

**PROJECT NARRATIVE FOR NEW WIRELESS COMMUNICATIONS FACILITY**  
***Lot of Record Verification, Significant Wildlife Habitat (SEC-h) permit, Limited Design***  
***Review (DR), and Planning Director Decision***  
**AT&T PD31 BETHANY CREST**

Submitted to Multnomah County, OR  
Land Use Planning Division

**Applicant:** New Cingular Wireless PCS, LLC ("AT&T")  
20309 N. Creek Parkway  
Bothell, WA 98011

**Representative:** Smartlink  
10 Church Circle  
Annapolis, MD 21401  
**Contact:** Debbie Griffin  
(480) 296-1205  
[Debbie.Griffin@smartlinkgroup.com](mailto:Debbie.Griffin@smartlinkgroup.com)

**Property-Owner:** Robert and Gayla Zahler  
13937 NW Springville Road  
Portland, OR 97229

**Project Address:** 13937 NW Springville Road  
Portland, OR 97229

**Description & Parcel:** GPS Coordinates: 45.569867/ -122.825219  
Tax Lot: 1N1W16C-00100

**Zoning Classification:** Exclusive Farm Use (EFU)

Smartlink is submitting this application on behalf of New Cingular Wireless PCS, LLC ("AT&T") and the underlying property owners, Robert and Gayla Zahler.

## 1. PROJECT OVERVIEW

AT&T is proposing to build a new wireless communications facility (“WCF” or “Facility”), PD31 Bethany Crest, at 13937 NW Springville Road, in Multnomah County. This proposed facility is intended to fill a significant gap in AT&T’s network coverage and service quality experienced by its customers in the “Target Area”. Specifically, the candidate will provide 4G LTE coverage and enhance capacity along NW Kaiser Rd, NW Springville Rd, and NW Laidlaw Rd, including the residences in the North Bethany and Bethany neighborhoods.

As determined by AT&T’s RF engineers, see **Attachment 4 – AT&T Radiofrequency (RF) Justification**, the proposed Facility meets AT&T’s service objectives to provide continuous and uninterrupted outdoor, in-vehicle, and in-building wireless service to the Targeted Service Area. This will result in fewer dropped calls and improved call quality, as well as access to additional wireless services the public now demands (including emergency 911 calls).

The following documents (collectively, “AT&T’s Application”) should constitute all information needed to show compliance with all country and state requirements for siting a new Wireless Communications Facility in an EFU zone. Those documents noted as “updated” should replace the attachments previously submitted to Project No. T2-2025-0023. Documents not noted as such remain unchanged:

- Attachment 1—Application Form
- Attachment 1a—Service Provider Forms
- Attachment 2—Project Narrative (this document) **UPDATED**
- Attachment 2a—Exhibit A to Narrative – FirstNet
- Attachment 3—Statement of Code Compliance **UPDATED**
- Attachment 4—AT&T Radiofrequency (RF) Justification **UPDATED**
- Attachment 5—AT&T RFSSRP (NIER) Report
- Attachment 6—Photo Simulations
- Attachment 7—Tower Design Loading, PE Stamped
- Attachment 8—Noise Study
- Attachment 9—AT&T Collocation Statement
- Attachment 10—Fully Executed Lease Agreement
- Attachment 10a—Memorandum of Lease Agreement
- Attachment 11—FAA TOWAIR Report
- Attachment 12—ODA Determination Letter
- Attachment 13—Stormwater Report & Certificate
- Attachment 14—Mitigation Plan
- Attachment 15—Pre-Filing Meeting Notes
- Attachment 16—Property Owner Letter of Authorization
- Attachment 17—AT&T Letter of Authorization
- Attachment 18—Chain of Title
- Attachment 19—Tax Map
- Attachment 20—Zoning Drawings

As shown in AT&T's Application, this proposed Facility meets the applicable Multnomah County Zoning Code ("MCZC") criteria for siting new wireless communications facilities and complies with all other applicable state and federal regulations. AT&T's proposal is also the least intrusive means of meeting its service objectives for this site. Accordingly, AT&T respectfully requests that Multnomah County approve this project as proposed, subject only to the county's standard conditions of approval for similar proposals.

