets directly related to the provision of critical communications services.<sup>15</sup> Finally, some petitioners argue that, if the Commission wants to pursue implementation of a backup power rule, it should issue a Notice of Inquiry or Notice of Proposed Rulemaking.<sup>16</sup>

8. Administrative Procedure Act (APA) Notice and Comment. Several petitioners contend that the Commission's adoption of the backup power rule violated the Administrative Procedure Act (APA)<sup>17</sup> by failing to provide adequate notice that it was considering the adoption of that rule and failing to provide opportunity to comment.<sup>18</sup> They argue that the *Notice* was too general to adequately support the backup power rule ultimately adopted and that the final rule deviates too sharply from the initial proposals to satisfy the notice and comment requirements.<sup>19</sup> Petitioners contend that the *Notice* never discussed the backup power issue in terms of a potential mandate and only asked how the Commission could best

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<sup>10</sup> 47 C.F.R. § 12.2.

<sup>11</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, EB Docket No. 06-119, WC Docket No. 06-63, 22 FCC Rcd 14246 (*Delay Order*).

<sup>12</sup> See CTIA's Motion for Administrative Stay filed July 31, 2007; NextG's Request for Partial Stay of the Commission's Back Up Power Rule filed July 31, 2007 and Errata filed August 1, 2007; and PCIA's Comments in Support of Stay Requests filed August 2, 2007. See also CTIA's Motion for Administrative Stay filed September 24, 2007.

<sup>13</sup> As noted before, one of these petitions was subsequently withdrawn.

<sup>14</sup> See, e.g., AAPC Petition at 1-5; PCIA Petition at 8, 19-20; T-Mobile September 4, 2007 Comments in Support of Petitions for Reconsideration (T-Mobile Reply) at 16-18; USTelecom Petition at 1-13.

<sup>15</sup> See, e.g., USTelecom Petition at 3.

<sup>16</sup> See, e.g., PCIA Petition at 5.

<sup>17</sup> See 5 U.S.C. § 553(b) (APA requirements relating to notice).

<sup>18</sup> See, e.g., PCIA Petition at 3-4, 15-19; T-Mobile Reply at 8; USTelecom Petition at 9-13.

<sup>19</sup> *Id.*

encourage implementation of the Katrina Panel's backup power recommendation that the Commission encourage the implementation of *NRIC VII Recommendation 7-7-5204*.<sup>20</sup> Petitioners also assert that the *Notice* did not suggest that the physical scope of the backup power recommendation might extend to all cell sites other remote assets or that the Commission intended to select a specific durational requirement for emergency power, let alone an eight- or twenty-four hour standard.<sup>21</sup>

9. Section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rule making that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved" and to give interested parties an opportunity to submit comments on the proposal.<sup>22</sup> The notice "need not specify every precise proposal which [the agency] may ultimately adopt as a rule"; it need only "be sufficient to fairly apprise interested parties of the issues involved."<sup>23</sup> In particular, the APA's notice requirements are satisfied where the final rule is a "logical outgrowth" of the actions proposed.<sup>24</sup>

10. In this instance, the Commission provided adequate notice in compliance with the APA regarding the backup power rule. The Katrina Panel Report repeatedly stated that the lack of adequate backup power for communications facilities was a critical problem after Katrina that caused communications network interruptions and hampered recovery efforts.<sup>25</sup> These findings provided the context for the Report's recommendation that the Commission encourage the NRIC best practice that states: "[s]ervice providers, network operators and property managers should ensure availability of emergency/backup power (e.g., batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures . . . ."<sup>26</sup> In the *Notice*, the Commission noted that the Katrina Panel observed significant challenges to maintenance and restoration of communications services after Hurricane Katrina, due in part to problems with access to key resources such as power and/or generator fuel.<sup>27</sup> The Commission also noted that the Katrina Panel recommended that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and

<sup>20</sup> See, e.g., T-Mobile Reply at 5; US Telecom Petition at 9-13.

<sup>21</sup> See, e.g., MetroPCS Petition at 6-7; PCIA Petition at 3-4, 15-19; T-Mobile Reply at 5, 8; US Telecom Petition at 9-13.

<sup>22</sup> See 5 U.S.C. § 553(b), (c).

<sup>23</sup> *Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (internal quotations omitted).

<sup>24</sup> *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990).

<sup>25</sup> See Katrina Panel Report at i ("lack of power and/or fuel" was one of the "three main problems that caused the majority of communications network interruptions"); *id.* at 5-6 ("[T]he duration of power outages far outlasted most generator fuel reserves, leading to the failure of otherwise functional infrastructure."); *id.* at 9 ("In general, cellular/PCS base stations were not destroyed by Katrina, although some antennas required adjustment after the storm. Rather, the majority of the adverse effects and outages encountered by wireless providers were due to a lack of commercial power or a lack of transport connectivity to the wireless switch . . . ."); *id.* at 14 ("While the communications industry has generally been diligent in deploying backup batteries and generators and ensuring that these systems have one to two days of fuel or charge, not all locations had them installed. . . . Where generators were installed and operational, the fuel was generally exhausted prior to restoration of power."); *id.* at 17 ("Backup generators and batteries were not present at all facilities. Where they were deployed, most provided only enough power to operate particular communications facilities for 24-48 hours – generally a sufficient period of time to permit the restoration of commercial power in most situations, but not enough for a catastrophe like Hurricane Katrina.").

<sup>26</sup> *Id.* at 39.

<sup>27</sup> *Notice*, 21 FCC Rcd at 7323.

resiliency of the 911 and E911 architecture, including a recommendation that service providers and network operators should “ensure” availability of emergency backup power capabilities (located on-site, when appropriate).<sup>28</sup> The Commission sought comment on how the Commission can best encourage implementation of these recommendations consistent with our statutory authority and jurisdiction and welcomed further suggestions on measures that could be taken to strengthen 911 and E911 infrastructure and architecture.<sup>29</sup> The Commission also invited “broad comment on the Independent Panel’s recommendations and on the measures the Commission should take to address the problems identified” and to build upon the lessons learned from Hurricane Katrina and promote greater resiliency and reliability of communications infrastructure, heightened readiness and preparedness, and more effective, efficient response and recovery efforts, in the future.<sup>30</sup>

11. Further, in the *Notice*, the Commission sought comment on whether it should rely on voluntary consensus recommendations or whether it should rely on other measures for enhancing readiness and promoting more effective response efforts.<sup>31</sup> The *Notice* also invited comment on whether the Katrina Panel’s observations warranted additional measures or steps beyond the report’s specific recommendations and welcomed suggestions and recommendations of different actions or additional measures beyond the Katrina Panel’s recommendations.<sup>32</sup> In its report and recommendations, the Katrina Panel found that the lack of power and/or fuel was one of three main problems that caused the majority of communications network interruptions and significant impediments to the recovery effort in the aftermath of Hurricane Katrina.<sup>33</sup> The Katrina Panel Report also noted that during and after the hurricane, the power needed to support the communications networks was generally unavailable throughout the region and that backup batteries and generators were required for communications systems to continue to operate.<sup>34</sup> The Katrina Panel further noted that “the majority of the adverse effects and outages encountered by wireless providers were due to a lack of commercial power or a lack of transport connectivity to the wireless switch.”<sup>35</sup> Additionally, the Katrina Panel Report stated that “[w]ireless providers cited security for their personnel, access and fuel as the most pressing needs and problems affecting restoration of wireless service” and that the loss of power in the wireline telephone network also had a huge impact on the ability of public safety systems to function.<sup>36</sup> The Katrina Panel noted that electric utility networks had a high rate of survivability following Hurricane Katrina due, in part, to the

<sup>28</sup> *Id.* at 7326. See also Katrina Panel Report at 39 (recommending that, in order to ensure a more robust E911 service, the FCC should encourage the implementation of the following NRIC best practice:

Service providers, network operators and property managers should ensure availability of emergency/backup power (e.g., batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including natural and manmade occurrences (e.g., earthquakes, floods, fires, power brown/blackouts, terrorism). The emergency/backup power generators should be located onsite, when appropriate. See *NRIC VII Recommendation 7-7-5204.*)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 7320, 7322.

<sup>31</sup> *Id.* at 7322.

<sup>32</sup> *Id.*

<sup>33</sup> Katrina Panel Report at i, 13, 17-18 (problems with maintaining and restoring power for communications infrastructure significantly affected the recover process).

<sup>34</sup> *Id.* at 14.

<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.* at 7, 9.

fact that they were built with significant onsite backup power supplies (batteries and generators).<sup>37</sup> Although the Katrina Panel found that “the communications industry has generally been diligent in deploying backup batteries and generators and ensuring that these systems have one to two days of fuel or charge,” it also noted that not all locations had such backup batteries or generators installed and that, because all locations were not able to exercise and test the backup equipment in any systemic fashion, some generators and batteries did not function during the crisis.<sup>38</sup> Although the power outages during and after Hurricane Katrina were exceptionally long, the Panel’s observations clearly emphasized the importance of power supply to resiliency of communications networks.

