

Petition  
TOWN OF LYNNFIELD  
ZONING BOARD OF APPEALS

Name of Petitioner New Cingular Wireless PCS, LLC  
c/o Edward D. Pare, Jr., Esq.  
Address Brown Rudnick LLP, 10 Memorial Boulevard, Providence, RI 02903

Address of Property which is the subject of the  
Petition Wing Road (Parcel 0020-0000-0718)

1. Indicate and describe relief being sought by this petition:  
(check appropriate box)

- |                                     |                                                                                 |       |
|-------------------------------------|---------------------------------------------------------------------------------|-------|
| <input type="checkbox"/>            | A. Appeal Decision made by _____                                                | Date  |
|                                     | Bldg. Inspector, Planning Board, etc.                                           | _____ |
| <input type="checkbox"/>            | B. Apply for a Variance                                                         |       |
| _____                               |                                                                                 |       |
| <input type="checkbox"/>            | C. Apply for a Special Permit                                                   |       |
| _____                               |                                                                                 |       |
| <input checked="" type="checkbox"/> | D. Other (specify)                                                              |       |
|                                     | <u>Administrative Site Plan Review of Eligible Facilities Request to Modify</u> |       |
|                                     | <u>Transmission Equipment at water standpipe.</u>                               |       |

2. Specify Zoning Bylaw Sections(s) from which you desire relief: Section 8.8.5.2(2) of the Zoning Bylaw and Section 6409(a) of the federal Spectrum Act.

Relief cannot be granted at this hearing for any condition or bylaw not stated above

3. With respect to Land under consideration:

A. Its Area 43,560 square feet, street frontage 217.80 feet  
(1 Acre)

B. District Zone (see Bylaws) Single Residence A

C. Deed Record: Registry of Deeds \_\_\_\_\_

Book 28716 Page 286 (see tax bill)

Or Land Court \_\_\_\_\_

Book \_\_\_\_\_ Certificate \_\_\_\_\_

Map \_\_\_\_\_ Parcel \_\_\_\_\_

4. Ownership

A. Name, Address of Owner(s)  
Lynnfield Center Water District


B. If applicant is not owner, check the interest in the premises, and attach evidence of such interest.

Prospective Buyer: \_\_\_\_\_

Lessee: X Applicant is lessee of Lynnfield Water District

Other (explain) \_\_\_\_\_

5. The undersigned petitioner affirms the foregoing statements are true statements of fact:

Signed  Street and Number Brown Rudnick LLP  
10 Memorial Boulevard  
Town/City Providence State RI Phone No. 401-276-2639  
Assessors Clerk \_\_\_\_\_ Date \_\_\_\_\_

6. A check payable to the Town of Lynnfield shall be delivered to the Board of Appeals, Town Hall, Lynnfield, MA 01940 for the proper amount indicated in the above fee schedule.

7. The Application and fee shall be submitted to the Town Clerk at least four (4) weeks prior to date of the hearing.

8 Public Hearings are normally scheduled for the 1<sup>st</sup> Tuesday of each month

**Petitioner not to write below**

.....  
Petition reviewed by Building Inspector for completeness \_\_\_\_\_

Received and Stamped by Town Clerk \_\_\_\_\_

Entered with the Board of Appeal \_\_\_\_\_

Fees actually paid \$ \_\_\_\_\_

Advertised in \_\_\_\_\_

Parties of interest mailed notices \_\_\_\_\_

Hearing Date \_\_\_\_\_

October 3, 2018

10  
Memorial  
Boulevard  
Providence  
Rhode Island  
02903  
tel 401.276.2600  
fax 401.276.2601

**VIA HAND DELIVERY**

Lynnfield Zoning Board of Appeals  
c/o Winnie Barrasso  
Zoning Board Secretary  
Lynnfield Town Hall  
55 Summer Street  
Lynnfield, MA 01940

**RE: New Cingular Wireless PCS, LLC ("AT&T") – Request for Administrative Site Plan Review of an Eligible Facilities Request to Modify Transmission Equipment on a water standpipe (the "Standpipe") located at Wing Road, Lynnfield MA 01940 (AT&T Site Number MA3378) (Assessor's Parcel Identification 0020-0000-0718), pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act").**

Dear Honorable Members of the Lynnfield Zoning Board of Appeals:

On behalf of AT&T, we are pleased to submit this Eligible Facilities Request to the Town of Lynnfield Zoning Board of Appeals (the "Board") in support of AT&T's request to add, remove, modify and replace Transmission Equipment on the existing Standpipe located at Wing Road, Lynnfield, MA 01803 (Assessor's Parcel Identification 0020-0000-0718) (the "Site"). Capitalized terms not defined herein shall have the same meaning as provided in the Spectrum Act and Regulations (defined below).

As noted on the attached plans (the "Plans"), the Site is owned by the Lynnfield Center Water District and AT&T currently has Transmission Equipment mounted on the Standpipe at the 97' above ground level ("AGL") antenna centerline mark with electronic equipment within an existing equipment shelter near the base of the Standpipe within the existing fenced compound area (the "Facility"). As depicted on the Plans, AT&T is seeking to collocate three (3) additional panel antennas (one (1) per sector) and collocate Transmission Equipment to the Facility.