**Please Note:** All references to "Attachments" in this Project Narrative are in reference to the above-noted attachments included as part of AT&T's Application.

## 2. PROPOSED PROJECT DETAILS

Detailed information regarding the subject property and proposed Facility is included in **Attachment 20—Zoning Drawings** and outlined below:

### 2.1 Site Description

- **Subject property.** The proposed WCF is located at Map Tax Lot 1N1W16C-00100 in Multnomah County (the "Property"). The Property is owned by Robert and Gayla Zahler.
- **Zoning—Use.** The Property is zoned as Exclusive Farm Use (EFU) and is currently vacant.
- **Lease area.**
  - The overall proposed 50ft x 50ft fenced lease area with 5ft landscaping buffer (the "Lease Area") is near the western boundary of the parcel and the existing BPA transmission corridor.
  - The lease area will be surrounded by a 6ft chain-link fence topped with barbed wire and coated with a non-reflective green paint, with access secured by a locked 12ft wide gate.
  - The lease area will be covered in ¾-in crushed gravel.

### 2.2 Access, Parking, and Trip Generation

- **Access.** Access to the lease area will be via an existing private access road within the BPA right-of-way accessed from NW Springville Road that will be extended approximately 298ft to the site. The new access driveway will be paved with ¾-in crushed gravel and is 12ft wide.
- **Parking.** Maintenance vehicles will be able to utilize the proposed turnaround area located at the entrance to the lease area. AT&T is proposing to pave the parking and turnout area in ¾-in crushed gravel.
- **Trip generation.** The WCF is an unmanned facility and may require approximately one trip per month for maintenance visits provided by personnel in a single vehicle. However, these visits may be reduced as it is becoming more common for facilities to be monitored remotely. The proposed Facility will have no impact on existing vehicular access to and from the proposed site, or to pedestrian, bicycle, and transit circulation.

### 2.3 Wireless Facilities and Equipment

- **Tower design.** AT&T proposes to install a new 140ft stealth monopole designed to resemble a fir tree, commonly referred to as a monofir, within the lease area (the "Tower").
  - The proposed overall height of the Tower is 150ft.
    - The height of the monofir support structure and antennas will be 140ft.

- The additional 10ft of height, for an overall height of 150ft, is an allowance for camouflaging branches to fully encompass the antennas and add a more natural taper to the monofir design.
  - Sufficient space will be made available on the Tower for a minimum of two (2) additional antenna arrays for future collocation.
  - The pole will be painted brown to resemble a tree trunk and the faux tree branches will be painted green. All paint will have an anti-glare finish.
- **Tower antennas and equipment.**
  - The Tower will contain the following AT&T equipment:
    - Up to twelve (12) panel antennas
    - Up to eighteen (18) Remote Radio Head (RRH) units
    - Up to two (2) Surge Suppressors
    - Fiber/ DC Cables
  - The antennas, RRHs, and accessory equipment on the Tower will be painted green to match the faux branches. All paint will have an anti-glare finish.
- **Ground equipment.**
  - All ground equipment will be located within the lease area.
  - AT&T proposes to install a premanufactured walk-up-cabinet (“WUC”) within a 18ft x 20ft wood framed enclosure, which will be placed on an 18ft x 20ft concrete pad. The enclosure will be treated with horizontal siding, a shed roof and will be painted dark green to match the facility. The enclosure will not exceed 15ft in height.
  - A 30kw diesel generator (for secondary power during extended power outages) will be installed near the WUC and within the framed enclosure on the concrete pad.
- **Lighting.** No artificial lighting of the Facility is proposed other than a motion-controlled LED security light located on the prefabricated WUC within the fenced lease area. The security light will be shielded with opaque materials and pointed downward.

#### 2.4 Landscaping and Screening

- Pursuant to MMC 39.7740(B)(11), a landscape buffer is required to screen the base of the Tower and accessory equipment. The buffer will be 5ft and include a combination of Western Red Cedar and groundcover (Kinnikinnick). Please refer to Sheet L-1.0 and L-2.0 of **Attachment 20—Zoning Drawings** for the proposed Landscape Plan.
- The proposed project lies within a portion of the SEC-s Stream overlay and within the SEC-h Wildlife Habitat overlay. Please see **Attachment 14—Mitigation Plan** for details on the planting proposed within the 10,625 sq. ft. mitigation area.
- The Tower will be designed to resemble a fir tree to minimize its visual impact and screen the antennas to the extent feasible.