12. Taken together, the questions raised in the *Notice* as well as the Katrina Panel Report’s findings regarding the lack of emergency power were sufficient to put interested parties on notice that the Commission was considering how to address the lack of emergency backup power, including through the possible adoption of an emergency backup power rule. Specifically, the *Notice* sought comment on how the Commission could best encourage implementation of various NRIC best practices, including ensuring the availability of emergency backup power.<sup>39</sup> Even if that language were not read to propose a mandatory rule, the *Notice* still gave ample notice that this was a possibility. The *Notice* specifically inquired about “whether [the Commission] should rely on voluntary consensus recommendations, as advocated by the [Katrina] Panel, or whether [it] should rely on *other measures* for enhancing readiness and promoting more effective response efforts,”<sup>40</sup> a line of inquiry that the Commission reiterated in the *July 26 Public Notice*.<sup>41</sup> Moreover, the D.C. Circuit has held that the ultimate adoption of a mandatory rule can constitute the logical outgrowth of a voluntary standard.<sup>42</sup> Thus, because parties could have anticipated that the rule ultimately adopted was “possible,” it is considered a “logical outgrowth” of the original proposal, and there is no violation of the APA’s notice requirements.<sup>43</sup>

13. Indeed, we note that the National Emergency Number Association (NENA) did propose a backup power requirement in response to the *Notice*.<sup>44</sup> In addition, St. Tammany Parish Communications District 1 told the Commission that “[v]oluntary consensus measures . . . have fallen short many times” and that “it is imperative that [wireline] and wireless telephone providers be required to demonstrate they have adequate backup procedures in place.”<sup>45</sup> Carriers also commented on the importance of having

<sup>37</sup> *Id.* at 12.

<sup>38</sup> *Id.* at 14, 17-18.

<sup>39</sup> *Notice*, 21 FCC Rcd at 7326 ¶ 16 (emphasis added).

<sup>40</sup> *Notice*, 21 FCC Rcd at 7322 ¶ 7 (emphasis added).

<sup>41</sup> *July 26 Public Notice*, 21 FCC Rcd at 8583; *see also* Separate Statement of Commissioner Copps (“I am especially pleased that we seek comment on whether voluntary implementation is enough or whether we need to consider other measures.”).

<sup>42</sup> *See New York v. EPA*, 413 F.3d 3, 44 (D.C. Cir. 2005) (EPA’s adoption of certain mandatory environmental requirements following earlier proposal of a “menu of alternatives” approach by which state governments would be allowed to choose any or all of these requirements, was a “readily foreseeable outcome[] that could result from the proposal” and thus was the logical outgrowth of that proposal).

<sup>43</sup> *See Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 951 (D.C. Cir. 2004) (discussing APA notice requirements and the “logical outgrowth” test).

<sup>44</sup> *See* NENA’s August 7, 2006 comments in response to the *Notice* at 6. *Cf. Rybachek v. EPA*, 904 F.2d 1276, 1288 (9<sup>th</sup> Cir. 1990) (finding that final rule was “logical outgrowth” of earlier proposal where agency issued NPRM mentioning only the possibility of case-by-case imposition of environmental requirements but issued final rule mandating these requirements after public comments recommended mandates).

<sup>45</sup> Comments of St. Tammany Parish Communications District 1, at 1-2.

backup power. CTIA observed that wireless carriers “must ensure network reliability and reliance” and that, to do so, they “provision their cell sites and switches with batteries to power them when electrical grids fail” and “maintain permanent generators at all of the switches and critical cell sites, as well as an inventory of backup power generators to recharge the batteries during extended commercial power failures.”<sup>46</sup> USTA likewise gave examples of telephone companies that had already deployed backup power capabilities that enabled their cell networks to remain in operation for several days after a loss of main power.<sup>47</sup> In light of these comments, we do not find credible the argument that the *Notice* failed to apprise parties that the Commission would address the issue of backup power in this proceeding.

14. Petitioners’ argument that the Commission did not give adequate notice that it might select a specific durational requirement for emergency power, such as twenty-four or eight hours, also lacks merit. Had we adopted a general backup power requirement that did not require a minimum amount of backup power, we would have risked creating an illogical and meaningless requirement that would have allowed providers to have only one minute of backup power. Thus, parties should have realized that an emergency backup power mandate would inevitably include a specific durational requirement.

15. Statutory Authority. PCIA asserts that Section 1 of the Communications Act, the statutory authority upon which the Commission adopted the backup power rule, is patently inadequate statutory authority.<sup>48</sup> PCIA contends that Section 1 of the Communications Act, as amended, (the “Act”)<sup>49</sup> is only a general grant of jurisdiction that, absent other specific authority, does not authorize the Commission to impose requirements to maintain backup power at cell sites.<sup>50</sup> PCIA argues that the Commission’s ancillary authority under Section 1 of the Act does not empower it to act where such action would be “ancillary to nothing.”<sup>51</sup>

16. The Commission’s Section 1 ancillary jurisdiction covers circumstances where: (1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations, and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.<sup>52</sup> This two-part test for ancillary jurisdiction was developed by the Supreme Court in

<sup>46</sup> CTIA–The Wireless Association Comments (“CTIA Comments”) at 8.

<sup>47</sup> Comments of the United States Telecom Association at 5-6.

<sup>48</sup> PCIA Petition at 15-16.

<sup>49</sup> 47 U.S.C. § 151.

<sup>50</sup> PCIA Petition at 15-16 (citing *Am. Library Ass’n v. FCC*, 406 F.3d 689 and *Motion Picture Assn of America, Inc. v. FCC*, 309 F.3d 796).

<sup>51</sup> PCIA Petition at 15 (citing *Am. Library Ass’n*, 406 F.3d at 702 and *United States v. Southwestern Cable Co.*, 392 US 157, 178 (1968)). PCIA further states that it “agrees with CTIA that the Commission’s reliance on only Section 1 is an insufficient statutory basis to sustain the new regulation,” citing the CTIA July 31, 2007 Motion for Stay at 8-11. CTIA also states that Section 1, standing alone, is not the type of clear expression of Congressional intent that is necessary to impose such a heavy obligation on the wireless industry and, indeed, this would be particularly anomalous in the context of CMRS, which since its inception has been largely deregulated at the federal level (citing *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238, 1245 (11th Cir. 2006) (describing the “the pro-competitive, deregulatory framework for [wireless service providers] prescribed by Congress.”) (quotation omitted)). See CTIA’s July 31, 2007 Motion for Stay at 10-11. Finally, CTIA asserts that, even in cases in which the Commission has relied on Section 1 in addition to other provisions of Title I of the Act, such as Section 4(i), 47 U.S.C. § 154(i), to adopt regulations pursuant to its ancillary authority, the courts have routinely rejected such efforts. See CTIA’s July 31, 2007 Motion for Stay at 9-11.

<sup>52</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*) (upholding the FCC regulatory authority over cable television).

*Southwestern Cable*.<sup>53</sup>

17. To fulfill the first prong of the ancillary jurisdiction test, the subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act, which encompasses "all interstate and foreign Communication by wire or radio."<sup>54</sup> In the instant rule making, this first prong of the ancillary jurisdiction test is met because the backup power rule adopted by the Commission in the *Katrina Panel Order* pertains to the provisioning of "interstate and foreign commerce in communication by wire and radio."<sup>55</sup> The second prong of the ancillary jurisdiction test requires that the subject of the regulation must be reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.<sup>56</sup> It cannot seriously be disputed that the backup power requirement is "reasonably ancillary to the effective performance" of the Commission's responsibilities to promote public safety. Section 1 itself makes clear that one of the Commission's missions is to "make available . . . [a] wire and radio communication service with adequate facilities . . . for the purpose of *promoting safety of life and property* through the use of wire and radio communications." 47 U.S.C. § 151 (emphasis added). Section 1 thus requires the Commission to "consider public safety" and to "take into account its *duty* to protect the public." *Nuvio Corp. v. FCC*, 473 F.3d 302, 307 (2006); *see also id.* at 311 (Kavanaugh, J., concurring) ("the FCC possesses statutory authority . . . to address the public safety threat by banning providers from selling voice services until the providers can ensure adequate 911 connections"). And as this Court has recognized, it is well "within the Commission's statutory authority" to "make such rules and regulations . . . as may be necessary in the execution" of its section 1 responsibilities.<sup>57</sup> Section 303(r) also provides ample authority to support the Commission's action here. Section 303(r) provides that the Commission may "[m]ake such rules and regulations . . . as may be necessary to carry out the provisions of this Act."<sup>58</sup>

18. The presence of a backup power source installed by all local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), as well as commercial mobile radio service (CMRS) providers for all assets that are normally powered from local commercial power including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals will facilitate communication for the purposes of national defense and the promotion of "safety of life and property" during emergencies. Communications networks cannot operate without a power source. The Commission must therefore be mindful of an adequate power supply, particularly in emergencies, if it is to discharge its core responsibilities under Section 1 of the Communications Act to regulate communications for the promotion of national defense, public safety and the protection of property. If commercially supplied power is incapacitated, the communications network will also fail. The backup power rule adopted by the Commission is a short-term attempt to sustain communication in a severe emergency for the purposes of promoting the Commission's salient purpose pursuant to Section 1 to regulate interstate communications by wire and radio.

19. PCIA's reliance on the broadcast flag ruling by the U.S. Court of Appeals for the District of Columbia (Court) is misplaced. In that case, the Court found that the Commission had not satisfied the

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<sup>53</sup> *Id.* This test was subsequently applied by the Supreme Court in *United States v. Midwest Video Corp.*, 406 U.S. 649 (1972) (*Midwest Video I*) and *United States v. Midwest Video Corp.*, 440 U.S. 689 (1979) (*Midwest Video II*).

<sup>54</sup> *Southwestern Cable*, 392 U.S. at 167. *See also Am. Library Ass'n*, 406 F.3d at 693.

<sup>55</sup> 47 U.S.C. § 151.

