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February 18, 2024

Via Email To: Peter.Kaljjan@sonoma-county.org

Peter Kaljjan, Project Planner
County of Sonoma
Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: County of Sonoma File Number: UPE22-0051
Conditional Use Permit Application ("**Application**") for 9300 Mill Station Rd., Sebastopol
Vertical Bridge ("**Applicant**")

Dear Mr. Kaljjan:

I am writing to submit additional materials and information in response to the comments and requests made by the Board of Zoning Adjustment ("**BZA**") during the hearing on July 27, 2023. This submission also addresses the public comments provided by members of the community ("**Commenters**") regarding the proposed wireless communication facility at 9300 Mill Station Rd., Sebastopol, in unincorporated Sonoma County ("**Proposed Facility**").

1. Alternative Stealth Design Options

The BZA suggested the exploration of additional stealth design options, particularly emphasizing a faux water tank design in lieu of the faux monopine, which was felt to be less compatible with the surrounding neighborhood's character. In response, the Applicant has developed three new stealth design alternatives for review and consideration:

- a. **Faux Water Tank.** A faux water tank design has been proposed, within which the T-Mobile antennas would be fully concealed, completely hidden from public view. The design also includes space for an additional future carrier, aligning with the guidelines of Sonoma County Municipal Code ("**SCMC**") Section 26-88-130(a)(3)(xii). The structure height of the proposed faux water tank is 70'.

SCMC Sec. 26-88-130(3)(iii) requires that "[f]acility towers, antennas and other structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve

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compatibility with neighboring residences and the character of the community to the extent feasible considering the technological requirements of the proposed telecommunication service.”

The Proposed Facility is located on a parcel zoned Diverse Agriculture (“DA”) and is bounded by parcels zoned DA to the north, east and west, and Rural Residential (“RR”) to the south. The primary purpose of the DA zone is to enhance and protect lands where conditions support an array of farming activities. The primary purpose of the RR zone is to preserve the rural character and amenities in areas best suited for low-density residential development.

Water tanks are a typical structure in rural residential and farming communities, making the faux water tank design a compatible design option for the area. This approach not only meets the requirements of SCMC Sec. 26-88-130(a)(3)(ii) in terms of minimizing visual impact and ensuring community compatibility but also resonates with the architectural style common in rural residential and agricultural settings. The design thoughtfully balances the technological requirements of the wireless communication facility with the rural and agricultural character of the surrounding landscape. See sheet 2 of **Attachment 1 – Site Plans** and **Attachment 2 -Faux Water Tank Photosimulation** for a visual depiction of this design option.

- b. **Faux Windmill.** In addition to the faux water tank, a faux windmill design option has been proposed for the BZA’s consideration. This design involves mounting the antennas to the exterior of the windmill structure. This approach is consistent with authentic windmill structures, where interior antenna integration is not feasible due to the typical lattice tower structure associated with windmills. The design includes space for two additional future carriers. The overall structure height is 77 feet. The increased height compared to the water tank design is necessary to accommodate the 65’ antenna tip height required by the T-Mobile antennas, and to integrate the windmill fan at the top of the structure.

Windmills, like water tanks, are commonly found in rural residential and farming communities and are frequently used as antenna support structures. The proposed faux windmill has been designed to harmonize with the rural and agricultural character of the surrounding neighborhood, ensuring visual compatibility. For a visual representation of this design option, please refer to sheet 1 of **Attachment 1 – Site Plans** and **Attachment 3 - Faux Windmill Photosimulation**.

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- c. **Faux Monoecalyptus.** In addition to the above, a faux monoecalyptus has been proposed. We acknowledge the BZA's concerns with the compatibility of the faux monopine, and therefore have proposed a faux eucalyptus tree given its commonality in similar northern California landscapes. The design includes space for two additional future collocators. The overall structure height is 70 feet.

The proposed site and its neighboring area feature a diverse array of trees, varying both in type and height, which creates a natural setting suitable for the faux monoecalyptus. As Kevin Sullivan highlighted during the BZA hearing on July 27th, 2023, and shown on the survey data in the drawings on file with the County, there is a distinctive row of tall trees along the property's southern boundary, with heights ranging approximately from 70 to 90 feet, providing a natural landscape buffer to the rural residential neighborhood to the south. Additionally, there is an oak tree, 55 feet tall, on the northeastern side of the leased area, which will be preserved. The Proposed Facility is planned to be located in an area surrounded by apple trees of varying heights.

The provided drone footage further illustrates the area's diverse tree canopy, showcasing its variety in height, type, and density. This diverse arboreal environment underscores the suitability of the faux monoecalyptus design, as it would reasonably integrate into the existing natural setting. For a visual representation of this design option, please refer to sheet 3 of **Attachment 1 – Site Plans** and **Attachment 4 – Monoecalyptus Photosimulation**.