#### 2.5 Utilities

- **Power.** Power is available via an existing utility pole to the northwest of the Property and will be trenched underground along the proposed extended access drive to the Facility.
- **Telecommunications.** Telecommunications fiber is available via an existing source to the southwest of the Property and will be trenched underground along the proposed extended access drive to the Facility.

- **Water.** As this is an unmanned wireless facility, no water service is needed.
- **Sewer.** As this is an unmanned wireless facility, no sewer service is needed.

### 3. AT&T NETWORK COVERAGE AND SERVICES

#### 3.1. Overview—AT&T Network Coverage and Services—4G LTE & 5G

AT&T is upgrading and expanding its wireless communications network to support the latest 5G and 4G LTE technology. 5G and 4G stand for “5<sup>th</sup> Generation” and “4<sup>th</sup> Generation” and LTE stands for “Long Term Evolution.” These acronyms refer to the ongoing process of improving wireless technology standards, now in its 5<sup>th</sup> generation. With each generation comes improvement in speed and functionality—4G LTE offers speeds up to ten times faster than 3G and 5G offers speeds up to 1-gigabit per second.

AT&T's 4G LTE service over the 700 MHz frequency band is AT&T's primary layer of service in and around Bethany. As shown in Figure B of **Attachment 4**, AT&T's 4G LTE signals are too weak to provide adequate and reliable coverage in the targeted service area, including in-building coverage. Adequate and reliable in-building service is especially critical when over three-quarters of American adults (78.7%) and nearly nine out of ten (86.9%) children live in wireless-only households.<sup>1</sup>

AT&T will also introduce 5G service on the 850 MHz band to further enhance coverage in the community. 5G technology is the next step in increasing broadband speeds to meet the demands of users and the variety of content accessed over mobile networks, and it is necessary to facilitate capabilities that are being designed into the latest devices. There are several components of 5G wireless technology and separate bands of wavelength spectrum used to build a 5G network—low-band (<2GHz), mid-band (3-10GHz), and high-band millimeter wave (mmWave) (20-100GHz):

- **Low-band 5G.** Low-band 5G frequencies (generally below 2GHz) are the oldest cellular (and TV) frequencies and are being used by AT&T to provide widely-available 5G service in residential, suburban, and rural areas. This is the same spectrum used for 3G and 4G cellular service today. As noted below, **the low-band 850MHz 5G frequency is proposed for this Facility.**

Low-band 5G frequencies are a tradeoff of download speed versus distance and service area—they are slower than the high-band mmWave and mid-band frequencies (as described below), but they travel the farthest and can pass through more obstacles to provide a better, more reliable indoor and outdoor signal for a larger service area (*i.e.* miles, not feet).

- **Mid-band 5G.** Mid-band 5G frequencies (generally 3-10GHz) cover most current cellular and WiFi frequencies and provide broader coverage (typically a half a mile) than high-band mmWaves but with slower speeds. Use of these frequencies is not as prevalent for building a 5G network as much of the bandwidth in this range is currently unavailable.
- **High-band 5G+ mmWave.** High-band millimeter wave (mmWave) frequencies (generally 20-100GHz) are the new Federal Communications Commission (“FCC”) approved frequencies most associated with 5G service—“5G+” is AT&T's name for 5G service delivered using high-band

---

<sup>1</sup> *CDC Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2024* (released June 2025).

mmWave spectrum. AT&T offers an enhanced wireless experience on 5G+ with mmWave service though with more limited coverage. Results continue to be impressive, with peak download speeds up to 1 gigabit per second (Gbps) – fast enough to stream 4K movies. High-band mmWave sites need to be in close proximity to one another and are typically used in dense, high trafficked areas such as urban areas, stadiums/arenas, airports, manufacturing and healthcare centers, etc.

Upon completion, the Facility will become part of AT&T's statewide and nationwide communications network. See **Attachment 4—AT&T Radiofrequency (RF) Justification**.

