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From: Board Of Supervisors
Sent: Monday, June 9, 2025 3:23 PM
To: Agenda Management Support
Subject: Item 10 Comment_Irias, K
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Subject: AGENDA ITEM 10 - 6.9.25 Letter to Board of Supervisors in Support of CTI_Appeal_Bonny Doon

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*This email is sent on behalf of Travis Brooks.
Replies may be directed to Mr. Brooks at Travis.Brooks@msrlegal.com. Thank you.*

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June 9, 2025

Honorable Chair Felipe Hernandez
and Board of Supervisors
County of Santa Cruz
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Re: **Agenda Item 10**
Application Number 221049
Further Correspondence In Support of Appeal of Planning Commission Grant
of Appeal and Denial of Wireless Communications Facility at 186 Summit
Drive (APN 080-062-02)

Dear Honorable Chair Hernandez and Supervisors:

We again write on behalf of CTI Towers, Inc. ("CTI" or the "Applicant") in support of their appeal of the County Planning Commission's February 12, 2025 decision to grant project opponents' appeal of the Zoning Administrator's ("ZA") January 2024 approval of new wireless facility at 186 Summit Drive in the County (the "Project") and deny the Project. As we have already set forth in our detailed February 25, 2025 correspondence, the Commission's decision to deny the Project was a clear legal error and abuse of discretion. The decision would result in the effective prohibition of wireless service in violation of the Federal Telecommunications Act of 1996 (the "Act") and was not supported by substantial evidence. We respectfully request that the board grant this appeal and approve the Project as directed by the County Code the Act.¹

As discussed in detail below and the extensive written materials, testimony, and evidence submitted by the Applicant in the record, the Project is needed to close AT&T's² significant gap in coverage in the vicinity of the Project site. This significant

¹ The Applicant has supported its application in numerous letters to the County Zoning Administrator, Planning Commission, and its February 24, 2025 letter to the Board requesting that it take jurisdiction of this Appeal, which are part of the record. The Applicant hereby reasserts the positions made in those prior correspondences and all of the arguments and evidence it has submitted in support of its application, which is included in the record.

² AT&T is CTI's primary tenant for the Project and is partnering with CTI in this application.

gap has been confirmed with the precise propagation mapping, empirical drive test data, and RF statement and analyses that wireless carriers rely on to design their wireless networks. Federal courts consistently hold that use of these proprietary tools are the appropriate method to determine whether a significant gap in coverage exists. In other words, the tools relied on by AT&T in its application are more accurate than the marketing maps and less precise FCC maps, which are not appropriate for designing wireless networks, that Project opponents continue to reference.³

AT&T has confirmed, after a meaningful comparison of alternative sites, that the Project proposes the least intrusive means of closing AT&T's significant gap in coverage. Based on the record before the Board – including an absence of any showing by the County that an alternative is available, technically feasible, and less intrusive than the proposed facility - the County cannot deny the Project application without violating the Act.

Federal law prohibits the County from requiring AT&T to utilize an alternative technology like small cells or low orbit satellites to close its gap in coverage. If that were not enough, these alternative technologies are either not offered by AT&T or not feasible.

Finally, the generalized comments provided by opponents regarding the Project's impacts to their private views or property values do not constitute substantial evidence sufficient to deny the Project. Even if these comments did provide a conceivable basis to deny the Project under the County Code, the County is preempted by the Act from denying the Project. Based on the record before the Board, such denial would amount to the effective denial of wireless services.

I. The Telecommunications Act Prohibits the County from “Effectively Prohibiting” the Provision of Wireless Services. Denial Of The Appeal And Application Would Result In An Effective Prohibition.