For all proposed design options, space for future collocation has been provided, thereby reducing the need for additional new freestanding structures to be built in the vicinity by offering a single support structure capable of housing multiple wireless service providers. Importantly, SCMC Sec. 26-88-130(a)(3)(iii) recognizes the constraints of the technical requirements of a proposed wireless communication facility. Given these constraints, there are limited stealth design options that can be proposed that meet both the technical requirements of the facility and that are compatible with the surrounding neighborhood character. To date, the Applicant has agreed to reduce the original Proposed Facility height by 10 feet and has proposed five different design options, including those included with this letter, demonstrating an earnest effort to comply with the intent of the design criteria for a new intermediate freestanding commercial telecommunication facility.

Finally, as noted in the plan views in Applicant's resubmittal materials (**Attachment 1 – Site Plans**), each of the alternative stealth designs will maintain a setback from the nearest property line greater than the facility's height, exceeding the County's code requirements.

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2. Ground Level Screening

To further reduce visual impact, the Applicant has proposed additional screening elements to further screen the ground equipment from view. The ground equipment will be enclosed within an 8-foot high chain-link fence screened with green privacy slats. Additionally, the planting of native landscaping around the perimeter of the fenced lease area is proposed to enhance integration of the facility with the surrounding natural landscape. See **Attachment 1 – Site Plans**.

3. Visual Analysis & Private Views

The BZA requested a drone assessment to evaluate the impact of the Proposed Facility on private views. In response, the Applicant conducted drone footage, assessing structure heights of 70' and 79' from the subject property.¹ This footage, offering a 360-degree panoramic view from the proposed site's location, reveals that fewer than ten houses are within visible range, indicating minimal visibility of the Proposed Facility to surrounding properties. Moreover, the Applicant has introduced three new design options, all featuring stealth elements designed to either significantly reduce or entirely obscure the facility from view, thus substantially minimizing aesthetic impacts. The panoramic footage also illustrates the varied tree canopy surrounding the site, marked by differences in height, type, and density, which provide a substantial natural and varied backdrop for the Proposed Facility. The drone footage has been submitted electronically, accompanying this letter.

Notably, the County Code does not require applicants to evaluate views from private properties, focusing instead on public viewpoints. Specifically, there is no stipulation within the code that mandates an assessment of views from private properties. The County's Visual Assessment Guidelines, primarily used for the evaluation of visual impacts in the development of Initial Studies and Environmental Impact Reports, provide direction in this area. Although the proposed project is exempt from CEQA, these guidelines offer objective standards and general guidance for assessing visual impacts in the absence of directly applicable standards. According to these guidelines, the analysis of project impacts should focus on **public viewing points**, such as from public roads, trails, and parks, to determine where a project would be most visible to the general public.

¹ The faux water tank and monoecalyptus designs are 70 feet in height, while the faux windmill stands at 77 feet. Drone assessments were conducted at 70 and 79 feet to account for potential height variations as the design drawings were concurrently developed.

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4. Property Values

A number of Commenters have raised concerns about the potential impact of the Proposed Facility on property values.

With regard to visual impact, the Applicant has already agreed to reduce the height of the Proposed Facility to 70 feet, marking a 12.5% reduction from the originally proposed 80 feet. Additionally, three new stealth design options have been introduced, each redesigned for enhanced compatibility with neighboring residences and the overall character of the surrounding neighborhood. These designs reflect the Applicant's earnest efforts to integrate the facility seamlessly within the community, addressing any aesthetic concerns that could be seen to indirectly influence perceptions of property value. By reducing the facility's height and implementing stealth design options, the facility's visual impact is minimized to the greatest extent technically feasible.

Moreover:

- Concern over a decrease in property values may not be considered as reason to deny or condition a wireless facility if the fear of property value depreciation is based on concern over the health effects caused by RF emissions. *AT&T Wireless Services v. City of Carlsbad*, 308 F.Supp.2d 1148 (S.D.Cal. 2003).
- The authorities typically cited for up to a 20% decrease in property values as alleged in public comments are based largely on a 2003 study by Sandy Bond, PhD (published in 2005), which has since been discredited² and the purpose of which was to evaluate property value impacts due to concerns about health effects. Sandy Bond herself was unable to replicate the results of her New Zealand study in a 2004 study in Florida, which found only a *de minimus* (approximately 2%) variation in property values.³
- Public comments also refer to a 2014 survey by the National Institute for Science, Law and Public Policy, which suggested that a high percentage of respondents believed that a cell tower would impact property values. This survey was far from a scientific study, and similar to the Bond study, its results are tied to perceived health effects. The sample used was self-selected through circulation of the survey through social media and email,

² See discussion by Dr. Jonathan L. Kramer, Esq., a telecommunications advisor to the League of California Cities and many California municipalities at: <https://jonathankramer.com/?s=sandy+bond>

³ Sandy Bond, PhD, "The Effect of Distance to Cell Phone Towers on House Prices in Florida" *The Appraisal Journal* (Fall 2007).

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and the bias of the respondents is obvious when you consider that a high percentage of respondents also believed that they had suffered physical (63%) or cognitive (57%) effects from radiation.⁴

- In contrast, potential impacts to property values are often found to be insignificant. A 2021 analysis found no statistically significant impacts of cell towers on residential property values in California. See: <https://haus.com/resources/the-impact-of-cell-tower-construction-on-residential-property-values>
- Finally, with so few homeowners retaining a landline phone (as of 2022, 72.6% of adults and 81.9% of children lived in wireless-only households⁵), good wireless service is *critical* to home value.

