Attachment B

Appeal

Mammoth Lakes
CALIFORNIA

COMMUNITY AND ECONOMIC DEVELOPMEN
PLANNING DIVISION
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APPEAL OF DECISION OF PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

(Municipal Code Section 17.104)

This form must be filed within fifteen (15) days of the stated action in order to be valid.

APPLICATION NUMBER APPEALED UPA 23-002

DATE OF STATED ACTION February 14, 2024

APPELLANT'S NAME Snowcreek VII Condominium Owner's Association

ADDRESS P.O. Box 1999 / 2 Oak Tree Place

Mammoth Lakes, California 93546

APPEAL FEE: See Community and Economic Development Department Fee Schedule

Action taken by the Planning and Economic Development Commission which is being appealed:

_____ Denial

✓ Approval

✓ Approval with Conditions (Attach a copy of conditions and indicate those you wish waived or modified.)

What is being appealed?

Resolution/Decision of Planning Commission on February 14, 2024.

Rationale for Appeal (use additional sheets if necessary):

See attached.

I certify that I am the: __Legal Owner __Authorized Legal Agent __Other Interested Party

2/29/24
Date

Signature of Appellant

TOWN OF MAMMOTH LAKES
STATE OF CALIFORNIA

----------X

In the Matter of the Application of:

AT&T

For Use Permit

Premises: 1574 Old Mammoth Road
Mammoth Lakes, CA 92780

APN: 040-040-021-000

----------X

MEMORANDUM IN SUPPORT OF APPEAL

Respectfully submitted,

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Jon Conner
Theresa Conner
Jenny Umansky
John Heidelman
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Brian Blades
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Brooks Play
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Ryan Wayne
Iris Zuleyka Farnes
Sandy Webb
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Preliminary Statement

This memorandum is submitted in support of this appeal of the Planning Commission's decision to approve AT&T's application to construct an 80 foot wireless telecommunications facility at 1574 Old Mammoth Road, Mammoth Lakes. Construction of AT&T's proposed wireless facility, dressed as a fake pine tree, will have severe adverse impacts on the surrounding community, while benefiting only those who subscribe to AT&T's wireless service.

We incorporate by reference our Memorandum in Opposition to AT&T's application. The memorandum, together with Exhibits is not attached hereto, but is a matter of public record having previously been submitted to the Planning Commission. We repeat and reiterate all those arguments contained in the Memorandum in Opposition.

We respectfully submit that the Planning commission erred in its decision to grant AT&T's application, particularly where the proposed tower would only benefit AT&T wireless subscribers and where the number of subscribers who would actually benefit is unknown. Moreover, the severe negative impacts that would result from the construction of the proposed tower far outweigh the alleged benefit.

Applicable Law

As set forth in the Memorandum in Opposition, under the Telecommunications Act, placement and construction of a wireless service facility is within the rights – and responsibility – of a local municipality, through zoning regulations. *See, T-Mobile South, LLC v. Roswell,* 135 S.Ct. 808 (2015); *GTE Mobilnet of California Ltd. P'ship v City of Berkley*, 2023 WL 2648197 (D. N.D. CA 2023); *Colfaxnet LLC v City of Colfax,* 2020 WL 6544494 (D. E.D. CA 2020). Simply stated, the TCA provides that an application to erect a cell tower can – and

should – be treated as a land use issue, to be decided by a municipality using the same considerations normally employed in a land use case.

A. The General Plan

As set forth in our Memorandum in opposition, the Town's General Plan makes it very clear that the guiding principles for development in the Town are preservation of the beauty of the natural environment and preservation of the small town character and community. There are multiple references to these goals within the General Plan, many of which are cited in our Memorandum in Opposition. Pertinent references include:

Mammoth Lakes places a high value on:

1. Sustainability and continuity of our unique relationship with the natural environment…
2. Being a great place to live and work….
5. Protecting the surrounding natural environment and supporting our small town atmosphere by limiting the urbanized area…
6. Exceptional standards for design and development that complement and are appropriate to the Eastern Sierra Nevada mountain setting and our sense of a "village in the trees" with small town charm.

With respect to community design and appearance the Plan provides:

Community Design

C.1. Improve and enhance the community's unique character by requiring a high standard of design in all development in Mammoth Lakes.

C.2. Design the man-made environment to complement, not dominate, the natural environment…

And neighborhoods and districts must be mindful of the following:

Neighborhood And District Character

L.1. Be stewards of the community's small town character and charm, compact form, spectacular natural surroundings

Stated Goals and Policies include:

C.1. Goal: Improve and enhance the community's unique character by requiring a high standard of design in al development in Mammoth Lakes.

C.2. Design the man-made environment to complement, not dominate, the natural environment.

C.2.I. Policy: Achieve highest quality development that complements the natural surroundings…

C.2.J. Policy: Be stewards in preserving public views of surrounding mountains, ridgelines and knolls.

It's very clear that the Town and its residents place great importance on Mammoth Lakes' unique character, charm and small town feel, as well as the stunning vistas and magnificent landscape.

In order to comply with the General Plan and the applicable zoning provisions, AT&T's proposed tower must fit in with its surroundings and the neighborhood's unique charm and beautiful views. It cannot be said that the proposed fake tree monopine, which will rise far above any other trees, vegetation or structures and will stick out like a sore thumb, is in harmony with the adjacent neighborhood. It does not comply with the *letter* of the law, nor the *intent* behind these provisions.

B. Town Zoning Code

The Town's Zoning Code is intended to carry "out the policies of the Mammoth Lakes General Plan" and "is adopted to protect and to promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents…." (§17.04.020).

The Code is also intended to require land use planning that "enhances the visual character of the Town, avoids conflicts between land uses, enhances functionality and safety, and preserves the scenic qualities of the Town by maintaining adequate open space." It is also meant to "conserve and protect the natural resources of the Town, its natural beauty and significant environmental amenities." *Id.*

In addition to the goals of maintaining the unique character of the surrounding community and preserving the environment with its magnificent views, one of the most important responsibilities of any municipality is safeguarding the public welfare. The Town of Mammoth Lakes, through its General Plan and zoning laws, seeks to safeguard and "promote the public health, safety, comfort, convenience, prosperity, and general welfare of residents." "[T]he concept of the public welfare is broad and inclusive." *Voice Stream PCS v. City of Hillsboro*, 301 F.Supp.2d 1271 (D. Ore. 2004), (quoting *Berman v. Parker*, 348 U.S. 26, (1954). *Vertical Bridge Development, LLD v. Brawley City Council*, 2023 WL 3568069 (S.D. Calif. 2023). Safeguarding the public welfare coupled with the desire to maintain the unique character of the community and the environment, means that a municipality is within its authority to weigh the benefit of merely improving the existing cellular coverage against the negative aesthetic impact the tower would cause. *Id.* The values represented by the concept of the "public welfare" are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy .... *Voice Stream, supra.*

Construction of a wireless telecommunications facility is further regulated by Chapter 17.52 (Standards for Specific Land Uses) of the Code. This specific provision must be read in conjunction with the intent of Use Permits in general under Chapter 17.68 (Use Permits), or the

provisions would not make sense. Only when the Code is interpreted and applied as a whole can the intent of the Town's land use planning be realized.