The Act prohibits local agencies from denying wireless facilities in a manner that would “prohibit or have the effect of prohibiting the provision of personal wireless services.” (47 U.S.C. § 332(c)(7)(B).) As relevant here, an unlawful, “effective prohibition” of wireless services occurs where a county denies a wireless facility after the applicant has made a showing that (1) a wireless carrier has identified a significant gap in service coverage, and (2) the manner in which the carrier proposes to fill the significant gap in services is the least intrusive in relation to the local land use values set out in local regulations (*T. Mobile USA, Inc. v. City of Anacortes* 572 F.3d 987, 996 (2009, 9th Circuit).) A significant gap exists “wherever a provider is prevented

³ We note that even the FCC maps cited by the Applicant, which are not appropriate for use in determining gaps in coverage or designing wireless networks, indicate that there is no indoor coverage in the gap area. Providing indoor coverage through a large part of the gap area, including residences, and along Empire Grade, is a critical aspect of AT&T's coverage goals in the gap area.

from filling a significant gap in *its own* service coverage.” (*Metro PCS, Inc. v. City of San Francisco*, 400 F.3d 715, 733 (2005, 9th Circuit.) FCC orders have clarified that whether an unlawful “effective prohibition” has occurred is deferential to the wireless carrier’s coverage goals and preferred methods of improving wireless services.⁴

A. AT&T Has Identified And Certified A Significant Gap In Its Wireless Coverage Using Precise Industry Standard Network Design Tools Accepted By Courts As Appropriate To Identify Coverage Gaps. Neither The Less Precise Marketing Maps Nor FCC Maps Cited By Opponents Refute this.

As noted in detail in AT&T’s Radio Frequency Statement included as part of the record, AT&T has identified a significant service gap in 4G LTE service in an area “roughly bordered by .7 miles north of Empire Grade and Alba Road to the north, Alba Road to the east, Empire Grade and Pine Flat Road to the west, Empire Grade and Pine Flat Road to the south, and ½ mile west of Empire Grade Road to the west.” This area includes large portions of Empire Grade, a well-traveled roadway for vehicles travelling between the Bonny Doon community and population centers to the North and East. The coverage gap area also includes many residences and some commercial businesses.

The Project will improve critical wireless services to the area, which are needed as customers increasingly use mobile phones as their primary communication devices. In fact, the Center for Disease Control and Prevention studies the extent of mobile phone use, and recently found that more than 81% of California adults, and more than 98% of Californians under age 18, rely exclusively or primarily on wireless communications in their homes.⁵ Additionally, customers rely on their mobile phones to do much more than just voice communication, including E911 service, video streaming, GPS, Internet access, and texting. In fact, the Federal Communications

⁴ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, FCC 18-133 (September 27, 2018) (“*Infrastructure Order*”) at ¶¶ 34-42 [Noting that a local government “could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services.”; see also, *In the Matter of California Payphone Association Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997); and also see *City of Portland v. United States*, 969 F.3d 1020, 1034 (9th Cir. 2020), *cert. denied*, *City of Portland v. United States*, 141 S.Ct. 2855 (2021) [9th Circuit upholds FCC’s material inhibition test for effective prohibition claims].

⁵ See *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2019*, available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_202108-508.pdf.

Commission conservatively estimates that 74% of 911 calls are placed by people using wireless phones.⁶

The Project is also part of AT&T's commitment to supporting public safety through its partnership with FirstNet, the federal First Responder Network Authority. Conceived by the *9/11 Commission Report* as necessary for first responder communications, Congress created the federal First Responder Network Authority, which selected AT&T to build and manage FirstNet, the first-ever nationwide first-responder wireless network. The Proposed Facility will provide new service on Band 14, which is the nationwide high-quality spectrum set aside by the U.S. government for public safety. Deployment of FirstNet in the subject area will improve public safety by putting advanced wireless technologies into the hands of public safety agencies and first responders.

The existence of AT&T's significant gap in coverage is evidenced through the use of proprietary wireless system design tools including a RF Statement, propagation maps, drive test results and maps, and AT&T's engineer testimony, which are all included as part of the administrative record. Each of these sophisticated tools show that the Project is necessary to provide and improve AT&T's 4G LTE service coverage in the gap area. These – and not the less accurate marketing maps or FCC coverage maps – cited by Project opponents, have been repeatedly recognized by federal courts as the appropriate method of determining whether a significant gap in wireless coverage exists.⁷ Unlike the inaccurate tools cited by Project opponents, AT&T's precise mapping tools are necessary to take into account terrain, weather, foliage, buildings, and other obstructions to empirically understand the lack of existing coverage.⁸ The proprietary tools relied on by AT&T also provide a detailed analysis of existing indoor, in vehicle, and outdoor coverage, and resulting coverage that would be provided with the Project.