<sup>56</sup> *Southwestern Cable*, 392 U.S. at 178.

<sup>57</sup> *Rural Telephone Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988) (quoting 47 U.S.C. § 154(i)).

<sup>58</sup> 47 U.S.C. § 303(r). *See also* 47 U.S.C. § 332.

second prong of the ancillary jurisdiction test because the restriction on recording digital television programs that were transmitted by cable or over-the-air broadcast exceeded the Commission's authority to regulate the transmission of communications by wire and radio given that the restriction pertained to a regulation imposed outside the course of the act of transmitting the communication.<sup>59</sup> In this case, by contrast, backup power is necessary for the communication to be transmitted at all.

20. Arguments Regarding Lack of Record Support, Consideration of Important Factors or Reasoned Basis for Rule. Petitioners contend that the backup power rule is arbitrary and capricious because the Commission failed to explain why a mandatory obligation including an inflexible minimum 8 or 24 hour period was necessary and why it rejected less restrictive alternatives to the rule, such as a voluntary best practices regime as recommended by the Katrina Panel.<sup>60</sup> Several petitioners also allege that the Commission failed to consider the impact of the rule, failed to consider important aspects of the very problem it sought to redress, and failed to explain why present carrier preparedness plans are inadequate.<sup>61</sup> Additionally, several petitioners argue that the backup power rule adopted lacks record support.

21. Petitioners argue that there is no record evidence to support the backup power mandate in general, or the eight or 24-hour minimum in particular.<sup>62</sup> Some petitioners note that the comments described in the Order when discussing the backup power rule do not concern CMRS providers at all, do not suggest any mandatory minimum standard, or have nothing to do with backup power.<sup>63</sup> However, the rule adopted by the Commission enjoyed strong factual support. First, as described *supra* at ¶ 11, the Katrina Panel repeatedly emphasized the importance of power supply to resiliency of communications networks. Further, it noted that backup generators and batteries were not present at all facilities.<sup>64</sup> Additionally, the Katrina Panel Report stated that power for radio base stations and battery/chargers for portable radio devices are carefully planned for public safety systems; however, "generators are typically designed to keep base stations operating for 24 to 48 hours."<sup>65</sup> This language, along with the Katrina Panel's recognition that 24-48 hours is generally a sufficient time to permit the restoration of power in most situations,<sup>66</sup> clearly provides support for requiring LECs and CMRS providers to maintain backup power for a minimum of 24 hours for assets located inside central offices. The 24 hour requirement imposes relatively less burden while still generally providing sufficient time for restoration of commercial power or for carriers to allocate additional power sources. Further, the Commission recognized the burdens of ensuring longer durations of backup power at other locations, which have subsequently been detailed by petitioners, and reasonably required only 8 hours of backup power for such locations,

<sup>59</sup> *Am. Library Ass'n*, 406 F.3d at 703-704.

<sup>60</sup> *See, e.g.* PCIA Petition at 6; September 4, 2007 Comments of Sprint Nextel (Sprint Nextel Reply) at 4; USTelecom Petition at 3, 10-12.

<sup>61</sup> *See, e.g.* NextG Petition at 2-13; T-Mobile Reply at 8; USTelecom Petition at 2-3, 7-13.

<sup>62</sup> *See, e.g.*, MetroPCS Petition at ii, 4, 6-7; PCIA Petition at 15-18; USTelecom Petition at 9-13.

<sup>63</sup> *See, e.g.*, DAS Forum Petition at 5-7; Sprint Nextel Reply at 2-3; USTelecom at 12 (noting that NENA's comments addressed only wireline providers central offices and did not discuss any specific time frame for backup power and that St. Tammany Parish's comments discussed only backup procedures and made no mention of backup power.).

<sup>64</sup> Katrina Panel Report at 17.

<sup>65</sup> *Id.* at 7. NENA further states that its representative on the Katrina Panel urged that wireless sites should include generators with a minimum of five days fuel supply and backup battery systems rated for a minimum of eight hours. *See* NENA's September 11, 2007 Comments at 1-3.

<sup>66</sup> *Id.* at 17.

including, but not limited to, cell sites, remote switches and digital loop carrier system remote terminals.<sup>67</sup> This will provide at least eight hours for commercial power restoration or carrier actions to obtain additional backup power sources.<sup>68</sup>

22. Additionally, the Katrina Panel's recommendation was that the Commission encourage the implementation of the NRIC VII Recommendation 7-7-5204. That recommendation states that "[s]ervice providers, network operators and property managers should ensure availability of emergency/backup power. . ." The terms "service providers" and "network operators" clearly include CMRS providers. In the *Katrina Panel Order*, the Commission noted that NENA recommended that "the FCC or state commissions, as appropriate, require all telephone central offices to have an emergency backup power source."<sup>69</sup> NENA states that, in its comments in the Katrina Panel Docket, it chose to mention telephone central offices as emblematic, not exhaustive, of critical switching points in wire and wireless networks, and it also endorsed the broader scope of NRIC Recommendation 7-7-5204.<sup>70</sup>

23. The Commission determined that a mandatory backup power requirement would be in the public interest. Although several carriers described their backup power plans, the Katrina Panel Report made clear the importance of backup power for resilient communications and restoration of communications services that have been disrupted. The report further made clear that, although many carriers do have backup power or backup power plans, not all locations have backup power. The Katrina Panel also noted that because those communications providers did not necessarily test and exercise their backup power sources in a systematic fashion, generators and batteries might not function during the crisis.<sup>71</sup> Imposing a backup power rule would ensure that more communications assets have backup power and that providers ensure the availability of this power. Access to communications technologies during times of emergency is critical to the public, public safety personnel, hospitals, and schools, among others. Therefore, because the benefits of ensuring resilient communications during times of crises are so great, the Commission determined that a backup power rule was in the public interest. Moreover, it is important that both LEC and CMRS providers have backup power, because the public, public safety personnel, and hospitals, among others, rely heavily on both types of providers. In fact, many Americans now rely on only a wireless phone and public safety entities, hospitals and others are increasingly relying on wireless technologies.<sup>72</sup> As the Katrina Panel Report and commenters note, lack of commercial power was one of the main causes of wireless outages during Hurricane Katrina, access to fuel was one of the

<sup>67</sup> 47 C.F.R. § 12.2.

<sup>68</sup> In the US Telecom Petition and a Verizon Wireless *Ex Parte*, both providers reported that the majority of their remote sites have backup power. See US Telecom Petition at 2,8 (noting that the vast majority of all network remote terminals have onsite backup battery power typically designed to an eight hour engineering standard, although the actual life of the battery at any point in time depends on numerous factors and some remote terminals are too small to support a battery); Verizon Wireless *Ex Parte* filed September 4, 2007 (stating that Verizon Wireless' internal design standard is for eight hours or more of backup power (generators, batteries or both) at every cell site where possible, that the majority of its cell sites have on-site generators or batteries capable of providing backup power for much longer than eight hours, that only a small percentage of sites have only batteries that will not last for eight hours, and that only a handful of sites have no on-site backup power at all).

<sup>69</sup> *Katrina Panel Order*, 22 FCC Rcd at 10565 ¶ 76; NENA Comments at 6.

<sup>70</sup> NENA's September 11, 2007 Comments at 1-3.

<sup>71</sup> *Id.* at 14, 17-18.

<sup>72</sup> See, e.g., *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Eleventh Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 21 FCC Rcd 10947, 11010, ¶ 158 (2006) ("In the last three years alone, the total mobile telephone subscriber base has increased 50 percent.").

wireless providers' most pressing needs during that catastrophe, and it is important that both wireless and wireline carriers ensure network reliability and resiliency by provisioning their sites with back up power.<sup>73</sup>

24. Petitioners also allege that the Commission failed to consider burdens and important matters, some of which affect the ability of carriers to comply with the rule. They contend that legal impediments, including contractual obligations and inconsistency with federal, state and local environmental, safety, building and zoning laws will make compliance with the rule difficult, if not impossible and could result in preemption issues regarding state and local laws.<sup>74</sup> Petitioners note that carriers have site leases with contractual obligations that regulate the placement, installation and operation of power sources.<sup>75</sup> Additionally, petitioners assert that compliance with the backup power rule could result in threats to public health and safety. For instance, petitioners state that the installation of a generator and its combustible fuel on the roof of a school or public building, where many transmitters are located, may pose a risk to public health and safety even when in compliance with law.<sup>76</sup> Further, petitioners assert that the Commission failed to properly consider the length of time it would reasonably take for providers to comply with the rule. They contend that compliance will take a significant amount of time and the time allowed by the *Katrina Panel Order* is insufficient, because providers must obtain permits, do site inspections, conduct structural engineering analysis, renegotiate leases, obtain permits, ensure compliance with legal requirements, evaluate backup power needs, and order and install the necessary equipment.<sup>77</sup> Petitioners also assert that compliance will take time because thousands of "non-critical" sites do not have backup power and many of the sites that do have backup power do not have the amount required.<sup>78</sup> As discussed in greater detail below, petitioners also argue that physical and other practical limitations make it difficult or impossible to comply with the backup power rule. Finally, petitioners argue that the Commission did not adequately consider the economic burden the rule will impose.<sup>79</sup>

<sup>73</sup> See, *supra* ¶¶ 11, 13.

<sup>74</sup> See, e.g., DAS Forum Petition at 6-7, 10; MetroPCS Petition at ii, 8-12; PCIA Petition at 9; T-Mobile Reply at 9.