Pursuant to §17.68.050, a use permit may be granted *only* "if all of the following findings can be made:"

> A. That the proposed use is consistent with all applicable sections of the General Plan and Title 17 and is consistent with any applicable specific plan or master plan;
> B. That the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health and safety nor materially injurious to properties or improvements in the vicinity…

The more specific telecommunications regulations outlined in Zoning Code Chapter 17.52 §17.52.280 *et seq.* echo the intent of the General Plan and preliminary Code provisions. The stated purpose of the telecommunications facilities sections is as follows:

> A. **Purpose.** This Section provides development standards consistent with Federal law to regulate the placement and design of telecommunications facilities *so as to preserve the unique visual character of the Town, promote the aesthetic appearance of the Town, and to ensure public safety and welfare….*
>
> (*emphasis supplied*)

Subsection (F) mandates that wireless facilities "*shall* comply with the following requirements.

> ***1. Application requirements.*** In addition to the information required for a use permit by Chapter 17.68 (Use Permits), the application for a cellular wireless communications facility shall include:
> a. A map showing planned and/or anticipated future needs of wireless communication services and facilities within and throughout the town, including a discussion of existing local network facilities and service gaps;

b. An alternative site analysis detailing the specific steps undertaken to determine the applicant's selection of a particular site consistent with Subsection 17.52.280F.2; and

2. ***Site selection.*** Sites for cellular wireless communications facilities shall be selected according to the following *order of preference*:

   a. On or within existing structures (e.g., church steeple, roof top stairwell or equipment enclosures, etc.).
   b. Co-location facilities (i.e., locating equipment from more than one provider on a single facility).
   c. In locations where existing topography, vegetation, or other structures provide the greatest amount of screening.
   d. On parcels which will not require significant visual mitigation.

3. ***Design standards.*** Facilities shall be designed, installed, modified, and maintained in compliance with the following standards; except that any standard may be modified or waived by the Commission upon a determination that effective signal reception and transmission will not occur if the facility complies with these standards.

   a. *Location.*
      i. Facilities shall be located either within a structure, underground, in the rear portion of the property (not visible from the public right-of-way), or on a screened roof top area.

Examining each of these provisions in turn, AT&T's application is fatally deficient. They did not provide an adequate map showing future planned or anticipated needs, particularly with respect to a discussion of existing local network facilities and service gaps. In light of the site selection preference for existing structures, AT&T has failed to properly denote existing facilities of *other providers*. AT&T has only listed their own existing towers and concluded that no existing AT&T tower could offer a location sufficient for their needs. This coincides with their inadequate alternative site analysis, which is discussed further, below.

Again, the site selection process does not meet the requirements of the Code. The proposed location does not fit any of the sites listed in §17.52.280 (F)(2)(a) through (d). The proposed facility will not be located within an existing structure (although a church steeple was an alternate site); is certainly not planned to be collocated in an existing facility (it doesn't appear that any other carrier's existing towers were even considered); the proposed location doesn't have the topography, vegetation, or structures to hide this fake tree monopine; nor is the proposed parcel one which will not require significant visual mitigation.

With respect to a location at the *rear of the property*, not visible from a public right-of-way, while the proposed wireless facility may *technically* be at the rear of the property, the rear also faces a roadway and the monopine is highly visible even from the "rear" of the property.

The most glaring failure of this proposed wireless structure is that it flouts the stated purpose of Town's the telecommunications facilities regulations to preserve the unique visual character of the Town, promote the aesthetic appearance of the Town, and ensure public safety and welfare.

CEQA and Environmental Impact

An 80 foot wireless telecommunications facility must be subject to the requirements of CEQA. Although not necessarily binding as precedent, *Saint Ignatius v. City and County of San Francisco,* 301 Cal. Rptr.3d 641 (1st Dist. Div. 4 2022) is instructive. This case involved proposed 90 foot light towers in a school field. The court noted that "'CEQA and its implementing regulations 'embody California's strong public policy of protecting the environment.'" *Quoting Bottini v. City of San Diego,* 238 Cal. Rptr.3d 260 (2018). The court found that the proposed lights would have an impact which rendered them subject to CEQA.

Similarly, AT&T's proposed monopine structure should be found to be in the same category, subject to CEQA.

A Class 3 exemption applies to projects which are "construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure" (§15303 of the Guidelines). Although it may be argued that the monopine occupies a small footprint, the extreme height of the structure makes it environmentally significant.

Furthermore, the materials that are used to manufacture the fake branches and needles may be hazardous to the local grounds, flora and fauna when the fall off their branches. These fake pine needles, unlike natural pine needles, will not deteriorate or decay into the ground becoming compost.

It is incumbent upon the Town to consider the ramifications of not only the size, but the materials which make up the proposed monopine in a sincere effort to comply with California's strong environmental policies.

Public Safety

It is understandable that much discussion was had on the issue of public safety. However, much of the discussion has been somewhat misleading. The proposed tower will only benefit those who have AT&T wireless service.

Attached as **Exhibit "2"** are documents, obtained from *radioreference.com,* which show that the Mammoth Lakes Fire District operates through emergency frequencies of 155.145 and 153.950. These frequencies will not be improved or benefitted by the installation of AT&T's proposed tower. Furthermore, it was noted at the February 14th Hearing that the Fire Department

does not have any current or future plans to put any of their equipment on AT&T's monopine tower. While they "hope" Verizon Wireless will collocate equipment at some time in the future, there is no contract or indication that Verizon has any intention of doing so. It is therefore, purely speculative that Verizon or any other wireless service provider will ever collocate their equipment on this proposed tower.

While AT&T touts its role in the FirstNet first responder network envisioned by the FCC, once again, the frequencies employed by FirstNet are not those used by the Mammoth Lakes Fire Department.

FirstNet is a dedicated network, designed to allow first responders to communicate while ensuring that the public's demand for cellular connections cannot jam the networks during a widespread emergency. According to the FCC website, FirstNet is an independent authority within the U.S. Department of Commerce which will hold an FCC license for the public safety frequencies 758-769MHz/788-799 MHz (www.fcc.gov/public-safety/public-safety-and-homeland-security/policy-and-licensing-division/public-safety-spectrum).

Not only is there no indication that the tower to be erected is, or will be part of the FirstNet network, but the Fire Department's communications operate through a different frequency. It should be noted that participation in FirstNet is voluntary, not mandated by the FCC. Furthermore, emergency calls made to 911 will connect to *any available network*, regardless of carrier, to complete the call.

IPAWS (Integrated Public Alert & Warning System) is another emergency network referenced during the February 14th Hearing. Documents obtained from the FEMA website (fema.gov/IPAWS) and attached hereto as **Exhibit "3"** explain the system. IPAWS "is FEMA's national system for local alerting that provides authenticated emergency and life-saving

information to the public through mobile phones using Wireless Emergency Alerts, to radio and television via the Emergency Alert System, and on the National Oceanic and Atmospheric Administration's Weather Radio."

There are multiple communication pathways for IPAWS.