⁶ See *Thirteenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* (Dec. 31, 2021), at 12, available at <https://www.fcc.gov/sites/default/files/13th-annual-911-fee-report-2021.pdf>.

⁷ *L.A. SMSA Ltd. P'ship v. City of L.A.*, Case No. 2:16-cv-04954-FLA, 2021 U.S. Dist. Court C.D. at 8-13 (2021 WL 2741539); *T-Mobile Corp v. City of Huntington Beach*, Case No. CV 10-2835, 2012 U.S. Dist. Court C.D. of CA at 6-13 (2012 WL 4867775) (T-Mobile's web-based coverage maps are not system design tools and the approximate coverage depicted therein should not be relied upon to evaluate coverage gaps in reliable in-building service for purposes of considering an effective prohibition claim); *MetroPCS N.Y., LLC v. Village of E. Hills*, 764 F.Supp.2d 441, 453-54 (E.D.N.Y. 2011); *Extenet Sys., Inc. v. Village of Plandome*, 2021 U.S. E Dist. Ct. of NY at 15-18 (2021 WL 4449453).

⁸ We also note that even the less accurate FCC maps cited by opponents indicate there is no indoor or in vehicle service coverage in the gap area. AT&T's coverage objectives include providing indoor service in the area in the center of the coverage gap area, in vehicle service on portions of Empire Grade road, and at least outdoor level service south towards Conifer Lane. AT&T's RF Statement, propagation maps, and drive test data all clearly indicate a coverage gap.

Reflecting federal law's deference to carriers in their determination whether a significant gap in coverage exists, the County Code defines a significant gap in coverage as "a gap in a wireless provider's own wireless services that is significant as certified by the wireless carrier." (County Code § 13.10.660 (B)(18).) In other words, AT&T - not Project opponents, or the Planning Commission – is the appropriate entity to certify whether AT&T has a significant gap in coverage. AT&T has clearly done so here.

B. Alternatives Analysis

The Applicant demonstrated that there are no less intrusive alternative locations in the vicinity from which it could locate a similar facility to close its significant coverage gap. Federal law prohibits the County from requiring the Applicant to deploy an alternative technology – such as satellite or small cell - to close its gap in coverage. As reflected in the record, none of these alternative technologies are suitable alternatives in any event.

1. AT&T Has Demonstrated There Are No Less Intrusive Locations In The Vicinity To Close Their Significant Gap In Service Coverage.

The Applicant demonstrated that the Project is necessary for AT&T to provide adequate service coverage in the area and that it proposes the least visually intrusive means available to close its gap in coverage. This included a meaningful review of five alternative locations, resulting in a conclusion that none of these were technically feasible and certainly not a less intrusive means of closing AT&T's service gap.⁹

The Commission's denial of the Project was based partly on a faulty conclusion, despite overwhelming evidence to the contrary, that AT&T could close its gap in coverage by somehow locating on an existing HAM radio tower nearby on Patrick Road. This conclusion was directly controverted by the evidence in the record, which confirmed that: (1) it is not likely technically or commercially feasible to locate a wireless facility at the Patrick Road site because the existing HAM radio tower lacks the structural support and other characteristics necessary to install 4G transmission antennas, this means that an entirely new tower would need to be constructed at the location, the commercial and/or structural feasibility of which has not been confirmed; and (2) that because the Patrick Road site is not centrally located in the gap area, is lower in elevation, and characterized by problematic topography and trees in its vicinity, a much higher tower with a center line of 210 feet would be necessary to

⁹ These include (1) an existing 79' pole operated by Crown Castle GT Company at the Crest Ranch Christmas Tree Farm, (2) a proposed 150-foot tall facility at the Ben Lomond Conservation Camp at 13575 Empire Grade Road, (3) a proposed new 150-foot tower at the Bonny Doon Fire and Rescue Station at 7276 Empire Grade Road; and (4) a 150-foot tower at the same site as a recently approved HAM radio tower at Patrick Road. AT&T also inquired about the possibility of locating a facility at a PG&E substation at 333 Robles Drive, however PG&E responded that it would not allow a wireless facility at this property.

close AT&T's significant gap - especially in the southern portion of its coverage gap where many residences are located and south along Empire Grade Road. Neither Project opponents nor the Commission provided evidence contradicting this data provided by CTI and AT&T.