<sup>75</sup> Petitioners state that, in order to comply with the rule, carriers would be required to maintain a large number of battery and fuel-powered generators at cell sites. Because these power systems contain lead, sulfuric acid, oils and flammable liquids, they are subject to a host of federal, state, and local environmental and safety laws that strictly limit their placement and use. They note that, at a multi-carrier site, compliance with the rule could require the addition of several thousand pounds of additional weight, which would implicate local building code limitations. Petitioners note that placement and operation of diesel generators raises environmental issues and implicate federal and state environmental laws are implicated by the rule. They state that state and local government laws and ordinances require permits before installing new diesel generators and issuance of such permits can be delayed while authorities negotiate to address concerns re: noise pollution, ventilation, fuel leakage, etc. Petitioners argue that site leases that contractually limit the placement of such equipment will have to be renegotiated prior to installation. See, e.g., *id.*

<sup>76</sup> See, e.g., DAS Forum at 9; MetroPCS Petition at 8-9; T-Mobile Reply at 10. Because several petitioners refer to the CTIA Petition, we note that CTIA also noted that a rooftop location could expose the equipment to lightning or other weather conditions that could compromise the equipment, making it more susceptible to fuel leakage and fire; that the location of such equipment in a church steeple may not provide adequate ventilation; and that pollutants emitted by diesel generators have been identified as leading contributors to a variety of environmental and health problems. See CTIA Petition at 18-19.

<sup>77</sup> See, e.g., PCIA Petition at 5, 10; T-Mobile Reply at 7, 9, 11-12; USTelecom at 8; Verizon Wireless *Ex Parte* at 2-3.

<sup>78</sup> *Id.*

<sup>79</sup> See, e.g., MetroPCS Petition at 5, 13; NextG Petition at 2-3, 10-15; PCIA Petition at 5; Sprint Nextel Reply at 3-4.

25. We find that Petitioners' arguments regarding legal impediments and threat to public health and safety to be compelling and modify Section 12.2 to state that LECs and CMRS providers are not required to meet the backup power requirement if they demonstrate, through the reporting requirement described below, that such compliance is precluded by: (1) federal, state, tribal or local law; (2) risk to safety of life or health; or (3) private legal obligation or agreement. With respect to private legal obligations or agreements, LECs and CMRS providers should make efforts to revise agreements to enable rule compliance where possible, for example through renegotiations or renewals. Obviously, the Commission will disapprove of attempts to circumvent the rule through private agreements. We believe such exemptions are warranted because those impediments create a substantial burden for LECs and CMRS providers to overcome in order to comply with the rule that in some cases may be insurmountable. In the case of risk to safety of life or health, such an exemption is obviously in the public interest. As noted, *supra* at ¶ 7, some petitioners assert that the Commission should clarify that the backup power rule applies only to assets directly related to the provision of critical communications services.<sup>80</sup> We agree that the requirement should be clarified to apply only to assets necessary to the provision of communications services and modify the rule accordingly. We decline, however to limit the rule to "critical" communications services, because, although that term was included in the NRIC best practice recommended by the Katrina Panel, it is not well defined and we believe, for public safety and public interest reasons, all assets necessary to the provision of communications services should have backup power. We also agree with AT&T that on-site power sources satisfy the requirement of this rule if such sources were originally designed to provide the minimum backup power capacity level required herein and the provider has implemented reasonable methods and procedures to ensure that batteries are regularly checked and replaced when they deteriorate.<sup>81</sup> Finally, we find that the requirement should not be limited to assets normally powered from local "AC" commercial power. Regardless of the type of commercial power used, assets necessary to maintain communications should have backup power and be as reliable and resilient as possible. We also note that the NRIC best practice recommended by the Katrina Panel did not limit its recommendation in this way. Accordingly, we delete the reference to "AC" in the rule.

26. While today we address concerns raised by LECs and CMRS providers regarding their obligation to ensure emergency backup power, given the importance of backup power reserves during times of emergency, we will seek information regarding the extent to which LECs and CMRS providers are in compliance with this rule. Accordingly, we also modify Section 12.2 of our rules to require LECs and CMRS providers to file reports with the Commission that identify the following information: (1) an inventory listing of each asset that was designed to comply with the backup power mandate; (2) an inventory listing of each asset where compliance is precluded due to risk to safety or life or health; (3) an inventory listing of each asset where compliance is precluded by private legal obligation or agreement; (4) an inventory listing of each asset where compliance is precluded by Federal, state, tribal or local law; and (5) an inventory listing of each asset designed with less than the required emergency backup power capacity and that is not otherwise precluded from compliance for one of the three reasons identified in paragraph 25, above.<sup>82</sup> LECs and CMRS providers must file these reports within six months of the

<sup>80</sup> See, e.g., MetroPCS Petition at 13; NENA September 11, 2007, Comments at 3; NextG Petition at 17; Sprint Nextel Reply at 2; USTelecom Petition at 3.

<sup>81</sup> AT&T *Ex Parte* Notice filed September 27, 2007; see also Verizon Wireless *Ex Parte* filed September 4, 2007 (noting that batteries begin to deteriorate the minute they are installed and, although Verizon Wireless has methods and procedures in place that insure that batteries are regularly checked and replaced when they deteriorate, it cannot guarantee that every battery designed to provide 8 hours of backup power will actually do so).

<sup>82</sup> LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from the rule and the reporting requirements in paragraphs 26-27.

effective date of this requirement, and must include a description of facts supporting the basis of the LEC's or CMRS provider's claim of preclusion from compliance. For example, claims that a LEC or CMRS provider cannot comply with the backup power mandate due to a legal constraint must include the citation(s) to the relevant laws and, in order to be deemed precluded from compliance, the law or other legal constraint must prohibit the LEC or CMRS provider from complying with the backup power requirement. The mere need to obtain a permit or other approval will not be deemed to preclude compliance with the backup power requirement. Claims that a LEC or CMRS provider cannot comply with the backup power mandate with respect to a particular asset due to a private legal obligation or agreement must include the relevant terms of the obligation or agreement and the dates on which the relevant terms of the agreement became effective and are scheduled to expire. Claims that a LEC or CMRS provider cannot comply with the backup power mandate with respect to a particular asset due to risk to safety of life or health must include a description of the particular public safety risk and sufficient facts to demonstrate substantial risk of harm. We direct the PSHSB to develop an appropriate auditing program to ensure that carriers' exclusion filings are reasonable and accurate.

27. LECs or CMRS providers identifying assets designed with less than the required emergency backup power capacity and not otherwise precluded from compliance for one of the three reasons listed above must comply with the backup power requirement or file, within 12 months from the effective date of the rule, a certified emergency backup power compliance plan that is subject to Commission review. That plan must describe how, in the event of a commercial power failure, the LEC or CMRS provider intends to provide emergency backup power to 100 percent of the area covered by any non-compliant asset, relying on on-site and/or portable backup power sources or other sources as appropriate. The emergency backup power must be sufficient for service coverage as follows: a minimum 24 hours of emergency backup power for assets inside central offices and eight hours for other assets such as cell sites, remote switches, and digital loop carrier system remote terminals. The provider must be able to ensure backup power is available for 100 percent of the area covered by any non-compliant asset pursuant to the emergency backup power compliance plan on the date that the plan is filed. All reports and plans required by Section 12.2 of the Commission's rules will be automatically afforded confidentiality, because the information in those reports and plans is sensitive, for both national security and/or commercial reasons. This reporting requirement should not be burdensome in light of many LEC and CMRS provider arguments that they already have business continuity plans that address the issue of backup power and in light of the fact that the plan is not due until 12 months after the effective date of the modified rule which will require Office of Management and Budget approval before going into effect. In any event such burdens are outweighed by the importance of having backup power for communications assets.

28. Petitioners argue that the Commission failed to consider the length of time it would reasonably take for CLECs and CMRS providers to comply with the rule and that it will take significant time to evaluate backup power needs, conduct structural engineering analyses, renegotiate leases if needed, prepare necessary applications for permits and other authorizations, ensure compliance with all applicable building codes and environmental regulations, coordinate with counsel, architects, construction personnel and government officials, order and receive the necessary equipment, and properly install the backup power source.<sup>83</sup> We note that the *Katrina Panel Order* was released on June 8, 2007, almost four months ago, and LECs and CMRS providers have known of the backup power requirement since that

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<sup>83</sup> See, *supra* n77. Some petitioners also note that the rule will result in an increased demand for batteries and generators that might cause a production strain and limit the timely availability of these resources. However, they have provided no proof in support of these assertions and for the reasons stated in this paragraph, we believe providers will have adequate time to comply with the rule. Moreover, rule modifications we adopt today will decrease the amount of backup power sources that will need to be installed.

time. Further, the modified backup power rule adopted herein will not go into effect until OMB approves the new information collection, giving providers additional time to come into compliance. To the extent LECs and CMRS providers identify non-compliant assets, they will receive even more time to file emergency backup power compliance plans. In addition, the modifications to the rule mitigate these concerns by exempting assets from compliance when precluded by law, private legal obligation or agreement, or risk to safety of life or health and by allowing an emergency backup power compliance plan in cases where assets do not comply with the 8-24 hour rule and are not subject to the exceptions. As such, we believe that it will be feasible for providers to comply with the rule.