AT&T's Facility has and continues to comply with all applicable terms and conditions of the Lynnfield Bylaw. As the antennas of the existing Facility are mounted at the 97' AGL antenna centerline mark on the Standpipe, while not exceeding the height of the Standpipe's cap, there are no undue adverse impacts upon historic resources, scenic views, residential property values or man-made resources and the aesthetic qualities of the Town of are preserved. The Facility is passive in nature and does not generate unreasonable noise, odors, smoke, waste, or significant amounts of traffic. This is an unmanned facility and does not have negative effects upon adjoining lots. The Facility has and will continue to comply with all applicable federal, state and local laws, regulations and guidelines, including applicable radio frequency emissions standards. The most recent special permit (the "Decision") issued to AT&T (copy attached) with respect to this Site was issued on June 3, 2009.

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## ELIGIBLE FACILITIES REQUEST

On behalf of AT&T, while reserving all rights, we seek approval of the site modifications as depicted on the Plans as an Eligible Facilities Request. As you know, Section 6409(a) of the "Spectrum Act" (copy attached) mandates that state and local governments "*may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.*" [emphasis added]. Under Section 6409(a)(2)(A)-(C), an Eligible Facilities Request is any request to modify a Tower or Base Station that involves "collocations of new Transmission Equipment," "removal," or "replacement" of Transmission Equipment.

Federal law now preempts many of the permit application requirements that the Town of Lynnfield may previously have required from an applicant and provides for a limited, administrative review of AT&T's Eligible Facilities Request application. This Eligible Facilities Request involves an effort to collocate, remove, modify, or replace Transmission Equipment on and adjacent to an existing Standpipe used by an FCC licensed wireless carrier. The existing Standpipe is an Eligible Support Structure that is supporting wireless Transmission Equipment. AT&T seeks administrative approval for the proposed modifications which is clearly an Eligible Facilities Request which does not substantially change the physical dimensions of the Eligible Support Structure pursuant to Section 6409 of the Spectrum Act. AT&T proposes to: collocate three (3) additional antennas (1 per sector) at the same 97' AGL centerline mounting heights; collocate remote radio units and surge arrestors; and collocate cables, fiber and other Transmission Equipment as illustrated on Plans submitted herewith.

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

As you may know, the FCC adopted a Report and Order, In re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, FCC Docket No. 13-238, Report and Order No. 14-153 (October 17, 2014) Final Rule codified at 47 CFR Parts 1 and 17 promulgating regulations (the "Regulations") interpreting and implementing the provisions of the Spectrum Act, which Regulations became effective on April 8, 2015 (with certain provisions effective on May 18, 2015). The Regulations determined that any



modification to an Eligible Support Structure, in this case the Standpipe, that meets the following six criteria does not substantially change the physical dimensions of the existing Standpipe and, therefore, is an Eligible Facilities Request which must be granted:

1. The modifications to the Transmission Equipment do not increase the height of the Standpipe by more than ten feet (10') or ten percent (10%), whichever is greater.
2. The modifications to the Transmission Equipment do not protrude from the edge of the Standpipe by more than six feet (6').
3. The modifications to the Transmission Equipment do not involve the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four.
4. The modifications to the Transmission Equipment do not entail any excavation or deployment outside of the Site.
5. The modifications to the Transmission Equipment do not defeat any existing concealment elements of the Eligible Support Structure.
6. The modifications to the Transmission Equipment comply with prior conditions of approval of the Base Station, unless the non-compliance is due to an increase in height, increase in width, addition of equipment cabinets, or new excavation that does not exceed the corresponding "substantial change" thresholds in numbers 1-4 above.

As evidenced on the Plans, this Eligible Facilities Request satisfies each of the six review criteria enumerated by the FCC in the Regulations. In accordance with the Spectrum Act and the Regulations, AT&T's proposed modifications will not increase the height of the Eligible Support Structure, in this case the Standpipe, by more than ten feet (10') nor protrude from the edge of the Standpipe by more than six feet (6'). In fact, the proposed modifications will not increase the height of the Standpipe at all. AT&T does not propose excavating outside of the Site and is not adding any additional equipment cabinets. Rather, two cabinets within the equipment shelter will be decommissioned and removed. Lastly, AT&T's modifications do not defeat any concealment elements because the antenna modifications will be located on the Standpipe at the same centerline mounting height as AT&T's existing antennas and will be painted to match the existing antennas. AT&T's modifications to the Transmission Equipment at the Eligible Support Structure contained in this Eligible Facilities Request fully conform to Section 6409(a) of the Spectrum Act.

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



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

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

## CONCLUSION

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

AT&T respectfully requests that the Board approve this Eligible Facilities Request. Please do not hesitate to contact me should there be any questions.

Respectfully,

**BROWN RUDNICK LLP**

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

Edward D. Pare, Jr., Esq.



Lynnfield Zoning Board of Appeals  
October 3, 2018  
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### ATTACHMENTS

1. Application Form and Fee
2. FCC Public Notice and Section 6409
3. FCC Regulations
4. FCC Licenses
5. Sample Letter From Attorney General
6. Letter of Authorization
7. Plans
8. Structural Report
9. Prior Zoning Decision