As the visual simulations in the record make clear - even if it were technically feasible to construct a new facility at Patrick Road, the visual impact of a facility there would far more severe than the proposed Project. Visual simulations prepared by the Applicant make clear that a new facility at Patrick Road would be more visually intrusive to nearby residences and – unlike the Project – would be highly visible from Empire Grade Road.¹⁰

Construction of a new facility at Patrick Road would require approval and construction of an entirely new tower, with a height exception under the County Code to 210 feet.¹¹ However, one of the findings required under the Code to approve a height exception at Patrick Road would be a determination that such a facility:

... is located on the least visually obtrusive site and least visually obtrusive portion of the site, where the applicant provides substantial evidence that it chose the best solution for the community after a meaningful comparison of alternative sites and designs, including but not limited to considering less sensitive sites, alternative system designs, alternative tower designs, placement of antennas on existing structures, and other viable, technically feasible, and environmentally (i.e., visually) equivalent or superior potential alternatives.

(County Code § 13.10.660(C)(4) and (G).)

Even if a facility at Patrick Road were somehow technologically feasible – which it is not – the County could not make the above finding to approve a facility at Patrick Road because the proposed Project is located on a less sensitive and superior site and proposes a superior, far more camouflaged design. Unlike the Patrick Road facility, which would need to be constructed at 210 feet to close AT&T's significant gap, the Project would not be visible from any public vantagepoints or roadways.

Thus, as part of CTI's application, AT&T clearly demonstrated that the Project proposes the best available and least intrusive means by which AT&T can close its significant service coverage gap. The Project application materials provided a

¹⁰ Empire Grade Road is designated a scenic resource in the County's General Plan.

¹¹ And as the record reflects, even at 150 feet, a replacement tower at Patrick Road would be more visually intrusive than the proposed tower.

meaningful comparison of alternatives and explained why four other sites in the vicinity, as well as the HAM radio tower on Patrick Road, are either unavailable or unfeasible. Under federal law, the burden shifts to the local government to prove that another alternative is available, technically feasible, and is less intrusive than the proposed facility. The County has not, and cannot do so here, especially with respect to the Patrick Road location. (*T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, at 997-98 (9th Cir. 2009).)

2. The County Cannot Require AT&T To Deploy An Alternative Technology To Close Its Gap In Coverage And Such Alternatives Are Not Technologically Feasible.

Project opponents have repeatedly pointed to satellite or small cell technologies as feasible alternatives to close AT&T's significant gap in coverage.

As an initial matter, it is important to note that a local government may not require deployment of a specific technology – such as small cell or satellite technology as an alternative to that proposed - because the Federal Communications Commission has exclusive authority over technical aspects of wireless communications. *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 105 (2d Cir. 2010) (local government preempted from dictating alternative technology for providing wireless services); *Bennett v. T-Mobile U.S. Inc.*, 597 F.Supp. 2d 1050, 1053 (C.D. Cal. 2008) (FCC has regulated “every technical aspect of radio communication”); *Public Utility Comm'n of Texas Petition for Declaratory ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Opinion and Order, 13 FCC Rcd 3460, ¶¶ 13, 74 (FCC rel. Oct. 1, 1997) (FCC ruled it is unlawful for a state or locality to specify the “means and facilities” through which a service provider must offer services).