29. Several petitioners argue that compliance with the backup power rule is burdensome due to physical and other practical limitations, that the required space might not be available at many sites, and that providers may be forced to modify structures containing cell transmitters or to build new structures.<sup>84</sup> They assert, for example, that roofs and floors need to be designed to support the weight of power sources, that many rooftop cell sites were not engineered with the additional weight requirements made necessary by the backup power rule, and that many of those structures may simply not be able to physically support the weight of additional batteries or a generator.<sup>85</sup> Petitioners also argue that there is not enough space at many cell sites to add additional backup power sources and note that cell transmitters are often placed in locations with limited room, such as building rooftops, church steeples and inside buildings.<sup>86</sup> USTelecom notes that some remote terminals are physically too small to support a backup battery or a battery over a certain size.<sup>87</sup> T-Mobile reports that, in the case of liquid propane-fueled generators, Occupational Safety and Health Administration requirements mandate a 10-foot radius clearance between the liquid propane fuel tank and its ignition source.<sup>88</sup> T-Mobile argues that this could substantially increase the amount of space needed to install a backup power source.<sup>89</sup>

30. We are not convinced that LECs and CMRS providers should be excused from having emergency backup power solely because they have chosen to place their assets at locations with limited weight or space capacities. The ultimate goal of this rule is to ensure that carriers have sufficient emergency backup power, particularly during times of emergencies. We recognize that, in order to comply with the rule, some carriers may have to modify sites to accommodate additional equipment or, in some cases, find other, more suitable, locations for their assets. We believe, however, that any such burdens are far outweighed by the ultimate goal of this rule. For similar reasons, we also reject the notion that carriers should be excused from complying with the rule for vague “practical” reasons. Having said this, however, a carrier could be excused from the rule to the extent that the carrier can demonstrate that an asset with purported physical constraints fall into one of the three exceptions listed above. Additionally, where assets do not comply with the 8-24 hour rule and are not subject to the exceptions, we

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<sup>84</sup> See, e.g., DAS Forum Petition at 9, 4-5; MetroPCS Petition at ii, 9-13; T-Mobile Reply at 11; USTelecom Petition at 2; Verizon Wireless *Ex Parte* filed September 4, 2007 at 2-3.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* PCIA asserts that the backup power rule is at odds with federal efforts to limit the physical presence of cell sites and the policy of promoting collocation. PCIA Petition at 8-10; see also T-Mobile Reply at 10-11. While we recognize the desire to collocate and the flexibility afforded by collocation, the goal of ensuring reliable and resilient communications outweighs any benefits afforded by collocation. Further, the backup power rule, particularly as amended in this Order on Reconsideration, does not necessarily prevent collocation.

<sup>87</sup> USTelecom Petition at 2, 8.

<sup>88</sup> T-Mobile Reply at 11; see also PCIA Petition at 9 (stating that fire codes require safety zones around propane and diesel tanks).

<sup>89</sup> *Id.*

now allow an emergency backup power compliance plan.

31. Although petitioners argue that the economic burden that the backup power rule will impose is substantial, the record before the Commission showed that several carriers have already deployed backup power capabilities, some of which allow them to remain in operation for several days in the event of a loss of main power.<sup>90</sup> In any event, we find that the benefits of ensuring sufficient emergency backup power, especially in times of crisis involving possible loss of life or injury, outweighs the fact that carriers may have to spend resources, perhaps even significant resources, to comply with the rule.<sup>91</sup> Petitioners assert that compliance may be costly; however, the record does not show that it is “cost-prohibitive” for carriers. Moreover, the rule modifications, including new exemptions described above and the provision that providers file an emergency backup power compliance plan to ensure 100 percent coverage in areas covered by non-compliant assets, will decrease any economic burden substantially. Finally, we find that the goal of ensuring that carriers’ networks have sufficient emergency backup power outweighs the economic burden described by petitioners and particularly the reduced economic burden in light of the rule modifications adopted herein. The need for backup power in the event of emergencies has been made abundantly clear by recent events, and the cost of failing to have such power may be measured in lives lost.

32. Some Petitioners argue that, contrary to the ultimate goal of protecting the provision of services, the backup power rule will not advance, but will actually risk undermining, carriers’ emergency preparedness goals and efforts to achieve important business continuity and disaster recovery goals.<sup>92</sup> Petitioners contend that the rule deprives carriers of the flexibility necessary to make intelligent and efficient plans for network resiliency as well as giving carriers the flexibility to respond to disasters in real time while remaining in compliance with the Commissions rules.<sup>93</sup> Petitioners assert that, by diverting manpower and resources away from more appropriate efforts to tailor emergency communications plans, and by denying carriers the ability to move resources away from areas not impacted to those that have been impacted, the rule undermines rather than promotes the important goal of public safety.<sup>94</sup>

33. We recognize that carriers need some level of flexibility in the design and deployment of their networks. This need, however, must be balanced with the critical goal of ensuring that communications networks has sufficient backup power, particularly during times of disaster. The modifications we make today strike a fair and equitable balance of these two interests. The modified rule we adopt today will ensure that LECs, including ILECs and CLECs, as well as CMRS providers maintain sufficient level of emergency backup power for assets that are necessary to maintain communications and

<sup>90</sup> See, *supra* ¶ 13. See also T-Mobile Reply at 7 (T-Mobile already provides varying degrees of backup power at 95 percent of its cell sites, most have less than 8 hours of power but some have more than 8 hours).

<sup>91</sup> Although its petition has been withdrawn several commenters reference the CTIA Petition, and we note that CTIA asserted that the reasons the Commission gave for encouraging but not requiring other Katrina Panel recommendations apply with equal force to the backup power issue. For instance, like the implementation of diverse 911 circuits, CTIA contends that mandatory minimum backup power is “cost-prohibitive in certain cases.” CTIA Petition at 24, n.33; see also *Katrina Panel Order*, 22 FCC Rcd at 10564-65 ¶ 75. However, the costs of implementing diverse 911 circuits are often shouldered by PSAPs which depend on limited sources of public funding and do not have the financial resources of commercial companies.

<sup>92</sup> See, e.g., MetroPCS Petition at 13; PCIA Petition at 8, 19-20; USTelecom Petition at 1-3, 7-9.

<sup>93</sup> See, e.g., MetroPCS Petition at ii, 6-7, 13; PCIA Petition at 8, 19-20; Sprint Nextel Reply at 2-3; USTelecom Petition at 2, 7.

<sup>94</sup> *Id.*

that are normally maintained by commercial power. At the same time, the modifications adopted herein provide some level flexibility, both in terms of the exceptions provided and the requirements for submission of an emergency backup power compliance plan in cases where providers are not compliant. Moreover, inclusion of on-site back up power does not preclude the ability of carriers to maintain strategic stores of fuel, batteries or other backup equipment in other localities as a further layer of redundancy. Petitioners argue that enforcement could also lead to the termination or disruption of wireless cell sites, threatening the availability of service, including E-911 service.<sup>95</sup> Petitioners further contend that carriers may have little choice but to shut down or move certain transmitters rather than risk operating in violation of the new rule or endangering public health and safety.<sup>96</sup> NENA disagrees and contends that these arguments suggest that cellular providers should be immune from any disruptive regulatory discipline.<sup>97</sup> We believe that the exemptions now provided along with the requirement to develop an emergency backup power compliance plan in cases where assets do not comply with the 8-24 hour rule and are not subject to the exceptions described herein will mitigate these concerns.

34. Paging Carriers. The American Association of Paging Carriers (AAPC) argues that the Commission did not intend to apply the backup power rule to paging carriers and should so clarify. Alternatively, AAPC asserts that, if the Commission did intend for this rule to apply to paging carriers, the Commission should reconsider and exclude paging carriers<sup>98</sup> or instead adopt the Katrina Panel's actual recommendation on this issue, as set forth in the Katrina Panel Report. The backup power rule adopted in the *Katrina Panel Order* requires commercial mobile radio service (CMRS) providers to have emergency backup power. CMRS providers that have no more than 500,000 subscribers are exempt from this rule. Therefore, paging carriers that are CMRS providers with more than 500,000 subscribers must comply with the rule. Paging services are a critical part of emergency response. Many first responders, hospitals and critical infrastructure providers rely on paging services during emergencies.<sup>99</sup> Therefore, it is critical that these services be available during crises. Backup power at paging carrier facilities will help ensure the availability of these services. The importance of paging services is further demonstrated by the fact that paging carriers participate in the Commercial Mobile Service Alert Advisory Committee and are subject to the Commission's Part 4 outage reporting rules. For these reasons and those set forth below,

<sup>95</sup> See, e.g. MetroPCS Petition at ii, 4, 8-13; PCIA Petition at 6, 12; NextG Petition at 1-3, 13-19.

<sup>96</sup> *Id.*

<sup>97</sup> NENA takes issue with the claim that forced shutdown of non-compliant sites will threaten public safety. NENA asserts this argument suggests that cellular providers should be immune from any disruptive regulatory discipline because so many 9-1-1 callers use wireless phones. NENA notes that wireless carriers made an analogous argument in 1993, during the early consideration of 9-1-1 caller location rules, suggesting that cellular telephony, of itself, was such a boon to 9-1-1 access that precise caller location should not be required. NENA Comments filed September 11, 2007 at 3.

<sup>98</sup> AAPC argues that the rule should not apply to entities defined by Section 20.9(1) and (6) of the rules, or to Narrowband PCS licenses as defined by Section 24.5 of the rules. AAPC Petition at 4. As noted herein, we find that the rule should apply to CMRS providers, as defined in Section 20.9 of the Commission's rules.