(1) The Emergency Alert System (EAS) delivers alerts via AM,FM and satellite radio, as well as broadcast, cable and satellite TV.

(2) Cell phones and mobile devices receive Wireless Emergency Alerts based on location, even if cellular networks are overloaded and can no longer support calls, text and emails.

(3) The National Oceanic and Atmospheric Administration (NOAA) delivers alerts through NOAA Weather Radio.

(4) Alerts are also available from internet service providers and unique system developers.

(5) State, local, territorial, and tribal alerting systems such as emergency telephone networks, giant voice sirens, and digital road signs may also receive alerts from IPAWS-OPEN and future alerting technologies....

IPAWS is a multiple pathway communication network separate from FirstNet. IPAWS has numerous methods and access to devices to alert the public in case of emergency and is not dependent on AT&T's cellular service. There is no evidence or indication that the proposed AT&T tower will provide any benefit for IPAWS.

Aesthetic Impact to the Community

The proposed wireless facility will have a severe negative impact on the aesthetics and character and the of the community. As noted in the letters from nearby homeowners (attached as **Exhibit "A"** to the Memorandum in Opposition), the fake tree will be clearly visible, will ruin the homeowner's views and destroy the character of the neighborhood. No matter how the cell tower is "camouflaged," it will be readily recognizable and ugly.

Significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny an application for the construction of a wireless telecommunication facility. The United States Court of Appeals for the Ninth Circuit determined that there is nothing to "prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of wireless telecommunications facilities (WCFs) within their jurisdictions." *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Ests.*, 583 F.3d 716 (9th Cir. 2009), *see also GTE Mobilnet of Calif. Ltd. P'ship v. City of Berkley,* supra ("Even under a substantial evidence review, zoning decisions based on aesthetic concerns can be valid," and "under the TCA, [a zoning board] is entitled to make an aesthetic judgment as long as the judgment is 'grounded in the specifics of the case,' and does not evince merely an aesthetic opposition to cell-phone towers in general." *citations omitted); and New Cingular Wireless PCS, LLC v. County of Marin, Calif.,* 2021 WL 5407509, (N.D. Calif. 2021).

A municipality "may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that these are legitimate concerns for a locality." *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009). *See also, Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider "other valid public goals such as safety and aesthetics"); *T-Mobile Cent., LLC v. Unified Gov't of Wyandotte County, Kan.,* 546 F.3d 1299, 1312 (10th Cir.2008) (noting that "aesthetics can be a valid ground for local zoning decisions"); and *Cellular Tel. Co. v. Town of Oyster Bay,* 166 F.3d 490, 494 (2d Cir.1999) (recognizing that "aesthetic concerns can be a valid basis for zoning decisions").

The United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a wireless facility application, it should accept, as direct evidence of the adverse aesthetic impacts that a proposed facility would inflict upon nearby homes, statements and letters from the actual homeowners, since they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005).

The letters attached as **Exhibit "A"** to the Memorandum in Opposition contain specific, individual details from the homeowners regarding the adverse aesthetic impacts that the proposed facility would inflict upon their homes. They describe the reasons the homeowners came to Mammoth Creek, including the beautiful scenery, the natural setting, the small town feel of the community, the views from their windows and backyards, and the unique character of their community.

Many of these homeowners have also expressed their concerns about the decrease in property value their homes will suffer as a result of the proposed wireless facility. Having made a substantial investment in their homes, having labored to maintain and beautify their homes, they are rightly concerned about the decrease in the value of their properties.

These letters convey all the ways the proposed tower will negatively affect the nearby residents, their views, their enjoyment of their homes and the loss of property values.

The specific and detailed impacts described by the adjacent and nearby property owners constitute "*substantial evidence*" of the adverse aesthetic impacts they stand to suffer because they are not limited to "generalized concerns." These letters contain specific, detailed descriptions of how the proposed facility would dominate the views from their bedroom

windows, living rooms, kitchens, front yards and backyards. *See GTE Mobilnet, supra; Voice Stream PCS I, LLC v. City of Hillsboro, 301 F.Supp. 2d 1251 (D. Or. 2004).*

The proposed tower is simply incompatible with the surrounding neighborhood. The severe adverse aesthetic impacts which would be caused by the proposed wireless facility's irresponsible placement which are detailed in these letters, are the precise type of damaging impacts that the Zoning Code was specifically enacted to prevent. Accordingly, AT&T's application should be denied.

Visual Assessment

The visual assessment prepared by AT&T is defective and misleading and should be disregarded in its entirety. As is undoubtedly known to AT&T, the visual impact analysis presented is inherently defective because it does not serve the purpose for which it has been offered. Photo simulations, or other visual impact studies, of a proposed wireless facility are meant to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation will inflict upon the nearby homes and community. Applicants often disingenuously seek to minimize the visual impact of these depictions by deliberately omitting from their photo simulations any images *actually taken from* the nearby homes that would sustain the most severe adverse aesthetic impacts.

In a widely cited and authoritative case, *Omnipoint Communications Inc. v. The City of White Plains,* 430 F3d 529 (2nd Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions where they "omit" any images from the perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective, and should be disregarded.

As was explicitly stated by the court: "the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . ***the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows***" *Id.*

A simple review of the records shows that AT&T has failed to submit a meaningful visual impact analysis. AT&T has not included a single image taken from the vantage point of *any* of the nearby homes that will sustain the most severe adverse aesthetic impacts from the installation of the proposed wireless facility. This, of course, includes a complete absence of any photographic images taken from any of the homes belonging to the homeowners whose adverse aesthetic impact letters are annexed hereto as **Exhibit "A."**

Instead, the photo simulations only consist of photos taken from public roads, and from angles and perspectives designed to minimize the appearance of the adverse aesthetic impact. They in no way accurately depict the view the affected homeowners will see, each and every time they look out their bedroom, kitchen, or living room window, or sit in their backyard. This is the exact type of "presentation" which the federal court explicitly ruled to be defective in *Omnipoint*. As such, in accord with the federal court's holding in *Omnipoint*, AT&T's visual impact analysis should be recognized as inherently defective and disregarded in its entirety.

To present a truer picture of the impact the proposed tower would have, photo simulations taken from positions representing what adjacent property owners would be forced to look at were attached to the Memorandum in Opposition as **Exhibit "B."** These photos make it clear that the proposed monopine presents a far greater intrusion in the community than AT&T would have the Board believe. This mutant pine tree stands out from the few other trees nearby and even towers over the fire department building. As much as it's a "sore thumb" now, it will

be an even bigger eyesore when AT&T decides to raise it another 15 or 20 feet, *as is their right* under §6409 (a) of the Middle-Class Tax Relief and Job Creation Act of 2012.

It must be remembered that despite any statements at the February 14th Hearing regarding the Board's inability to consider aesthetics in the context of CEQA, that is not the issue at hand. As noted above, the Board is able to – in fact it must – consider the aesthetic impact a wireless facility will have on a community, just as it would consider aesthetics in the context of any land use issue.