### **3.2. Network Service Objectives and Targeted Service Area for Proposed Facility**

This proposed facility is intended to fill a significant gap in AT&T's 4G LTE network coverage and will especially enhance in-building coverage and capacity along NW Kaiser Rd, NW Springville Rd, and NW Laidlaw Rd, including the residences in the North Bethany and Bethany neighborhoods (collectively, the "Targeted Service Area"). This will allow for uninterrupted wireless service in the Targeted Service Area with fewer dropped calls, improved call quality, and improved access to additional wireless services that the public now demands. This includes emergency 911 calls throughout the area.

#### **Attachment 4—AT&T Radiofrequency (RF) Justification.**

The service objective, Targeted Service Area, and proposed location were determined by AT&T's RF engineers through a combined analysis of propagation maps, market demand, customer complaints, service requests, and RF engineering design, and input from public safety officials.

### **3.3. FirstNet**

In addition to AT&T commercial facilities, this proposed Facility will include facilities to support FirstNet. As a FirstNet site, this proposed WCF is part of a more significant initiative by AT&T to upgrade existing wireless sites and to build new sites to support FirstNet and deploy the new frequency band for first responders ("Band 14"). Placing antennas at the minimum height necessary to reliably make and receive telephone calls and provide data service in the presence of varying signals is crucial for the efficient and effective operation of this site as a FirstNet Network site.

As explained in **Attachment 2A, Exhibit A to the Narrative**:

*Nationwide there are **currently over 28,000** federal, state, tribal, and local **agencies** and organizations, with more than **6 million connections** involving emergency medical services, fire services, law enforcement, and domestic emergency and disaster response organizations utilizing FirstNet.<sup>2</sup>*

## **4. Search Ring**

AT&T's RF engineers performed an RF engineering analysis—considering multiple objectives—to determine the approximate site location and antenna height required to best fulfill the noted service objectives within the Targeted Service Area. From this analysis, AT&T's RF engineers identified the area where a new wireless facility could be located to provide effective service in the Targeted Service Area. The search rings established for this proposal (the "Search Rings"), and a description of the methodology used to determine the Search Ring, is provided in **Attachment 4 – AT&T Radiofrequency (RF) Justification**:

---

<sup>2</sup> See also [www.firstnet.gov](http://www.firstnet.gov).

- The original search ring encompassed properties located in Washington County with most properties zoned residential. Collocation on the PGE transmission tower and BPA utility poles were explored; however, AT&T did not receive any positive responses from the underlying property owners.
- Accordingly, AT&T's RF engineers established a second search ring. Most properties within the expanded search ring are also located in Washington County and zoned residential. Those properties in Multnomah County contain flood zones and sensitive area overlays, limiting the number of potential parcels.

Radio frequency broadcasts travel in a straight line and diminish as they travel further away from the antennas; therefore, it is generally best to locate a facility near the center of the identified Search Ring and Targeted Service Area. The proposed new WCF is centered geographically within the identified expanded Search Ring (see Attachment 4) and will be able to maximize the coverage and signal dominance within the Targeted Service Area.

**5. ALTERNATIVE SITE ANALYSIS**

AT&T generally considers all siting possibilities within, and adjacent to, a search ring to determine the best location for a new facility to meet the targeted service objectives. AT&T will first attempt to utilize an existing tower or structure for collocation at the desired antenna height. If an existing tower or structure is not available or determined to be infeasible, AT&T will then propose a new tower.

For this proposed WCF, AT&T's construction and real estate group, with the assistance of outside consultants, thoroughly analyzed siting options and found that the proposed location is the least obtrusive option within the Search Ring that will meet AT&T's service objectives in the Targeted Service Area:

Description	Location	Comments
<i>Collocation</i>		
SBA Tower	45.552695, -122.833005 <u>JX</u> : Washington County <u>Zoning</u> : Institutional	This is a 55ft tower located outside both Search Rings, approximately 1.25 miles southwest of the proposed Facility. Collocation is not feasible as it is too geographically distant and not tall enough to provide the coverage needed to establish a dominant signal within the Targeted Service Area (even if the tower was increased in height by 20ft). In addition, the tower is located too close to an existing AT&T site. See, Attachment 4—AT&T Radiofrequency (RF) Justification.
<i>Existing structures</i>		