<sup>99</sup> See, e.g., Testimony of Bruce Deer, American Association of Paging Carriers before the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Meeting Transcript at 123 (March 5, 2006) ("And we realize that today, still, with all of the advent of all of the communications methods of electronic forms that hospitals still use predominantly pagers for emergency communications to reach their doctors and their emerging medical staffs."); Testimony of Vincent Kelly, President and Chief Executive Officer, USA Mobility before the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Meeting Transcript at 132 ("[P]aging devices continue to play a critical role for first responders and are still used extensively by policy [sic] officers, fire fighters, rescue workers. In addition, hospitals and health care clinics as well as government agencies rely heavily on paging services.")

we modify Section 12.2 to clarify that the rule applies to CMRS providers, *as defined in Section 20.9 of the Commission's rules.*

35. AAPC argues that the Commission intended to exclude paging carriers from this backup power rule. AAPC asserts that the *Katrina Panel Order* bases the CMRS classification in Section 12.2 on a definition developed for the *E-911 Proceeding*<sup>100</sup> and, because paging carriers do not provide E-911 service, the inference is that the Commission intended to exclude paging carriers from this rule. The parts of the *Katrina Panel Order* cited by AAPC, however, do not define CMRS providers, but instead provide an exemption for non-nationwide CMRS providers with no more than 500,000 subscribers. In a footnote, the Commission merely stated that this exemption is based on the Tier III CMRS definition. AAPC contends that the etymology of the backup power rule supports a finding that the Commission intended to exclude paging carriers and to apply the rule only to entities that are required to provide E-911 service as defined in Section 20.18 of the Commission's rules.<sup>101</sup> AAPC notes that the Katrina Panel made its backup power recommendation "in order to ensure a more robust E-911 service" and that, when requesting public comment on this recommendation, the Commission explained that the Panel "recommends that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E911 architecture."<sup>102</sup> However, the backup power rule includes no such limitations and, in the *Notice*, the Commission specifically sought comment on whether the Katrina Panel's observations warranted additional measures or steps beyond the report's specific recommendations and welcomed suggestions and recommendations regarding additional measures or actions beyond the Panel's recommendations.<sup>103</sup> The Commission also sought comment on whether it should rely on voluntary consensus recommendations, as advocated by the Katrina Panel, or whether it should rely on other measures for enhancing readiness and promoting more effective response efforts. Further, AAPC argues that the deliberate use of the term "cell sites" in the rule supports the conclusion that the Commission did not intend that the rule apply to paging carriers because paging carriers do not operate cell sites in their networks.<sup>104</sup> The reference to cell sites, however, is only one example of an asset that is normally powered from local commercial power and the assets identified in the rule are not an exhaustive list.<sup>105</sup>

36. AAPC requests, in the event that the Commission did intend to apply the backup power rule to paging carriers, that the rule be modified to ensure that it does not apply to paging carriers. AAPC argues that it is unreasonable to lump paging networks together with other types of CMRS networks for purposes of this rule without considering the particular engineering and cost characteristics of paging networks themselves. Although AAPC argues that applying the requirement to all paging base stations and terminals would be particularly troubling for paging carriers,<sup>106</sup> the burden will be mitigated by the

<sup>100</sup> AAPC Petition at 2. In support of this assertion, AAPC cites the *Katrina Panel Order* at ¶ 78 & n. 103, Appendix C (Final Regulatory Flexibility Analysis) at ¶ 27 & nn. 59-60, citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Order to Stay)*, CC Docket No. 97-102, 17 FCC Rcd 14841, 14848 & ¶ 22 (2002) (the "*E-911 Proceeding*").

<sup>101</sup> AAPC Petition at 3-4.

<sup>102</sup> *Notice*, 21 FCC Rcd 7320, 7326 ¶ 16; Katrina Panel Report at 39.

<sup>103</sup> *Notice*, 21 FCC Rcd at 7320-7323.

<sup>104</sup> AAPC Petition at 4.

<sup>105</sup> The rule states, in part, that LECs and CMRS providers must have an emergency backup power source for all assets that are normally powered from local commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. 47 C.F.R. § 12.2.

<sup>106</sup> AAPC notes that, unlike cellular and broadband PCS networks, paging networks make substantial use of simulcasting and "fill-in" transmitters to assure adequate signal penetration in buildings and to cover terrain-

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rule modifications adopted herein. Additionally, the burden for paging carriers would not necessarily be any more onerous for paging carriers than for other CMRS providers. Paging providers use a variety of facilities to provide coverage which are, in most cases not that different from the facilities of other CMRS providers. The fill-in facilities employed by paging providers are similar in size and power requirements as those used by other CMRS providers. In many instances, paging providers use high-powered transmitters that are located in multiple transmitter sites. While there may be challenges to overcome such as space, zoning and structural limitations for these facilities, they are no more onerous than those faced by other CMRS providers. In addition, the backup power rule might be less burdensome for paging carriers than for other CMRS providers, because the number of fill-in paging sites that paging carriers deploy is likely less than the more extensive deployment of assets required by other CMRS providers. AAPC asserts that the Commission should define CMRS as those services that are identified in Section 20.18(a) of the Commission's rules, as it did for purposes of Section 605(a) of the WARN Act, where the Commission defined the statutory phrase "commercial mobile service."<sup>107</sup> That definition, however was limited to Section 605(a) of the WARN Act and was done for specific purposes of that section of the Act that are not relevant to the backup power rule.<sup>108</sup> Further, the membership of the Commercial Mobile Service Alert Advisory Committee established pursuant to the WARN Act includes paging carriers. In light of these factors, we decline to modify the rule as suggested by AAPC, and clarify that paging carriers are required to comply.

37. Distributed Antenna System (DAS) Nodes and other non-traditional sites. NextG, MetroPCS and other petitioners ask the Commission to clarify that DAS Nodes and other "non-traditional" sites, such as cellular repeater sites, micro-cell and pico-cell locations, electric poles, light poles, and flagpoles, are not "cell sites" as the term is used in the Commission's new backup power rule.<sup>109</sup> In the alternative, these petitioners request that the Commission reconsider and amend the rule to eliminate the backup power requirement for DAS Nodes and other "non-traditional" sites.<sup>110</sup> Other petitioners make similar arguments for "non-traditional" sites and emphasize the burden of complying with the backup power rule due to physical constraints and economic resources.<sup>111</sup> NextG explains that it provides telecommunications services to wireless carriers via a network architecture that uses fiber-optic cable and small antennas mounted in the public rights-of-way on infrastructure such as utility poles, street lights and

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shielded areas. AAPC states that, in emergency conditions, not all base stations are usually required to maintain an acceptable level of service. According to AAPC, the design of paging networks involve engineering and cost trade-offs that do not fit neatly into a matrix that the Commission can or should promulgate into law. AAPC acknowledges that paging carriers typically do have backup power sources for their critical base station sites, but they may not have backup power at all sites. AAPC Petition at 4-5.

<sup>107</sup> AAPC Petition at 3, citing *Implementation of a Grant Program for Remote Community Alert Systems Pursuant to Section 605(a) of the Warning, Alert, and Response Network (WARN) Act*, Declaratory Ruling, PS Docket No. 07-8, 21 FCC Rcd 7214 (2007).

<sup>108</sup> The reasons this definition was adopted for Section 605(a) included: (1) because including current MSS offerings in the definition of "commercial mobile service" could render meaningless the grant program of Section 605(a), we cannot equate "commercial mobile service" with the Commission's definition of CMRS; (2) defining "commercial mobile service" to include only carriers that are obligated to provide E911 service focuses limited resources on communities that need them most: namely, those communities that have no access to wireless E911 service. *See Id.*

<sup>109</sup> *See, e.g.*, NextG Petition at 8-10, DAS Forum Petition at 3-4, MetroPCS Petition at 12-13, and Independent Telephone and Telecommunications Alliance August 30, 2007 Comments (ITTA Reply) at 1-4.

<sup>110</sup> *See, e.g.*, NextG Petition at 1-3. *See also id.*

<sup>111</sup> *See, e.g.*, MetroPCS Petition at ii; 12-13.

traffic signal poles. NextG argues that DAS Nodes should not be treated as a cell site because the DAS Node does not include some of the features typically associated with a cell site. The antenna is not associated with a base station or network switching equipment at the DAS Node site.<sup>112</sup> NextG and MetroPCS maintain that even if the Commission does treat the DAS Node as a cell site this equipment should be exempt from the backup power rule because it is “technologically, financially, and politically infeasible” to install eight hours of backup power.<sup>113</sup> DAS Forum argues that the impact due to the loss of power to a portion of a DAS network is far less than the loss of power to a traditional cell site because the balance of the DAS network continues to function when one node is damaged.<sup>114</sup>

38. We decline to exempt DAS Nodes or other sites from the emergency backup power rule.<sup>115</sup> Rather, we believe that to the extent these systems are necessary to provide communications services, they should be treated similarly to other types of assets that are subject to the rule. We note that many of the arguments made by petitioners are similar to the physical constraint arguments raised by other parties. As we stated earlier, we see no reason why LECs and CMRS providers who choose to place assets at locations with limited physical capacities should generally be excused from compliance with the rule. We realize that many providers have begun to use DAS and other small antenna systems as part of their communications networks. That fact alone, however, is far outweighed by the need to ensure a reliable communications network. To the extent petitioners raise concerns regarding legal impediments, private agreement constraints and safety risk issues, we note that the modifications to the rule we make today should address those concerns. DAS Forum and PCIA argue that the backup power rule will adversely impact the public interest and Commission policy goals, because the increased expense of compliance will prevent wireless carriers from further deploying their networks in this manner and that this will decrease capacity, coverage and reliability and affect emergency communications and wireless E911 coverage.<sup>116</sup> Petitioners have not presented sufficient evidence that the backup power rule will prevent wireless carriers from deploying their networks, particularly in light of the reduced burden of compliance that will result from the rule modifications we adopt in this Order on Reconsideration. Moreover, as noted above, the Commission finds that the benefits of ensuring backup power for communications assets outweighs any economic burden that LECs and CMRS providers may incur as a result of this rule.