Decrease in Property Values

Not only would the proposed cell tower have an adverse impact upon the aesthetics of the community, it would negatively affect the property values of the nearby homes. It was speculated by one of the Commissioners that the economy was the cause of any decrease in local property values. While this may be true, an additional factor causing *further* decreases in the property values of the adjacent homes is the looming presence of the proposed cell tower. The evidence presented through letters from qualified realtors (**Exhibit "C"** to the Memorandum in Opposition) indicates that cell towers may reduce property values by as much as 20%, or more. Furthermore, disclosure of even the possibility of construction of a cell tower in the vicinity of a home causes buyers to reject that property. (See **Exhibit "1"** attached hereto which is a letter from Realtor Barbara Taylor confirming that she has "lost" buyers when they learn of the impending cell tower construction). No competent evidence was presented to refute these expert opinions.

Across the entire United States, both real estate appraisers[1] and real estate brokers have

[1] *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Wireless Facility in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

rendered professional opinions that simply support what common sense dictates. When wireless facilities are installed unnecessarily close to residential homes, such homes suffer material losses in value, typically ranging from 15% to 20%, but up to 30% in some cases.[2] In the worst cases, facilities built near existing homes have caused the homes to be rendered wholly unsaleable.[3]

Federal courts recognize that it is perfectly proper for a local zoning authority to consider as direct evidence of the reduction in property values that an irresponsibly placed wireless facility would inflict upon nearby homes, the professional opinions of licensed real estate brokers (as opposed to appraisers) who provide their professional opinions as to the adverse

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[2] In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Wireless Facility in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Wireless Facility reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Wireless Facility reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Wireless Facility would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

[3] Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a Wireless Facility. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a Wireless Facility was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.,* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at

http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-home--172366931.html.

impact upon property values that would be caused by the installation of the proposed wireless facility. *See Omnipoint supra.* This is *especially* true when they possess years of real estate sales experience within the community and the specific geographic area at issue.

Exhibit "C" to the Memorandum in Opposition are letters from Realtors with years of local experience setting forth their professional opinions that specific residences in the area surrounding the proposed tower locations would suffer decreases in property values by as much as 20% or more. In fact, the letters of Julie Wright and Jodi Melton show that recently two sales were lost due to the prospect of the proposed tower being constructed nearby. No competent evidence has been offered to contradict these expert opinions.

This devaluation of properties is one of the very things the Zoning Code specifically seeks to prevent. As noted above, a use permit may only be granted if all of the conditions listed in §17.68.050 (B) are met, including not being materially injurious to properties or improvements in the vicinity. Given the significant reductions in property values that the proposed installation would inflict upon the nearby homes, AT&T's application should be denied.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012

If AT&T's proposed tower is built, §6409 of the Middle-Class Tax Relief Act would allow AT&T to increase the tower's height by up to 20 feet *without any prior Town approval.* Under the FCC's reading and interpretation of §6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower.

Simply stated, under the FCC's regulation, if this facility were to be built, AT&T could, at any time, unilaterally increase the height of the tower and there would be no way for

the Town to prevent such an occurrence, regardless of how many zoning regulations it would violate.

In light of the even more extreme adverse impacts which an increase in the height of the facility would inflict upon the homes and community nearby, AT&T's application should be denied.

Probative Evidence

Telecommunication facility zoning regulations, like the provisions of this Town's Code, promote "smart planning" of wireless infrastructure in the Town. The majority of municipalities in this country have adopted such smart planning provisions. Smart planning requires strategic placement of wireless facilities so that they minimize the number of facilities, prevent redundancy, while saturating the Town with complete cellular coverage (*i.e.* leaving no gaps in service) and yet avoiding unnecessary adverse aesthetic impacts or decreases in property values in the surrounding community.

To determine whether a proposed wireless facility would be consistent with smart planning, (and consistent with common sense), a Town's Board must be provided with adequate information and competent evidence.

While the Town's applicable telecommunications regulations may not specifically require particular information and evidence, it necessarily follows, through common sense as well as legal interpretation and inference, that the Board must have direct evidentiary proof of

(1) the *precise locations, size, and extent of any geographic gaps in personal wireless services* that are being provided by a particular wireless carrier, ***and***

(2) the *precise locations, size, and extent of any geographic areas* within which that wireless carrier suffers from a capacity deficiency in its coverage.

Without this information, a Planning Board is incapable of knowing whether the proposed facility will remedy any actual gaps of deficiencies, or whether the proposed placement of the tower would all but require that additional facilities would need to be built to do so. This would cause redundancy in wireless facilities throughout the Town.

In the present case, AT&T has wholly failed to provide any hard data to establish that the proposed placement of its facility would, in any way, be consistent with the smart planning provisions. It has failed to provide actual probative evidence to establish the actual location of gaps or deficient capacity locations in personal wireless services within the Town, nor why or how their proposed facility would be the best and/or least intrusive means of remedying those gaps.

The Evidentiary Standard

A. Significant Gap in Service

Within the context of zoning applications such as the current one filed by AT&T, an applicant is required to prove that there are ***significant*** gaps[4] in its wireless service, that the location of the proposed facility will remedy those gaps, and that the facility is the least intrusive means of remedying that gap.

The Ninth Circuit has set forth the following requirements, which all applicants seeking to install wireless facilities must prove. The test articulated by the Ninth Circuit requires AT&T to demonstrate that:

(1) the proposed facility is required in order to close a significant gap in service

[4] It should be noted that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that "a significant gap" in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir.2005). Here, Vertical Bridge failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is "significant" within the meaning of the TCA and established federal jurisprudence.

coverage;

(2) that the proposed facility is the least intrusive means of remedying the significant gap in service coverage, and

(3) a meaningful inquiry has been made as to why the proposed facility is the only feasible alternative.

See Am. Tower Corp. v. City of San Diego, 763 F.3d 1035 (9th Cir. 2014); *GTE Mobilnet, supra*; *T-Mobile USA, Inc. v. City of Anacortes*, *supra* 572 F.3d 987 (9th Cir. 2009).

"The TCA does not assure every wireless carrier a right to seamless coverage in every area it serves, and the relevant service gap must be truly 'significant' and 'not merely individual 'dead spots' within a greater service area." *Los Angeles SMSA Limited Partnership v. City of Los Angeles* 2021 WL 4706999 (C.D. Calif. 2021) *quoting MetroPCS, Inc. v. City and County of San Francisco,* 400 F.3d 715 (9th Cir. 2005).

With respect to a "gap in service," "where the holes in coverage are very limited in number or size… the lack of coverage likely will be *de minimis* so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service." *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999): *T-Mobile v Town of Islip, supra.*

Further, the *T-Mobile* Court, *citing Willoth,* held that "the fact that T-Mobile may have a need for the Proposed Facility does not 'trump all other important considerations, including the preservation of the autonomy of states and municipalities.'"

More specifically, the United States Court of Appeals for the Ninth Circuit stated in *Am. Tower Corp. v. City of San Diego*, *supra,* "[w]hen determining whether a locality has effectively prevented a wireless services provider from closing a significant gap in service coverage, as would violate the federal Telecommunications Act (TCA), some inquiry is required regarding the feasibility of alternative facilities or site locations, and a least intrusive means standard is applied, which requires that the provider show that the manner in which it proposes to

fill the significant gap in services is the least intrusive on the values that the denial sought to serve." *Id. See also Anacortes, supra.* In other words, is the proposed tower the least intrusive means in light of the municipality's zoning regulations and the legislative intent behind them?

