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Martha's Vineyard Commission
The Stone Building
P.O. Box 1447
33 New York Avenue
Oak Bluffs, MA 02557

Applicant: New Cingular Wireless PCS, LLC ("AT&T")
Property: 14 Sampson Avenue, Edgartown, Massachusetts
Assessor's Map 34 Lot 197 (the "Property")
Property Owner: Robert M. Fynbo

Dear Members of the Martha's Vineyard Commission:

As required, AT&T's application to the Town of the Edgartown Planning Board (the "Planning Board") for a Special Permit to construct, operate and maintain a Personal Wireless Service Facility ("PWSF") on the Property located at 14 Sampson Avenue, Edgartown, Massachusetts (the "Property") has been referred to the Martha's Vineyard Commission (the "Commission") as a Development of Regional Impact. The Property is located within the R-120 Zoning District. The proposed PWSF, including without limitation a 115-foot monopole with antennas and associated radio communications equipment is a permanent solution to address a significant gap in its wireless network coverage in the Chappaquiddick area of Edgartown.¹

I. AT&T's PROPOSED FACILITY DESIGN

AT&T has determined that significant coverage gaps exist in its network encompassing the majority of the Chappaquiddick area of Edgartown as more fully described in the RF report submitted with the application to Planning Board.² The purpose of the PWSF is to address these coverage gaps, referred to hereinafter as the "Targeted Coverage Area."

¹ As the Commission is aware, AT&T's existing temporary facility on the Property is currently providing coverage to its significant gap within the Chappaquiddick area.

² Copies of the Planning Board application and all supporting materials have filed with the Commission and are incorporated as if fully set forth herein.

As shown on the enclosed plans, AT&T proposes to construct, operate and maintain a PWSF consisting principally of the following elements (the "Facility"):³

- A 115 foot high, multi-carrier monopole tower (the "Tower");
- Nine (9) panel antennas (three per sector) mounted on a platform at an antenna centerline of 112 feet; Twenty-one (21) remote radio heads (seven per sector) mounted behind the proposed panel antennas;
- Four (4) surge arrestors mounted to the antenna mounting platform;
- Cables running underground through proposed conduit from the Tower to the existing building;
- Radio communications equipment cabinets located within an existing building;
- One GPS attached to the existing building;
- Two HVAC condensers on a proposed concrete pad located to the rear of the existing building within which AT&T's radio communications equipment cabinets will be located;
- A 100kW shared generator within a 6' high stockade fenced enclosure;⁴
- Two (2) omni, one (1) AF5, and six (6) sector antennas currently operated by MV WiFi, LLC will be relocated from an existing 80 foot guyed tower to the proposed monopole; and
- Space for additional future co-locators.

As part of AT&T's proposal, once the proposed PWSF is constructed and able to provide wireless service to the Targeted Coverage Area, AT&T's existing temporary facility will be decommissioned and removed. In addition, AT&T's proposal includes the removal of the existing 80 foot guyed tower currently utilized by MV WiFi, LLC after the MV WiFi antennas identified above are relocated to the proposed tower.

The proposed PWSF is a permanent solution to address a significant coverage gap in AT&T's wireless network coverage. The PWSF will be an unmanned, passive use, will not generate any excessive noise, dust or odors and will not adversely affect existing developed and natural

³ AT&T reserves the right to change the manufacturer, make, model, type and operating characteristics of the antennas and any other equipment based on availability, price, performance and other considerations and in accordance with all applicable laws.

⁴ AT&T's proposed generator will replace an existing generator already located on the Property.

environments around Chappaquiddick. The PWSF will enable users to access a state-of-the-art, fully digital system for voice communication, messaging, and data transmission and reception.

II. AT&T's NETWORK

AT&T is the premier wireless company in the United States, with more than 107.9 million subscribers who use the nation's fastest 4G network. AT&T is dedicated to providing customers with wireless technology designed to enrich their lives. AT&T continually raises its performance to meet and exceed customer expectations.

AT&T is licensed by the Federal Communications Commission to provide wireless phone service across the country and throughout Massachusetts, including the Town of Edgartown and surrounding communities. Wireless coverage for voice and data is provided by placement of a number of low power antenna sites within a given area. The sites are spaced so that coverage from each location overlaps with its neighboring sites. When a connection is established on a certain site, the wireless device monitors the signal from the serving site, as well as the signal of all the adjacent sites. When the wireless device receives a stronger signal from an adjacent site, it requests a transfer from the site it is currently using to the stronger site. If there is seamless coverage provided by the carrier, the connection will transfer without interruption. If there is insufficient signal strength at the transfer point, the quality of the connection degrades and may ultimately be lost.