#### IV. CONCLUSION

39. For the reason stated above, we deny petitioners’ requests that we rescind Section 12.2 of the Commission’s rules, but find that the petitioners have presented an adequate basis for modifying this backup power rule as detailed above and in Appendix B.

#### V. PROCEDURAL MATTERS

40. Supplemental Final Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this Order on

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<sup>112</sup> NextG Petition at 1, 8.

<sup>113</sup> NextG Petition at 2-3, 10-13; MetroPCS also argues that compliance would be burdensome, impractical and, in many instances impossible – particularly at remote sites, where MetroPCS claims that it will be forced to discontinue services in some instances. MetroPCS Petition at 4, 8-13.

<sup>114</sup> DAS Forum Petition at 3-5.

<sup>115</sup> We also again clarify that the list in the rule is not exhaustive and the inclusion of the term “cell sites” does not limit the rule’s applicability.

<sup>116</sup> See, e.g., DAS Forum Petition at 3; NextG Petition at 2-4, 10-17.

Reconsideration on small entities. The Supplemental Final Regulatory Flexibility Act analysis is set forth in Appendix C, *infra*. The Commission's Consumer & Government Affairs Bureau, Reference Information Center, will send a copy of this Order, including the Supplemental Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

41. Final Paperwork Reduction Act of 1995 Analysis. This Order on Reconsideration contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget ("OMB") and other Federal agencies to comment on the information collection requirements contained in this Order on Reconsideration, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days from date of publication of the Order on Reconsideration in the Federal Register. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the effects of requiring LECs and CMRS providers to have back-up power or emergency back-up power compliance plans and to file reports regarding compliance with these requirements as set forth in Section 12.2 of our rules. We have specifically exempt LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of our rules,<sup>117</sup> and non-nationwide CMRS providers with no more than 500,000 subscribers. We find that this imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission.

42. Congressional Review Act Analysis. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

43. Alternative Formats. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432.

## VI. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(k), 4(o), 201, 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 405, 621(b)(3) and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(k), 154(o), 201, 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 405, 541(b)(3), and 541(d), and Sections 1.3 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.106, that this Order on Reconsideration in EB Docket No. 06-119 and WC Docket No. 06-63 IS ADOPTED.

45. IT IS FURTHER ORDERED, that the Petitions for Reconsideration filed by The American Association of Paging Carriers, the DAS Forum, MetroPCS Communications, Inc., NextG Networks, Inc., PCIA – The Wireless Infrastructure Association (PCIA), and The United States Telecom Association ARE GRANTED to the extent discussed above, and the remainder of those petitions ARE DENIED.

46. IT IS FURTHER ORDERED that Section 12.2 of the Commission's rules IS AMENDED as specified in Appendix B, and Section 12.2 shall be effective on the date of Federal Register notice announcing OMB approval of the information collection now contained in that rule.

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<sup>117</sup> 47 C.F.R. § 32.11(b)(2).

47. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

List of Petitions for Clarification and/or Reconsideration, Comments, and *Ex Parte* CommentsEB Docket No. 06-119  
WC Docket No. 06-63Petitions for Reconsideration

1. American Association of Paging Carriers
2. CTIA-The Wireless Association®<sup>118</sup>
3. The DAS Forum
4. MetroPCS Communications, Inc.
5. NextG Networks, Inc.
6. PCIA-The Wireless Infrastructure Association
7. United States Telecom Association

Timely Filed Comments Responding to Petitions for Reconsideration

1. BridgeCom International, Inc.; Broadview Networks, Inc.; Cavalier Telephone, LLC; DeltaCom, Inc.; Eureka Telecom, Inc. d/b/a InfoHighway Communications; IDT Corporation; Integra Telecom, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; Norlight Telecommunications, Inc.; Pacific Lightnet, Inc.; RCN Telecom Services, Inc.; RNK, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; U.S. TelePacific Corp. d/b/a TelePacific Telecommunications
2. Independent Telephone and Telecommunications Alliance
3. National Hydrogen Association
4. Sprint Nextel Corporation
5. T-Mobile USA, Inc.

Ex Parte Comments

1. AT&T Services, Inc.
2. Cellular South and Rural Cellular Corporation; Leap Wireless; MetroPCS Communications, Inc.; SunCom Wireless; and United States Cellular Corporation
3. CTIA-The Wireless Association®
4. CTIA-The Wireless Association® and United States Telecom Association
5. The DAS Forum
6. Embarq, United States Telecom Association, Verizon, and Windstream
7. The National Emergency Number Association
8. NextG Networks, Inc.
9. PCIA-The Wireless Infrastructure Association
10. United States Telecom Association
11. Verizon
12. Verizon Wireless

<sup>118</sup> CTIA withdrew this Petition on September 28, 2007.

**APPENDIX B****Final Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 12 of Chapter I of Title 47 of the Code of Federal Regulations (C.F.R.) as follows:

**PART 12 – REDUNDANCY OF COMMUNICATIONS SYSTEMS**

1. Section 12.2 is amended to read as follows:

**§ 12.2 Backup Power.**

- (a) Except to the extent set forth in Section 12.2(b) and Section 12.2(c)(4) of the Commission's rules, local exchange carriers, including incumbent local exchange carriers and competitive local exchange carriers (collectively, LECs), and commercial mobile radio service (CMRS) providers, as defined in Section 20.9 of the Commission's rules, must have an emergency backup power source (*e.g.*, batteries, generators, fuel cells) for all assets necessary to maintain communications that are normally powered from local commercial power, including those assets located inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers must maintain emergency backup power for a minimum of twenty-four hours for assets that are normally powered from local commercial power and located inside central offices, and eight hours for assets that are normally powered from local commercial power and at other locations, including cell sites, remote switches and digital loop carrier system remote terminals. Power sources satisfy this requirement if they were originally designed to provide the minimum backup power capacity level required herein and the provider has implemented reasonable methods and procedures to ensure that the power sources are regularly checked and replaced when they deteriorate. LECs that meet the definition of a Class B company as set forth

in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

(b) LECs and CMRS providers are not required to comply with paragraph (a) for assets described above where the LEC or CMRS provider demonstrates, through the reporting requirement described below, that such compliance is precluded by:

- (1) Federal, state, tribal or local law;
- (2) Risk to safety of life or health; or
- (3) Private legal obligation or agreement.

(c) Within six months of the effective date of this requirement, LECs and CMRS providers subject to this section must file reports with the Chief of the Public Safety & Homeland Security Bureau.

(1) Each report must list the following:

- (i) Each asset that was designed to comply with the applicable backup power requirement as defined in paragraph (a);
- (ii) Each asset where compliance with paragraph (a) is precluded due to risk to safety of life or health;
- (iii) Each asset where compliance with paragraph (a) is precluded by a private legal obligation or agreement;
- (iv) Each asset where compliance with paragraph (a) is precluded by Federal, state, tribal or local law; and
- (v) Each asset that was designed with less than the emergency backup power capacity specified in paragraph (a) and that is not precluded from compliance under paragraph (b).

(2) Reports listing assets falling within the categories identified in paragraphs (c)(1)(ii) through (iv) must include a description of facts supporting the basis of the LEC's or CMRS provider's claim of preclusion from compliance. For example, claims that a LEC or CMRS provider cannot comply with this section due to a legal constraint must include the citation(s) to the relevant law(s) and, in

order to demonstrate that it is precluded from compliance, the provider must show that the legal constraint prohibits the provider from compliance. Claims that a LEC or CMRS provider cannot comply with this section with respect to a particular asset due to a private legal obligation or agreement must include a description of the relevant terms of the obligation or agreement and the dates on which the relevant terms of the agreement became effective and are set to expire. Claims that a LEC or CMRS provider cannot comply with this section with respect to a particular asset due to risk to safety of life or health must include a description of the safety of life or health risk and facts that demonstrate a substantial risk of harm.

(3) For purposes of complying with the reporting requirements set forth in paragraphs (c)(1)(i) through (v), in cases where more than one asset necessary to maintain communications that are normally powered from local commercial power are located at a single site (*i.e.*, within one central office), the reporting entity may identify all of such assets by the name of the site.

(4) In cases where a LEC or CMRS provider identifies assets pursuant to paragraph (c)(1)(v), such LEC or CMRS provider must comply with the backup power requirement in paragraph (a) or, within 12 months from the effective date of this rule, file with the Commission a certified emergency backup power compliance plan. That plan must certify that and describe how the LEC or CMRS provider will provide emergency backup power to 100 percent of the area covered by any non-compliant asset in the event of a commercial power failure. For purposes of the plan, a provider may rely on on-site and/or portable backup power sources or other sources, as appropriate, sufficient for service coverage as follows: a minimum of 24 hours of service for assets inside central offices and eight hours for other assets, including cell sites, remote switches, and digital loop carrier system remote terminals. The emergency backup power compliance plans submitted are subject to Commission review.

(5) Reports submitted pursuant to this paragraph must be supported by an affidavit or declaration under penalty of perjury and signed and dated by a duly authorized representative of the LEC or CMRS provider with personal knowledge of the facts contained therein.