B. Alternative Sites

There doesn't even appear to be any good faith effort by AT&T to place the facility in a location where the adverse aesthetic impact on the community is minimal. Despite potential interest from the Snowcreek Athletic Club, it does not appear that AT&T adequately investigated this location.

Furthermore, there is no satisfactory explanation why the two (2) sites put forth by AT&T are not feasible. Simply stating that there was no interest from the owner does not explain what efforts were made to investigate these two sites. Was there direct contact with the owner or did they simply not reply to a written inquiry? Was there a serious discussion regarding a lease agreement and rental payments to the owner?

Further, it appears that only existing AT&T sites were considered. Was collocation on another carrier's tower investigated, especially since collocation is a preferred site under §17.52.280(F) of the zoning code? Were small cell facilities considered instead of the huge monopine? Were micro cells or cellular arrays mounted on buildings considered? What, exactly, is the extent of AT&T's analysis of alternative sites?

Investigation of 2 sites is not sufficient to constitute a good faith investigation. Caselaw has held that investigation into only three (3) sites is not sufficient. *See Up State Tower Co., LLC v Kiantone,* 2019 WL 1117220 (W.D.N.Y. 2019) where applicant investigated 19 properties; and *Town of Oyster Bay, supra* where applicant investigated 8 alternate sites; *contrast Up State Tower Co. v Town of Southport, NY* 412 F.Supp.3d 270 (W.D.N.Y. 2019), in

which applicant initially investigated only 3 alternate sites. In *Anacortes* 18 alternative sites were investigated. Although there is no "magic" number, it should be obvious that AT&T has not performed its due diligence if it has only looked at 2 alternate sites.

An applicant is required to perform their due diligence and conduct a good faith, meaningful investigation into alternative sites. Interestingly, the *Omnipoint* Court found that where "other cell companies serve the area…the Board could infer that other towers erected by other companies are in the vicinity, and that Omnipoint had the burden of showing either that those towers lacked capacity for an Omnipoint facility or that (for some other reason) those towers were unavailable to bridge Omnipoint's coverage gap."

Moreover, a local government may reject an application for construction of a wireless service facility in an under-served area without thereby prohibiting wireless services if the service gap can be closed by less intrusive means. *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) *citing Town of Amherst v Omnipoint Communications,* 173 F.3d 9 (1st Cir 2 1999). And a denial is merited where the applicant has identified other potential sites, but stated in conclusory fashion that they were unfeasible and stated…that it was unable to build a less intrusive structure…. *Omnipoint, supra.*

Probative Evidence and Hard Data

AT&T failed to meet its burden of proving that: (1) a significant gap in service exists; (2) its facility would remedy that gap; (3) the proposed tower is compatible with the surrounding community; (4) its proposed placement would minimize the aesthetic impact within the meaning of the applicable sections of the Zoning Code; and (5) a denial of its application would constitute a "prohibition of personal wireless services" within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Glaringly absent from AT&T's application is any "*hard data,*" which could easily be submitted by the applicant, as *probative evidence* to establish that: (a) there is an actual gap in service which (b) necessitates the construction of a *new* facility, (c) and which requires it to be built at the specifically proposed location, and (d) on the specifically chosen site (as opposed to being built upon any alternative, less-intrusive locations).

Without any meaningful data whatsoever, it is impossible for the Town to comply with the smart planning requirements set forth in its own Zoning Code. Furthermore, without any data, the Town cannot ascertain whether the proposed location is the least intrusive means of providing personal wireless service to the community because they have no idea where any possible significant gaps may or may not exist. It would be entirely irresponsible and illogical for the Town to grant applications for the installation of wireless telecommunications facilities without even knowing where such facilities are actually needed.

A. FCC and California Public Utilities Commission

Both the FCC and the California Public Utilities Commission have recognized the ***absolute need*** for hard data rather than the commonly submitted propagation maps, which can easily be manipulated to exaggerate need and significant gaps.

As is discussed within the FCC's July 17, 2020, proposed order, FCC-20-94, "[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify mobile providers' coverage maps."[5] The FCC defines drive tests as "tests analyzing network coverage for mobile services in a given area, i.e., measurements taken from vehicles traveling on roads in the area."[6] Further within the FCC's proposed order, several commenting entities also

[5] *See* page 44 paragraph 104 of proposed order FCC-20-94.
[6] *See* page 44 fn. 298 of proposed order FCC-20-94.

agree that drive test data is the best way to ascertain the most reliable data. For example: (i) "City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers' coverage data…;"[7] (ii) California PUC asserted that 'drive tests [are] the most effective measure of actual mobile broadband service speeds';"[8] and (iii) "CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data 'may be a useful resource to help validate propagation data…'"[9]

California PUC has stated that "the data and mapping outputs of propagation-based models will not result in accurate representation of actual wireless coverage" and that based on its experience, "drive tests are required to capture fully accurate data for mobile wireless service areas."[10]

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

> *"The Mobility Fund Phase II Investigation Staff Report*, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The *Mobility Fund Phase II Investigation Staff Report* recommended that the Commission require providers to "submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. *Actual speed test data is critical to validating the models used to generate the maps.*"

(Emphasis added)

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC

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[7] *See* page 45 fn. 306 of proposed order FCC-20-94.
[8] *Id.*
[9] *Id.*
[10] https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/

found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires "[a]ffirmation that the coverage model has been validated and calibrated at least one time using on-the-ground testing and/or other real-world measurements completed by the provider or its vendor."

The mandate requiring more accurate coverage maps has been set forth by Congress. "As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps."[11] "The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to 'establish a process to verify the accuracy of such data, and more.'"[12]

However, despite Congress's clear intent to "improve the quality of the data,"[13] several wireless carriers, have opposed the drive test/real-world data requirement as too costly.

"The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC's current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate."[14]

If the FCC requires further validation and more accurate coverage models, there is no reason this Town should not do the same. For the foregoing reasons, dropped call records and drive test data are both relevant and necessary.

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[11] https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/
[12] *Id.*
[13] *Id.*
[14] https://www.lightreading.com/test-and-measurement/verizon-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329

B. Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install wireless facilities provide local governments with *hard data,* as both: (a) actual evidence that the facility they seek to build is necessary and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive evidence used to establish the location, size, and extent of both *significant gaps* in personal wireless services, and areas suffering from *capacity deficiencies*, are two specific forms of *hard data*, which consist of: (a) dropped call records and (b) actual drive test data. Both local governments and federal courts in California consider hard data in order to ascertain whether or not a significant gap in wireless coverage exists at that exact location.

It must be remembered that a propagation study is only a predictive model of signal strength and coverage. The programs that create the studies use thousands, perhaps millions of calculations and are dependent on the program used and the input parameters defined by the person running the program. Accordingly, the result is only as good as the data input into the program. Additionally, as here, propagation maps usually do not represent *all* frequencies available to the carrier. Lack of one frequency does not mean there is a lack of service in one or more other frequencies.