Regarding “distributed antenna systems” or “small cells”, this technology is primarily used in dense urban environments where building density is an issue or where small gaps in coverage exist. Small cells are not a replacement for macro sites, which are the fundamental building blocks needed to provide coverage where large gaps exist as in the Bonny Doon area. (See “Strengthening Connections Today, While Building for Tomorrow”, AT&T, included as part of the record). Small cells are characterized by limited lines of sight with signals that quickly dissipate to weak levels in areas with varied topography and dense foliage like Bonny Doon. Reflecting this, AT&T has found that the use of small cells would provide wireless coverage to a significantly smaller population than would be served by the Project.¹² Small cells are not a feasible alternative for AT&T to close its significant gap in coverage.

¹² It should also be noted that the installation of several un-screened small cell facilities along Bonny Doon roadways is arguably at least as visually intrusive, if not more, than the heavily screened and camouflaged Project which is setback from public roadways.

Project opponents have also suggested the use of low orbit satellite technology to close the significant coverage gap. However, AT&T does not offer satellite wireless service and lacks the capability to do so in Bonny Doon. Satellite wireless service is not a feasible alternative for AT&T to close its significant gap in coverage.

Regarding comments that “shared wifi” connections or “wifi” calling can be used to somehow close AT&T’s significant gap in coverage, this wifi technology is entirely different than the 4G communication technology AT&T needs to close its gap in service coverage for. Broadband based wifi calling *does not and cannot* close AT&T’s gap in 4G wireless service.

II. None Of The Project Opponents’ Comments Establish A Lawful Basis To Deny The Project.

As we noted previously, the Applicant’s materials and staff report set forth substantial evidence to support approval of the development permit for a wireless facility, as set forth in County Code, including section 13.10.660(D)(1). Similarly, the Act and the factual record obligate the County to make the findings set out in County Code section 13.10.660(C)(4), and (G) for an exception to height. The Project would not significantly impact any designated visual resources, environmentally sensitive habitat resources and/or other significant County resources, including agricultural, open space, and community character resources.

On the other hand, the only evidence from Project opponents regarding impacts of the Project relate to the generalized concerns by neighbors of the impacts on private views of the camouflaged facility from their homes, surrounding private property, or from Summit Drive - a private roadway. None of these comments indicate there would be visual impacts on public views or designated scenic resources as recognized by the County’s General Plan. Visual simulations prepared by the Applicant confirm the Project *would not* be visible from nearby public and/or scenic roadways or public vantage points in the County.¹³ These general concerns about aesthetics are insufficient as a matter of law to support denial of the Project. Courts within the Ninth Circuit and elsewhere have long agreed that general concerns about aesthetics and property values do not constitute substantial evidence to support denial of a permit to install a wireless telecommunications facility.¹⁴

¹³ The visual simulations provided by the Applicant confirm that at a height of 150 feet, the proposed wireless facility would not be visible from any public vistas, or any public or scenic roadways. This is confirmed in visual simulations from Empire Grade Road, Patrick Road, Highway 9, Flat Pine Road, Highway 236, Highway 17, and Highway 1.

¹⁴ See, e.g., *California RSA No. 4 v. Madera County*, 332 F.Supp.2d 1291, 1308-09 (E.D. Cal. 2003) (generalized expressions of concern regarding aesthetics or the effect on property values fail to meet the substantial evidence threshold under the Act) (citing *Omnipoint Corp. v. Zoning Hearing Bd.*, 181 F.3d 403, 409 (3d Cir.1999); *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d 490 (2nd Cir. 1999)).

Finally, we also note that, even if the County could identify substantial evidence and a code-based reason to disapprove the Project, the County is preempted by the Act from effectively prohibiting wireless services. Based on the record before it, the County cannot deny the Project without violating the Act and effectively prohibiting AT&T from providing wireless services.

III. Conclusion.

The Commission's February 12, 2025 decision was made without the support of substantial evidence, amounted to an error and abuse of discretion, and would constitute an unlawful prohibition of wireless services in violation of the Act. We respectfully request that the Board grant this appeal and approve the Project application.

Very truly yours,

MILLER STARR REGALIA

A handwritten signature in blue ink, appearing to read 'T. Brooks', with a stylized flourish at the end.

Travis Brooks

TZB:kli

cc: Client
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