(6) Information filed with the Commission pursuant to subsection (c) of this rule shall be automatically afforded confidentiality in accordance with the Commission's rules.

(7) LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this reporting requirement.

## APPENDIX C

## Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) in EB Docket No. 06-119.<sup>2</sup> The Commission sought written public comment on the proposals in this docket, including comment on the IRFA. On June 8, 2007, the Commission released an Order in EB Docket No. 06-119 which included a Final Regulatory Flexibility Analysis (FRFA).<sup>3</sup> In this Order on Reconsideration, the Commission includes a Supplemental FRFA which conforms to the RFA.<sup>4</sup>

**A. Need for, and Objectives of, the Rules**

2. In the Order released on June 8, 2007, the Commission adopted a rule requiring local exchange carriers (LECs), other than those that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules,<sup>5</sup> and commercial mobile radio service (CMRS) providers, other than non-nationwide CMRS providers with no more than 500,000 subscribers, to have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. The Commission received seven petitions seeking reconsideration of this rule on various grounds, including the inability of carriers to comply with the rule due to legal constraints (*i.e.*, other Federal, state and local laws precluding compliance with the Commission's rule), constraints due to private legal obligation or agreement that precludes the ability of carriers to store additional backup equipment necessary to comply with the rule, risk to safety of life or health, physical constraints, and economic burden. In response to the petitions for reconsideration, the Commission amends its rule to exempt assets where the LEC or CMRS provider has demonstrated that it cannot comply with the rule due to federal, state, tribal or local law; risk to safety of life or health; or private legal obligation or agreement. The Commission also amended the rule to require LECs and CMRS providers to file reports that list each asset: (1) that was designed to comply with the applicable backup power requirement; (2) where compliance is precluded do to risk to safety of life or health; (3) where compliance is precluded by a private legal obligation or agreement; (4) where compliance is precluded by Federal, state, tribal or local law; and (5) that was designed with less than the required emergency backup power capacity and is not

<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Notice of Proposed Rulemaking*, 21 FCC Rcd 7320, 7330, Appendix A (2006).

<sup>3</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541 (2007) (*Katrina Panel Order*).

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> Section 32.11 provides that Class B companies are those companies that have annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold. 47 C.F.R. § 32.11(b)(2). The Wireline Competition Bureau recently announced that the 2006 revenue threshold for Class A to Class B companies is \$134 million. *Public Notice*, "Annual Adjustment of Revenue Thresholds," DA 07-1706 (WCB, April 12, 2007). Although Section 32.11, by its terms, applies only to ILECs, we are applying the same revenue categories to CLECs for the purpose of the exception to this requirement.

precluded from compliance for the reasons stated in (2), (3) or (4). For assets in category (5), LECs and CMRS providers must comply with the backup power requirements or file a certified emergency backup power compliance plan that certifies that the LEC or CMRS provider will ensure 100 percent coverage in each of the areas covered by any non-compliant asset. Further, the Commission clarifies that the rule applies only to assets that are necessary to the provision of communications services that are normally powered from local commercial power. Finally, the Commission clarified that that on-site power sources satisfy the requirement of this rule if such sources were originally designed to provide the minimum backup power capacity level required and the provider has implemented reasonable methods and procedures to ensure that batteries are regularly checked and replaced when they deteriorate.

3. Although the rule now requires that LECs and CMRS providers file a report, and in some circumstances a backup power compliance plan, the amendments to the rule significantly reduce the burden on LECs and CMRS providers by providing appropriate relief from the requirement that they have backup power sources for all assets normally powered by commercial power. As noted above, the modified rule exempts assets where compliance is precluded by risk to safety of life or health, private legal obligation or agreement, or federal, state, tribal or local law, and allows providers with non-compliant assets that are not otherwise exempt to file an emergency backup power plan.

#### **B. Summary of Significant Issues Raised by the Public**

4. MetroPCS Communications, Inc. (MetroPCS) argues that the Commission's burden estimate in the FRFA regarding wireless carriers was based on mistakes of fact and that compliance is not feasible for MetroPCS, which qualifies as a non-nationwide provider with more than 500,000 subscribers.<sup>6</sup> MetroPCS asserts that the Commission erroneously concluded that the requirement will not create an undue burden because several communications providers reported in their comments that they already maintain emergency backup power.<sup>7</sup> MetroPCS contends that, while backup power at switch sites is common, no wireless service provider has reported that it routinely provides 8 hours of backup power at all remote sites.<sup>8</sup> As noted above, several petitioners argued that the Commission did not adequately consider the burden that the backup power rule would impose on LECs and CMRS providers.

#### **C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>9</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>10</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>11</sup> A "small business concern" is one

<sup>6</sup> MetroPCS Petition for Clarification and Reconsideration at 7-8, citing FRFA ¶ 24 and n60.

<sup>7</sup> See FRFA, ¶ 24.

<sup>8</sup> MetroPCS Petition for Clarification and Reconsideration at 7-8. The American Association of Paging Carriers (AAPC) cites parts of the FRFA that are identical to sections in the *Katrina Panel Order* in support of its arguments that Section 12.2 of the Commission's rules should not apply to paging carriers. AAPC Petition for Clarification or, Alternatively, Reconsideration at 2, n1. Those arguments are fully addressed in the Order on Reconsideration.

<sup>9</sup> 5 U.S.C. § 604(a)(3).

<sup>10</sup> 5 U.S.C. § 601(6).

<sup>11</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity (continued....)"

which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>12</sup>

6. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>13</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>14</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>15</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>16</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>17</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>18</sup> Thus, we estimate that most governmental jurisdictions are small.

7. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this Order. The rule changes affect LECs, including both incumbent LECs (ILECs) and competitive LECs (CLECs), and CMRS providers.

8. Since this Order applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. In the case of CMRS providers, when identifying small entities that could be affected by the Commission’s new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

9. Cellular Licensees. The SBA has developed a small business size standard for small businesses in the category “Cellular and Other Wireless Telecommunications.”<sup>19</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>20</sup> For the census category of “Cellular and Other Wireless Telecommunications,” Census Bureau data for 2002 show that there were 1,397 firms

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(...continued from previous page)

for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>12</sup> 15 U.S.C. § 632.

<sup>13</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>16</sup> 5 U.S.C. § 601(5).

<sup>17</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>18</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>19</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>20</sup> *Id.*

in this category that operated for the entire year.<sup>21</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>22</sup> Thus, under this category and size standard, the majority of firms can be considered small.

10. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>23</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>24</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>25</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>26</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>27</sup> On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35.<sup>28</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

11. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>29</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>30</sup> The SBA has approved these small business size

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<sup>21</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>22</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>23</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852 ¶¶ 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>24</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852 ¶ 60.

<sup>25</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>26</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. January 14, 1997).

<sup>27</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>28</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>29</sup> 47 C.F.R. § 90.814(b)(1).

<sup>30</sup> *Id.*

standards for the 900 MHz Service.<sup>31</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>32</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>33</sup>

12. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

13. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$3 million or \$15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, *supra*). One firm has over \$15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

14. *Advanced Wireless Services*. In the *AWS-1 Report and Order*, the Commission adopted rules that affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands.<sup>34</sup> The *AWS-1 Report and Order* defines a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The *AWS-1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

15. *Incumbent Local Exchange Carriers (Incumbent LECs)*. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of

<sup>31</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. The Commission notes that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

<sup>32</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

<sup>33</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>34</sup> Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Report and Order*).

operation.”<sup>35</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>36</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>37</sup> According to Commission data,<sup>38</sup> 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

16. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>39</sup> According to Commission data,<sup>40</sup> 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

17. Cable and Other Program Distribution. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”<sup>41</sup> The SBA has developed a small business size standard for

<sup>35</sup> 15 U.S.C. § 632.

<sup>36</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>38</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

<sup>39</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>40</sup> *Trends in Telephone Service*, Table 5.3.

<sup>41</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.<sup>42</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>43</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>44</sup> Thus, under this size standard, the majority of firms can be considered small.

18. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.<sup>45</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>46</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>47</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>48</sup> Thus, under this second size standard, most cable systems are small.

19. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>49</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>50</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>51</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual

<sup>42</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>43</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>44</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>45</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>46</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>47</sup> 47 C.F.R. § 76.901(c).

<sup>48</sup> Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>49</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>50</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>51</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

revenues exceed \$250 million,<sup>52</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

20. *Paging*. The SBA has developed a small business size standard for the broad economic census category of "Paging."<sup>53</sup> Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>54</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>55</sup> In addition, according to Commission data,<sup>56</sup> 365 carriers have reported that they are engaged in the provision of "Paging and Messaging Service." Of this total, we estimate that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

21. We also note that, in the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>57</sup> In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>58</sup> The SBA has approved this definition.<sup>59</sup> An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>60</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>61</sup> An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>62</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>63</sup> We also note that, currently, there are approximately 74,000 Common

<sup>52</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

<sup>53</sup> 13 C.F.R. § 121.201, NAICS code 517211.

<sup>54</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>55</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>56</sup> *Trends in Telephone Service*, Table 5.3.

<sup>57</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order*, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (Paging Second Report and Order); see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

<sup>58</sup> Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

<sup>59</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>60</sup> See "929 and 931 MHz Paging Auction Closes," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>61</sup> *Id.*

<sup>62</sup> See "Lower and Upper Paging Band Auction Closes," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>63</sup> See "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003).