In fact, unlike "expert" reports, RF modeling, and propagation maps – all of which may be manipulated to reflect whatever the preparer wants them to show – *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy. Dropped call records are generated by a carrier's computer systems. They are typically extremely accurate because they are generated by a computer that already possesses all of the

data pertaining to dropped calls, including the number, date, time, and location of all dropped calls suffered by a wireless carrier at any geographic location and for any chronological period. With the ease of a few keystrokes, each carrier's system can print out a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely that someone could enter false data into a carrier's computer system to materially alter that information.

In a similar vein, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in "computer modeling," the creation of hypothetical propagation maps, or "expert interpretations" of actual data, all of which are so subjective and easily manipulated that they are essentially rendered worthless as a form of probative evidence. Actual raw drive test data consists of actual records of a carrier's wireless signal's actual recorded strengths at precise geographic locations.

As reflected in the records, AT&T has not provided any type of *hard data* as probative evidence, nor has it presented any form of data whatsoever, despite being in possession of such data. For example, AT&T could – and should – provide documentation regarding the number of residents who would benefit from the proposed tower, or information regarding the number and kinds of customer service complaints. "The substantial evidence analysis requires the Court to look for 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion' that a significant gap in service exists. *New Cingular Wireless PCS v. City of West Covina*, 2023 WL 4422835 (C.D. Calif. 2023) *quoting* Metro PCS, *supra.* Clearly, the actual number of people who would benefit from the proposed tower as well as information regarding actual service complaints and/or dropped calls, would be the best indicators of a significant gap in service.

C. AT&T's Own Actual Coverage Data

As is a matter of public record, AT&T maintains an internet website at https://www.att.com. In conjunction with its ownership and operation of that website, AT&T maintains a database that contains geographic data points that cumulatively form a geographic inventory of their actual current coverage for wireless services.

As maintained and operated by AT&T, that database is linked to AT&T's website, and is the data source for an interactive function, which enables users to access AT&T's own data to ascertain both: (a) the existence of AT&T's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

AT&T's interactive website translates their *actual coverage data* to provide imagery whereby areas that are covered by AT&T service are depicted in various shades of blue, and areas where AT&T has a lack (or gap) in coverage, are depicted in white. The website further translates the data from AT&T's database to specify the actual *service level* at any specific geographic location.

A copy of AT&T's coverage map for the area around 1574 Old Mammoth Rd., Mammoth Lakes, CA can be viewed on AT&T's website and is also attached as **Exhibit "D"** to the Memorandum in Opposition. This Exhibit was obtained and printed on February 12, 2024, from AT&T's website.

On its website, the coverage map shows, based on AT&T's *own* data, that there is no significant coverage gap in AT&T's service at 1574 Old Mammoth Road, or anywhere around or in close proximity to it. The coverage map indicates solid levels of service.

This is in stark contrast to the claims made by AT&T in its submission, allegedly supported by their propagation maps. This obvious contrast between the claims made on AT&T's website in order to sell its services to the public and the claims made by AT&T in order

to sell its proposed tower to this Board is striking. If nothing else, these differences demonstrate the ease with which data can be manipulated to suit a particular purpose.

In addition, annexed to the Memorandum in Opposition as **Exhibit "E"** is a map maintained by the FCC, accessible on their website and based on data provided to the FCC directly by AT&T. This Exhibit was obtained and printed on February 12, 2024, and shows that there are no coverage gaps at or near 1574 Old Mammoth Rd., Mammoth Lakes, CA.

While representatives for AT&T claim the coverage map on its website comes with disclaimers, both **Exhibits "D"** and **"E"** are based on AT&T*s* own data and as such, at the very least should be treated as statements against interest.

D. ExteNet Systems, Inc. v. Village of Flower Hill

Although not binding on Courts in the state of California, the decision in the *Flower Hill* case is nonetheless informative and persuasive. The Judge noted that while "improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones, … they are not protected by the [TCA]." *ExteNet Systems, Inc. v. Village of Flower Hill*, No. 19-CV-5588-FB-VMS (E.D.N.Y. July 29, 2022). In *Flower Hill*, the Board found significant adverse aesthetic and property values impact and, most importantly, no gap in wireless coverage and, therefore, no need even to justify the significant adverse impacts. Quoting *Omnipoint, supra,* the Court found that the lack of "public necessity" can justify a denial under New York law. "In the context of wireless facilities, public necessity requires the provider 'to demonstrate that there was a gap in cell service, and that building the proposed [facility] was more feasible than other options.'" *Id.* Further, the Judge held that "as with the effective prohibition issue, the lack of a gap in coverage is relevant here and can constitute *substantial evidence* justifying denial…And, since one reason given by the Board for its decision was supported by substantial evidence, the

Court need not evaluate its other reasons." *Id., (emphasis supplied).*

The applicant bears the burden of proof and must show that there is a significant gap in service – not just a lack of a *particular frequency* of service, *i.e.,* 5G service. A cell phone is able to "downshift" – that is, from 5G to 4G or from 4G to 3G, etc. – if necessary to maintain a call throughout coverage areas. Unless there is an *actual* gap, the call will continue uninterrupted. Therefore, there's only a significant gap when there is ***no service at all***. *Id.*

Similarly, in this instance, in addition to the clear adverse impact on the neighboring properties, AT&T has failed to produce any evidence of a truly *significant gap* in wireless service. Showing a gap in a particular frequency is not sufficient. ***All*** frequencies must be absent for a significant gap to exist. AT&T has failed to meet this burden, and thus their application should be denied.

Written Decision Citing the
Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a Board must issue a written denial which is separate from the written record of the proceeding, and which contains a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco,* 400 F.3d 715 (2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The most authoritative and widely quoted explanation of the TCA's "substantial evidence" requirement comes from *Cellular Tel. Co. v. Town of Oyster Bay*: "substantial evidence implies 'less than a preponderance, but more than a scintilla of evidence'." 166 F.3d 490 (2d Cir. 1999). *See also, GTE Mobilnet, supra.* Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id., quoting MetroPCS, Inc. v. City and Cty. of San Francisco,* 400 F.3d 715 (9th Cir. 2005). Thus, these interested homeowners have met their burden of proving that AT&T failed to offer sufficient evidence to warrant granting their application and it should, therefore, be denied.

To ensure that the Town's decision to deny this application cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny AT&T's application in a written decision wherein the Board cites the substantial evidence upon which it based its determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers try to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow.

This is because, even if they file a federal action against the Town and win, the Telecommunications Act of 1996 does not entitle them to recover compensatory damages or

attorneys' fees, even if they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.[15]

This means that if they were to sue the Town and win, the Town would not be liable to pay them anything in damages or attorneys' fees under the TCA.

Typically, the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last a comparatively short time. As a result of the brevity and relative simplicity of such cases, the attorneys' fees incurred by a local government are typically quite small, compared to virtually any other type of litigation.