III. FEDERAL TELECOMMUNICATIONS ACT

AT&T's application is governed by the provisions of the Federal Telecommunications Act of 1996, which the United States Supreme Court has explained as follows:

Congress enacted the Telecommunications Act of 1996 (TCA)...to promote competition and higher quality in American telecommunications services and to "encourage the rapid deployment of new telecommunications technologies."... One of the means by which it sought to accomplish these goals was reduction of the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. To this end, the TCA amended the Communications Act of 1934 To include § 332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities, ... 47 U.S.C. § 332(c)(7). Under this provision, local governments may not "unreasonably discriminate among providers of functionally equivalent services," § 332(c)(7)(B)(i)(I), take actions that "prohibit or have the effect of prohibiting the provision of personal wireless services," § 332(c)(7)(B)(i)(II), or limit the placement of wireless facilities "on the basis of the environmental effects of radio frequency emissions," § 332(c)(7)(B)(iv). They must act on requests for authorization to locate

wireless facilities "within a reasonable period of time," § 332(c)(7)(B)(ii), and each decision denying such a request must "be in writing and supported by substantial evidence contained in a written record," § 332(c)(7)(B)(iii).

City of Rancho Palos Verdes, Cal. V. Abrams, 544 U.S. 113, 115-116, 125 S.Ct. 1453, 1455-1456 (2005) (internal citations omitted).

The TCA was intended to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies to all Americans. The proposed Facility will help bring advanced and improved wireless telecommunication and information technologies to Edgartown.

IV. COMPLIANCE WITH DRI REVIEW STANDARDS

The commission shall permit the referring agency to grant a development permit for such development only if it finds after such public hearing that:

(a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section fifteen;

As more fully discussed below, the probable benefit from AT&T's proposed development will exceed the probable detriment. The proposed Facility will allow AT&T to provide necessary coverage to areas where AT&T presently has significant gaps in coverage, in furtherance of the goals and requirements of the Telecommunication Act of 1996. As discussed herein and in the Planning Board application incorporated by reference herein, AT&T's proposed Facility will have a positive impact on the general health, safety, welfare and quality of life in Edgartown by providing wireless communications services for the convenience of its residents, business, and visitors, while also providing essential communications services to police, fire, EMT and other emergency services. Moreover, by utilizing the Property, already utilized for wireless communications purposes, the Facility is consistent with the existing use of the Property and within the surrounding neighborhood. (a) minimizes any alleged adverse visual or environmental impacts, (b) preserves the historic, cultural and archeological values of Edgartown, and (c) protects Edgartown's community character.

(b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of the county of Dukes County;

As part of AT&T's proposal, the existing eighty foot tall guyed tower utilized by MV WiFi, LLC, will be removed upon completion of the proposed Facility. In addition, AT&T's temporary PWSF, including the ballast mounted unipole will also be removed upon completion of the proposed Facility. By removing the existing MV WiFi guyed

tower, and replacing it with AT&T's proposed permanent Facility, the number of permanent towers on Chappaquiddick and within Edgartown will remain unchanged.

In addition, AT&T's proposed Facility will address a recognized need for personal wireless services on Chappaquiddick. As a result, AT&T's proposed Facility will have a positive impact on the general health, safety, welfare and quality of life in Edgartown by providing wireless communications services for the convenience of its residents, business, and visitors, while also providing essential communications services to police, fire, EMT and other emergency services. As such, the proposed Facility will allow AT&T to provide necessary coverage while not substantially or unreasonably interfering with the general plans of either the municipality or Dukes County.

(c) the proposed development is consistent with municipal development ordinances and by-laws or, if it is inconsistent the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation; and

As set forth in AT&T's application to the Planning Board, including without limitation, Table of Compliance included therein as Exhibit 2, AT&T's proposed Facility

(d) if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the commission pursuant to section ten; and

The proposed Facility is not located in whole or in party within a designated district of critical planning concern.

(e) a proposed development which does not qualify as a development of regional impact under the standards and criteria approved pursuant to section seven may nevertheless be referred to the commission as a development of regional impact by a municipal agency in the town where the development is located, by the Board of Selectman in any other municipality in the County of Dukes county or by the county commissioners.

Not applicable.

IV. Section 15 Analysis: DRI Benefit vs. Detriment

(a) development at the proposed location is or is not essential or especially appropriate in view of the available alternatives on the island of Martha's Vineyard;

As illustrated on the radio frequency coverage maps enclosed herewith and more fully explained in the radio frequency report, AT&T has a significant gap in coverage throughout Chappaquiddick. The proposed site is essential and appropriate to provide much need coverage to the gap area.

The proposed Facility minimizes any alleged adverse visual impacts to the maximum extent practical. As depicted in the photographic simulations submitted herewith, the Facility is not visible from a number of locations in Chappaquiddick including areas near the beaches and areas along Chappaquiddick Road.

As described in the Alternative Sites Analysis provided by Dan Bilizekian, there are no alternative available and reasonably feasible locations to meet the critical wireless communications services needs in the Chappaquiddick area of Edgartown that would have a lesser overall impact on Edgartown. As discussed herein, included as part of AT&T's proposed Facility is the replacement of the existing MV WiFi tower. As a result, AT&T's proposed Facility will not result in an increase in the number of permanent towers on Chappaquiddick or within Edgartown as a whole. In addition, by utilizing the Property, already utilized for wireless communications purposes, the Facility is consistent with the existing use of the Property and within the surrounding neighborhood.