<p>PGE Transmission Tower</p>	<p>45.570300, -122.844600  <u>JX</u>: Washington County  <u>Zoning</u>: Institutional</p>	<p>This existing transmission tower is located on a parcel owned by Tualatin Hill Parks and Recreation. AT&amp;T did not receive a positive response to inquiries on utilizing their property for access and ground space.</p>
<p>BPA H-Frame Utility Pole</p>	<p>45.564400, -122.835100  <u>JX</u>: Washington County  <u>Zoning</u>: R-6</p>	<p>This existing H-frame transmission tower is located on a parcel in Washington County, owned by the Tualatin Hill Parks and Recreation. AT&amp;T did not receive a positive response from them to inquiries on utilizing their property for access and ground space.</p>
<p>PGE Transmission Tower</p>	<p>45.568300, -122.844500  <u>JX</u>: Washington County  <u>Zoning</u>: R-9</p>	<p>This transmission tower is located on a parcel in Washington County, owned by the Arbor Lakes HOA. The Arbor Lakes HOA was not interested in allowing AT&amp;T's ground lease area on their parcel.</p>
<p>BPA H-Frame Utility Pole</p>	<p>ROW, adjacent to the proposed site  <u>JX</u>: Multnomah County  <u>Zoning</u>: EFU</p>	<p>There are BPA wooden utility poles along the Westside Trail to the west of the subject parcel; however, the pole would need to be replaced by a metal pole to support the required antennas and equipment. The replacement pole would be significantly larger in diameter and would need a substantial increase in height to allow for the proposed WCF to extend over the surrounding trees in order to provide dominant coverage. Additionally, this structure is also in the EFU zone and would not benefit from the vegetation of the subject parcel.</p>
<p>Existing buildings</p>	<p>Various locations in both Multnomah and Washington Counties</p>	<p>The specific service coverage needs require the proposed WCF to be located within the identified Search Ring (the original or revised). Based on its analysis, AT&amp;T has determined that there are no</p>

			existing buildings within either identified Search Ring feasible for collocation as none are of a sufficient height to reasonably meet AT&T's service objectives. The structures in these areas are predominantly only one-story or residential. Pursuant to AT&T's RF engineers, a 140ft antenna tip height is the minimum height needed for a site within the Search Ring to meet AT&T's service objectives within the Targeted Service Area. The existing buildings within the search ring could not provide this minimum height requirement.
<b>New structures</b>			
<b>G</b>	New tower	45.568972, -122.8195 <u>JX</u> : Multnomah County <u>Zoning</u> : MUA-20	The MUA-20 zone has a height limit of 120ft. At this height and at this distance from the targeted service area of the Bethany and North Bethany neighborhoods, a new tower here would not meet the coverage objectives. See Attachment 4 – AT&T RF Justification.
<b>H</b>	New tower	45.568583, -122.815194 <u>JX</u> : Multnomah County <u>Zoning</u> : MUA-20	The MUA-20 zone has a height limit of 120ft. At this height, a new tower here would not meet the coverage objectives. See Attachment 4 – AT&T RF Justification.

**6. APPLICABLE LAW**

**6.1 Local Codes**

**6.1.1. Zoning and Development Standards.** Pursuant to the Multnomah County Zoning Code (MCC), new wireless communication facilities less than 200ft in the Exclusive Farm Use (EFU) zone are allowed, subject to a Type II Land Use review and Limited Design Review and must comply with the criteria in MCC Part 7.B.4 – Wireless Communication Facilities (CS) and MCC Part 8.4 – Design Review. Please see **Attachment 3—Statement of Code Compliance (UPDATED)** for AT&T's demonstration of compliance with all applicable MCC provisions.

**6.1.2. Comprehensive Plan.** The proposed Facility satisfies several of the applicable goals and policies of the Multnomah County Comprehensive Plan including, but not limited to Farm Land,

Natural Resources, and Public Facilities. Wireless services are key to growing urban areas. People rely on the ability to use their phones and other wireless devices at work and at home, both indoors and outdoors. As the population of Multnomah County increases and land development patterns change over time, the demand for urban services also increases and changes. These changes require that service providers, both public and private, plan for the provision of services in a coordinated manner.