Conclusion

AT&T has not proven by competent evidence that a need even exists in the area where they propose to install their cell tower. No significant gap has been demonstrated. Nor has AT&T proven that the proposed facility is the least intrusive means of remedying the purported significant gap in service coverage, and they have not shown that a meaningful, good faith inquiry was made as to whether the proposed facility is the least intrusive alternative. No clear benefit to public safety has been demonstrated.

These facts together with the clear adverse impacts – both aesthetic and financial – which will befall the nearby residents, and which will affect the character of the of the entire community can bring only one reasoned decision. It is respectfully submitted that this appeal must be granted and AT&T's application denied in its entirety.

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[15] *See City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

Dated: Mammoth Lakes, CA
February 29, 2024

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John Heidelman
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Gevorg Mrktchian
Paulet Abedi
Christopher Caulfield
Monica Caulfield
Brian Blades
Wendy Blades
Stephen Dyner
Mandi Dyner
Diego Uchitel
David Melton
Jodi Melton
Patricia Johnson
David Johnson
Sean Jean
Jennifer Jean
Lauren Johanson
Eric Jones
Brooks Play
Paula Play
Ryan Wayne
Iris Zuleyka Farnes
Sandy Webb
Jeff Ruscigno
Broderick Family
Suzanna Ryan
Jeffrey Hall
Eric Larsen
Charles Davis
Kathy Hollenback

TOWN OF MAMMOTH LAKES
STATE OF CALIFORNIA

----------X

In the Matter of the Application of:

AT&T

For Use Permit

Premises: 1574 Old Mammoth Road
Mammoth Lakes, CA 92780

APN: 040-040-021-000

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EXHIBITS IN SUPPORT OF APPEAL

Exhibit List

1. Realtor Letter
2. Radioreference.com Frequency Document
3. FEMA.gov IPAWS Documents

EXHIBIT 1

To Whom it May Concern;

I am a Realtor with the Snowcreek Property Company. Ever since we were informed about the cell tower, I have had past, present and future clients express their great disdain of this project.

My clients who own 1461 Boulder Creek are in the direct line of sight of the 85 ft. mono pine. They purposely took the smaller bedroom upstairs for themselves because of the magnificent view of the Sherwins right out of their bedroom window. If the cell tower goes up, it will block out 75% of their view. Although they only recently bought their unit in January of 2022, they asked me to list it because of the cell tower. They have since decided to stay and fight this abomination.

While holding an open house over the course of 3 days, I immediately disclosed the location of the cell tower. All potential buyers were turned off at the thought of this giant "tree" right in their face. Although the unit was in pristine condition, selling furnished below market pricing, I received no offers during the listing period.

Just in the past few days, I've had interested buyers in one of our larger Creekhouse units. One client told me he would write an offer right now if it weren't for the cell tower. The unit in question is priced at $2.3 million dollars and his first concern was the drop in resale value.

This cell tower will only hurt the Creekhouse community. We all understand the safety issue of having cell service to the lakes basin but there are plenty of other places further down Old Mammoth Road that would suffice without infringing on homeowners rights.

The town of Mammoth Lakes continues to prove that they don't care about their second homeowners.

Regards,

Barbara Taylor, Realtor
The Snowcreek Property Company
License #01933840
barbara@snowcreekproperty.com
760-914-3163
LIFEINMAMMOTH.COM

EXHIBIT 2

FCC Callsign: WQJP908 (MAMMOTH LAKES FIRE DISTRICT)

Licensee:	MAMMOTH LAKES FIRE DISTRICT
Callsign:	WQJP908
FRN:	0001523505
Status:	**Active** (Effective: 09/05/2018 - Expires: 11/20/2028)
County:	MONO
State:	CA
Radio Service:	PW: Public Safety Pool, Conventional
Notes:	GOVERNMENTAL ENTITY RADIOS USED FOR OFFICIAL ACTIVITIES

Locations

#	TWR ID	Type	Antenna Height	Structure Height	Elevation	Address
1		TOWER	15.0	20.0	2225.0	3150 MAIN STREET
2		BPIPE	6.0	8.0	3047.0	3 KM NW OF MAMMOTH LAKES
3			0.0	0.0	0.0	
4			0.0	0.0	0.0	

Towns

Mammoth Lakes

Fire - Mono Co Fire

Frequency	License	Type	Tone	Alpha Tag	Description	Mode	Tag
155.595	WNDM858	BM	CSQ	MLPD 1 Dir	Police Ch 1	FM	Law Tac
155.595	WNDM858	RM	151.4 PL	MLPD 2 MamMt	Police Ch 2 - Dispatch	FM	Law Dispatch
155.595	WNDM858	RM	131.8 PL	MLPD 3 SubSt	Police Ch 3 - Dispatch	FM	Law Dispatch
155.025	WNDM858	M		MLPD CERT	Police Community Emergency Response Team (CERT)	FM	Multi-Talk
155.145	WQJP908	RM	151.4 PL	MLFD 2 CMD	Fire Ch 2 - Command	FM	Fire-Talk
153.950	WQJP908	BM	CSQ	MLFD 3 Tac	Fire Ch 3 - Tac	FM	Fire-Tac
158.760	WNDM858	RM		ML Admin Rpt	Town Admin	FM	Public Works
158.760	WNDM858	BM		ML Admin D	Town Admin Direct	FMN	Public Works
155.115	WNDM858	BM		ML Auxillary	Town Auxillary (Multi-Use)	FMN	Multi-Tac
158.835	WNDM858	BM		ML PW	Public Works	FMN	Public Works

EXHIBIT 3

Integrated Public Alert & Warning System

English Español

The Integrated Public Alert & Warning System (IPAWS) is FEMA's national system for local alerting that provides authenticated emergency and life-saving information to the public through mobile phones using Wireless Emergency Alerts, to radio and television via the Emergency Alert System, and on the National Oceanic and Atmospheric Administration's Weather Radio. Learn more from the IPAWS 101 Fact Sheet.

News and Updates

IPAWS 101 Now Available

Download IPAWS 101: America's System for Local Emergency Alerting for an introductory explanation of IPAWS, its benefits, and how local Public Safety Officials can sign up and use IPAWS to protect their communities.

Download IPAWS 101

FEMA and FCC Plan Nationwide Emergency Alert Test for Oct. 4, Sending Messages to all TVs, Radios and Cell Phones

FEMA, in coordination with the Federal Communications Commission, will conduct a nationwide test of the Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA) this fall. The national test will consist of two portions, testing WEA and EAS capabilities. Both tests are scheduled to begin at approximately 2:20 p.m. ET on Wednesday, Oct. 4.

Read More About the Test

1 2 3 … Next › Last »

Recorded Webinars

All sessions were recorded. If the recording is not available yet in the links below, check back soon.