(b) development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development;

As described in the Alternative Sites Analysis provided by Dan Bilizekian, there are no alternative available and reasonably feasible locations to meet the critical wireless communications services needs in the Chappaquiddick area of Edgartown that would have a lesser overall impact on Edgartown. As discussed herein, included as part of AT&T's proposed Facility is the replacement of the existing MV WiFi tower. As a result, AT&T's proposed Facility will not result in an increase in the number of permanent towers on Chappaquiddick or within Edgartown as a whole. In addition, by utilizing the Property, already utilized for wireless communications purposes, the Facility is consistent with the existing use of the Property and within the surrounding neighborhood.

The proposed Facility minimizes any alleged adverse visual impacts to the maximum extent practical. As depicted in the photographic simulations submitted herewith, the Facility is not visible from a number of locations in Chappaquiddick including areas near the beaches and areas along Chappaquiddick Road.

(c) the proposed development will favorably or adversely affect other persons and property, and if so. Whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed;

The proposed Facility will favorably affect other persons because the Facility will meet the critical wireless communications services needs of Chappaquiddick's residents, businesses, and visitors for personal, business and emergency use.

The proposed Facility minimizes any alleged adverse visual impacts to the maximum extent practical. As depicted in the photographic simulations submitted herewith, the

Facility is not visible from a number of locations in Chappaquiddick including areas near the beaches and areas along Chappaquiddick Road. As discussed herein, included as part of AT&T's proposed Facility is the replacement of the existing MV WiFi tower. As a result, AT&T's proposed Facility will not result in an increase in the number of permanent towers on Chappaquiddick or within Edgartown as a whole. In addition, by utilizing the Property, already utilized for wireless communications purposes, the Facility is consistent with the existing use of the Property and within the surrounding neighborhood. Given the limited visibility of the Facility from locations in and near the neighborhood and overall limited visibility from areas of concern on Chappaquiddick, the Facility no material affect on the neighborhood character, including aesthetics and property values.

Moreover, the Facility is unmanned and will generate only approximately one vehicle trip per month for routine maintenance. Lastly, the use itself is passive, and the proposed Facility will not generate any objectionable noise, vibration, smoke, dust, odors, heat or other effects detrimental to the normal use of adjacent property.

(d) the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents;

The proposed Facility will have no impact on the housing stock of the island.

(e) the proposed development will favorably or adversely affect the provision of municipal services and the burden on taxpayers in making provision there for;

The proposed Facility will be serviced by electric and telephone utilities. The proposed Facility will not impact most municipal services. However, the Facility will have a positive impact on the provision of emergency communications utilized by Edgartown Police, Fire and EMT and other emergency services. Moreover, the proposed will have a beneficial impact on the community by providing wireless communications services to Chappaquiddick's residents, businesses, and visitors for personal, business and emergency use.

(f) the proposed development will use efficiently or burden unduly existing public facilities or those which are to be developed within the succeeding five years;

As stated above, the proposed Facility will be serviced by standard electrical and telephone service so the proposed development will efficiently use existing public facilities to the extent that such facilities apply to the proposed development.

(g) the proposed development will aid or interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan; and

The proposed Facility will not interfere with the ability of the municipality to achieve objectives set forth in the municipal general plan. AT&T's proposed Facility will have a positive impact on the general health, safety, welfare and quality of life in Edgartown by

providing wireless communications services for the convenience of its residents, business, and visitors, while also providing essential communications services to police, fire, EMT and other emergency services.

(h) the proposed development will further contravene land development objectives and policies developed by regional and state agencies.

The Federal Telecommunications Act provides in relevant part that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof B(II) shall not prohibit nor have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. 332(c)(7)(B)(iii). Because AT&T proposes to install, operate, and maintain the proposed Facility within an area determined to have a significant gap in coverage, AT&T is entitled to the protections afforded by this section of the Act.

The Federal Telecommunications Act of 1996 also makes it unlawful for any municipality to impose regulations on the basis of the environmental effects of the radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's regulations concerning such emissions. 47 USC 332(c)(7)(B)(iv). The proposed installation fully complies with those regulations.

AT&T holds licenses from the Federal Communications Commission (FCC) to provide wireless communications services in this area of Massachusetts. AT&T's license, and the statute under which the license was granted, provide that the development of such services is in the public interest. Under the statute, AT&T is required to serve the public, and the terms and conditions of its service are subject to regulation by the FCC. 47 U.S.C. 201(b).

In addition, the Facility will have a positive impact on the provision of emergency communications utilized by Edgartown Police, Fire and EMT and other emergency services. Moreover, the proposed will have a beneficial impact on the community by providing wireless communications services to Chappaquiddick's residents, businesses, and visitors for personal, business and emergency use.

Therefore, AT&T's proposed Facility will not contravene land development objectives and policies developed by regional and state agencies to the extent those are in compliance with Federal law.

V. **CONCLUSION**

AT&T respectfully requests the Commission to approve the project as a Development of Regional Impact.

If we can provide any further information regarding this application, please let us know.

Sincerely,

Dan Bilezikian