- The proposed project forwards the goals of **Chapter 3: Farm Land**. As the population of Multnomah County increases and land development patterns change over time, the demand for urban services also increases and changes. The proposed project is an ancillary use that will provide wireless service for farming operations and nearby development. The proposed project supports allowed development and urban growth by providing reliable communications services to a growing community where there is a current gap in coverage, doing so in a manner that encourages future collocation of other providers in an inconspicuous manner on the same tower to limit the future construction of additional towers. A wireless communication facility is a passive, unmanned use, that will not provide or be impacted by noise, dust, traffic, light and glare, or toxic fumes. The “Facility” is contained within a 50ft x 50ft lease area and will not prohibit farming practices on the subject property or surrounding area. Additionally, this proposed use will not displace any current farm use as the subject parcel is vacant. Finally, the small lease area will take up less than 1% of the total parcel size ensuring that the parcel could still be used for agricultural purposes.
- The proposed project forwards the goals of **Chapter 5: Natural Resources**. The “Facility” is located within areas of Significant Environmental Concern; specifically, SEC-s Stream and SEC-h Wildlife Habitat. A wireless communication facility is a passive, unmanned use that will not provide noise, dust, traffic, light and glare, toxic fumes or stormwater runoff. The “Facility” is contained within a 50ft x 50ft lease area and will not impact the seasonal stream or wildlife habitat located on the parcel or surrounding area. Mitigation measures to reduce the impact on the areas of significant environmental concerns have been provided for the proposed project as demonstrated in the supporting documents to AT&T’s Type II land use review application. Said measures include an erosion control plan for the proposed 2500 sq. ft. lease area as shown on Sheets C1.0-C3.0 in **Attachment 20 – Zoning Drawings**. In addition, the existing vegetation on the parcel will be retained to the greatest extent feasible as demonstrated on the tree removal and retention plan included on Sheets L1.0 in **Attachment 20 – Zoning Drawings**. Further, a mitigation plan has been submitted to support the required SEC permit for the SEC-s and SEC-h overlays, addressing the approval criteria pursuant to MCC 39.5530 - 39.35590. See **Attachment 14 – Mitigation Plan**.
- Further, the proposed project forwards the intent of **Chapter 11: Public Facilities**. Though the proposed WCF is not a public facility, it will provide needed new and enhanced wireless services in a rural area of the County where there is a current gap in coverage. The proposed WCF will also improve emergency responses in the Targeted Service Area through improved connectivity for making emergency calls and access to a more reliable 4G & 5G LTE network for first responders.

## 6.2 Federal Law

Federal law, primarily found in the Telecommunications Act of 1996 (“Telecom Act”), acknowledges a local jurisdiction’s zoning authority over proposed wireless facilities but limits the exercise of that authority in several important ways.

### 6.2.1. Local jurisdictions may not prohibit the provision of personal wireless services.

The Telecom Act prohibits a local jurisdiction from taking any action on a wireless siting permit that “prohibit[s] or [has] the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). An effective prohibition occurs whenever the decision of a local government materially inhibits wireless services. *In the Matter of Cal. Payphone Assoc. Pet. for Preemption, Etc.*, 12 FCC Rcd. 14191 (FCC rel. July 17, 1997); *Sprint Telephony PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 578 (9th Cir. 2008) (noting Ninth Circuit’s analysis of effective prohibition “is consistent with the FCC’s” standard under *California Payphone*). The FCC has more recently reiterated the validity of its material inhibition standard, which the Ninth Circuit reaffirmed and upheld. *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv., Etc.*, 33 FCC Rcd. 9088 (FCC rel. Sept. 27, 2018) (“Infrastructure Order”) (material inhibition occurs whenever a denial prevents a wireless provider from providing new services or improving existing services); *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, *City of Portland v. FCC*, 141 S.Ct. 2855 (2021). This “effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.” *Infrastructure Order*, n.95.