SEP
27

Sep 27, 2023 10:00 a.m. EDT - 2:05 p.m. EDT **Virtual**

The IPAWS Users Conference - 2023

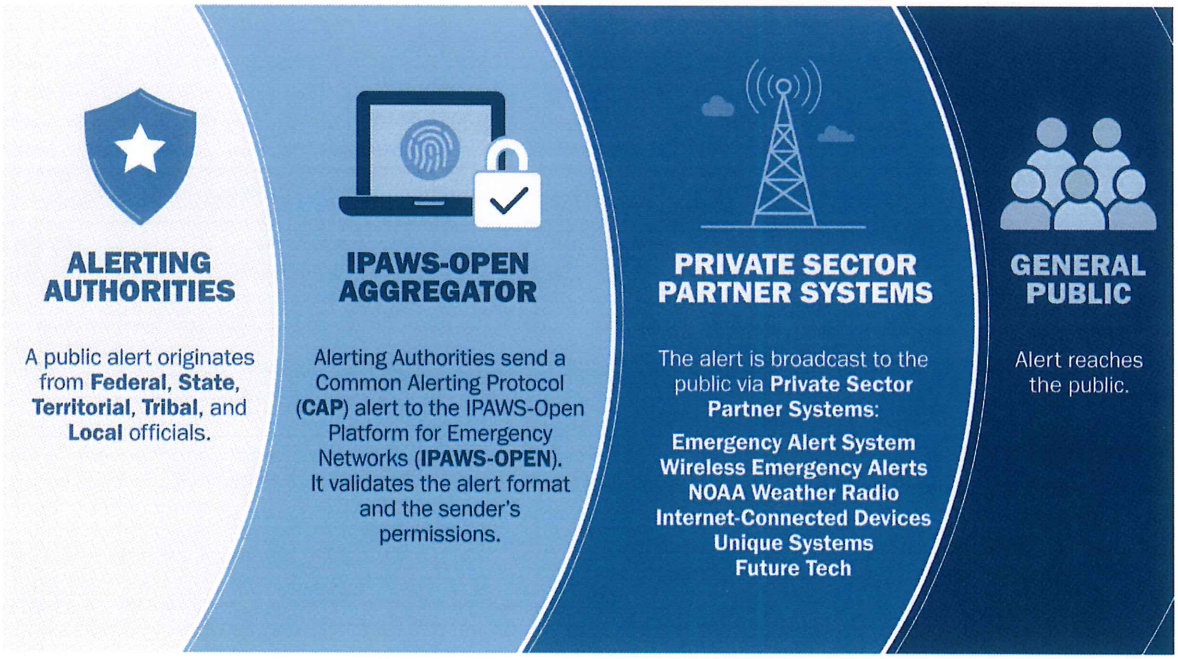
FEMA's Integrated Public Alert and Warning System (IPAWS) is excited to announce the 3rd annual IPAWS Users Conference.

1 2 3 … Next › Last »

How IPAWS Sends Alerts

IPAWS allows Alerting Authorities to write their own message using commercially available software that is Common Alerting Protocol (CAP) compliant. The message is then delivered to the Integrated Public Alert and Warning System, Open Platform for Emergency Networks (IPAWS OPEN), where it is authenticated and then delivered simultaneously through multiple communication pathways. Through IPAWS, one message is created to reach as many people as possible to save lives and protect property.

Utilizing multiple pathways for public alerts increases the likelihood that the message will successfully reach the public. IPAWS is structured to facilitate this functionality.



Communication Pathways

The Emergency Alert System (EAS) delivers alerts via AM, FM and satellite radio, as well as broadcast, cable and satellite TV.

Cell phones and mobile devices receive Wireless Emergency Alerts based on location, even if cellular networks are overloaded and can no longer support calls, text and emails.

The National Oceanic and Atmospheric Administration (NOAA) delivers alerts through NOAA Weather Radio.

Alerts are also available from internet service providers and unique system developers.

State, local, territorial, and tribal alerting systems such as emergency telephone networks, giant voice sirens, and digital road signs may also receive alerts from IPAWS-OPEN, and future alerting technologies and systems can easily be integrated into IPAWS.

IPAWS Tools by Audience

IPAWS 101

America's System for Local Emergency Alerts

IPAWS
Celebrating 10 Years of Wireless Emergency Alerts

INTEGRATED PUBLIC ALERT & WARNING SYSTEM

WHAT IS IPAWS?

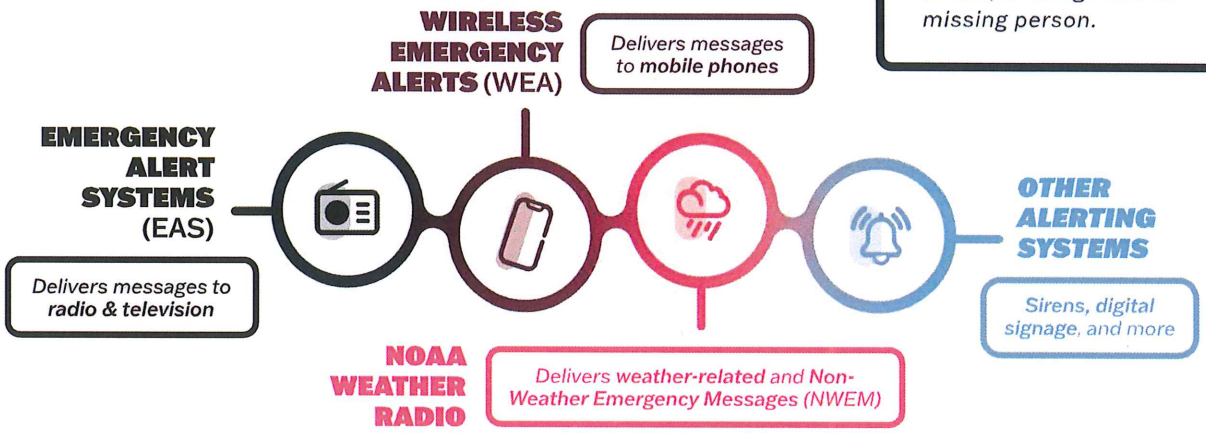
Integrated Public Alert & Warning System (IPAWS) is a tool that Federal, State, Local, Tribal, and Territorial (FSLTT) public safety agencies can use to notify the public of disasters and deliver emergency and public safety information.

FSLTT public safety agencies can sign up to become an Alerting Authority.

ALERTING AUTHORITY

A jurisdiction with the designated authority to alert and warn the public when there is an impending natural or human-made disaster, threat, or dangerous or missing person.

ALERT PATHWAYS INCLUDE



BENEFITS OF IPAWS

NO SIGN-UP REQUIRED TO RECEIVE ALERTS

There is no need to sign up or subscribe to receive alerts from IPAWS. There is no cost to receive alerts.

MINIMAL COST TO ALERTING AUTHORITIES

There is no cost to send or receive alerts through IPAWS. Alerting Authorities may incur costs to purchase compatible alert origination software that meets IPAWS requirements.

LOCAL TARGETING

With IPAWS, Alerting Authorities can target specific geographic areas to ensure only those in the affected area, including visitors, receive the alert. The content and timing of alerts is at the discretion of Alerting Authorities. FEMA does not review, edit, approve, or disapprove alerts sent by public safety agencies.

LANGUAGE & FUNCTIONAL ACCESSIBILITY

WEA's recipients can currently choose to display alerts in English or Spanish and EAS messages can include multilingual audio. IPAWS also allows for the integration of images and has text-to-speech capability to accommodate those with functional needs.

FEMA

October 2023

fema.gov/IPAWS