A wireless carrier may also demonstrate an effective prohibition by showing that a permitting entity has denied an application for a wireless facility despite (1) evidence of a “significant gap” in the carrier’s service and (2) a showing by the carrier that the proposed installation is the “least intrusive means” for closing that gap. *MetroPCS, Inc. v. City & Cnty. of San Francisco*, 400 F.3d 715, 734-35 (9th Cir. 2005), *abrogated on other grounds in T-Mobile S., LLC v. City of Roswell, Ga.*, 574 U.S. 293 (2015) (adopting least intrusive means test because “it promises to ultimately identify the best solution for the community, not merely the last one remaining after a series of application denials”); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009) (quotation marks and citation omitted). Under this judicial test, once a wireless provider presents prima facie evidence of a significant gap and that its proposal is the least intrusive means for closing that gap, the burden shifts to the local government to prove that an available, feasible, and less intrusive alternative exists. *Id.* at 998-99. To meet this shifted burden, the local government must show that another alternative is (a) available, (b) technologically feasible, and (c) less intrusive than the carrier’s proposed gap solution. *Id.* The applicant then has the opportunity to rebut the availability and feasibility of any alternatives identified by the local government. *Id.*

- **Significant Gap.** In the Ninth Circuit, a local jurisdiction clearly violates section 332(c)(7)(B)(i)(II) when it prevents a wireless carrier from using the least intrusive

means to fill a significant gap in service coverage. *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 988 (9th Cir. 2009).

- **In-building coverage.** Reliable in-building coverage is now a necessity and every community's expectation. Consistent with the abandonment of land line telephones and reliance on only wireless communications, federal courts have recognized that the lack of adequate or reliable in-building or in-vehicle service coverage is a "significant gap." See, e.g., *L.A. SMSA Ltd. P'ship v. City of L.A.*, 2021 U.S. Dist. LEXIS 160046, \*9, 25 (C.D. Cal. Aug. 24, 2021); *T-Mobile W. Corp. v. City of Huntington Beach*, 2012 U.S. Dist. LEXIS 148170 \*11-16 (C.D. Cal. Oct. 10, 2012); *MetroPCS, Inc. v. City and County of San Francisco*, 2006 WL 1699580, \*10-11 (N.D. Cal. 2006).
- **Least Intrusive Means.** The least intrusive means standard "requires that the provider 'show that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve.'" 572 F.3d at 995, quoting *MetroPCS, Inc. v. City of San Francisco*, 400 F.3d 715, 734 (9<sup>th</sup> Cir. 2005). These values are reflected by the local code's preferences and siting requirements.

#### **6.2.2. Environmental and health effects prohibited from consideration.**

Also, under the Telecom Act, a jurisdiction is prohibited from considering the environmental effects of RF emissions (including health effects) of the proposed site if the site will operate in compliance with federal regulations. 47 U.S.C. § 332(c)(7)(B)(iv). AT&T has included with this application a statement from its radio frequency engineers demonstrating that the proposed facility will operate in accordance with the FCC's RF emissions regulations. (See **Attachment 5—AT&T RFSSRP (NIER) Report**) Accordingly, this issue is preempted under federal law and any testimony or documents introduced relating to the environmental or health effects of the proposed Facility should be disregarded in this proceeding.

#### **6.2.3. No discrimination amongst providers.**

Local jurisdictions may not discriminate amongst providers of functionally equivalent services. 47 U.S.C. § 332(c)(7)(B)(i)(I). A jurisdiction must be able to provide plausible reasons for disparate treatment of different providers' applications for similarly situated facilities.

#### **6.2.4. Shot Clock.**

Finally, the Telecom Act requires local jurisdictions to act upon applications for wireless communications sites within a "reasonable" period of time. 47 U.S.C. § 332(c)(7)(B)(ii). The FCC has issued a "Shot Clock" rule to establish a deadline for the issuance of land use permits for wireless facilities. 47 C.F.R. § 1.6001, *et seq.* A presumptively reasonable period of time for a local government to act on all relevant applications for a "macro" wireless facility on a new structure is 150 days. 47 C.F.R. § 1.6003(c)(1)(iv). The Shot Clock date is determined by counting forward 150 calendar days from the day after the date of submittal, including any required pre-application period. 47 C.F.R. § 1.6003(e). The shot clock may be tolled by written agreement. 47 C.F.R. § 1.6003(d).

***Pursuant to federal law, the reasonable time period for review of this application is 150 days.***