It is thus clear that concerns related to property values, when indirectly linked to RF emissions, cannot serve as a legitimate basis for State or local decision-making under federal law. This underscores the importance of focusing on the broader benefits that the Proposed Facility brings to the community. Enhancing connectivity not only drives economic value but also significantly improves public safety, offering a net benefit to the local community.

5. Arborist Report

At the request of the BZA, the Applicant completed an arborist report and tree protection plan to provide an inventory of all trees within the project area, to assess the current condition of trees, and to establish a tree protection plan based on the findings. The full report is contained in **Attachment 5 – Arborist Report**.

Trees were assessed within the planned project area, comprising three (3) distinct species. One (1) tree is a native oak species, one species is a native willow, and the remaining trees are non-native edible apple species. The most common species are the orchard apples (*Malus domestica*), followed by arroyo willows (*Salix lasiolepis*), and one valley oak (*Quercus lobata*). Only one (1) tree, the valley oak, is considered a protected tree. Removal of seventeen (17) apple trees and approximately twelve (12) willow stems within the disturbance limits of the planned project will be necessary.

The Applicant will adhere to the tree preservation guidelines outlined in the arborist report to minimize impacts to onsite trees. A tree inventory, and summary of existing tree conditions

⁴ <https://electromagnetichealth.org/electromagnetic-health-blog/survey-property-desirability/>

⁵ *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December (2022)*, available at: <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202305.pdf>

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and protection/removal status is provided on page 9 of the report. The proposed tree removal has been reflected in the attached photo simulations as requested by the BZA.

6. Multiple Smaller Facilities

In response to the BZA's suggestion to consider redesigning the Proposed Facility into multiple smaller facilities, we ask that you consider the County's criteria for telecommunication facilities, which require an applicant to explore alternative "plans" for meeting a coverage objective, including "number of towers" **only when** a proposed facility is a "major freestanding facility[y] in all districts [or an] intermediate freestanding facilit[y] in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation." SCMC 26-30-120(a)(3)(xiv)(E,F,G).

In contrast, for the Applicant's Proposed Facility, an "intermediate" facility in the DA zone, the relevant criterion is only whether the proposed site "results in fewer or less severe environmental impacts than any feasible alternative site," **singular**. SCMC 26-30-120(a)(2)(v).

The code reveals that the County made a policy decision to only require a comparison with a multiple-facility service plan when an applicant proposed a tower of greater impact (by size or location in certain zones) than as proposed by the Applicant here.

Furthermore, the implications of such a design change are varied and result in greater impacts elsewhere (by definition, the change results in additional new towers). The current design of the Proposed Facility is designed to be the minimum height necessary for T-Mobile to achieve its coverage objectives in the area. Furthermore, the facility is designed and engineered to accommodate additional future collocators, aligning with the code's encouragement for collocation (SCMC 26-88-130(a)(3)(xiii)). Additionally, the code expressly permits intermediate facilities in the DA zoning district, subject to a Conditional Use Permit.

Constructing multiple smaller facilities, as opposed to a single consolidated structure, would hinder the possibility of collocation for other wireless providers. This approach makes the construction of additional free-standing facilities in the area far more likely by other providers looking to provide service coverage to this same area of the County. Such an outcome would be contrary to the spirit and intent of the County's regulations, which favor consolidated facilities capable of accommodating multiple providers.

Further, based on **Attachment 6 - Coverage Objective and Engineering Justification**, provided by T-Mobile's Radio-Frequency Engineering Manager, a shorter facility (50' or 40') at the subject location makes it more likely that additional towers would need to be built in the

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adjacent **RR zones** (both by T-Mobile and other providers) to address the coverage gaps outside the coverage area of a shorter facility. Facilities in RR zones are discouraged pursuant to the guidelines in SCMC 26-30-120(a)(3)(xiv). Requesting a shorter facility in a zone where intermediate facilities are preferred under the Code, that result in more towers in discouraged zones is contrary to the Code's guidance.

Notably, the average antenna tip height of a T-Mobile facility in rural areas of Sonoma County nearby the proposed facility is 68', which is higher than the 65' antenna tip height proposed here. A 70' tower is not out of character with towers that have been built throughout the County, subject to the same siting criteria.

Even if the considerations of this matter were governed by the criteria outlined in the aforementioned Code section, federal law restricts the County's ability to regulate technology in this manner. Any attempt to dictate the technological methods or design of equipment used by a wireless service provider constitutes a violation of federal law. *See New York SMSA LP v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. 2010), which holds that local governments are preempted from regulating or dictating a provider's choice of wireless technologies or equipment design.

7. Emergency Backup Generator

The BZA raised concerns regarding the inclusion of a 48KW generator with a 240-gallon diesel fuel tank in the project. This generator was proposed to ensure uninterrupted service by providing backup emergency power during power outages, an essential feature for maintaining communication in emergency situations and was designed to comply with applicable County standards. While recognizing the importance of such backup power systems, the Applicant nonetheless has agreed to remove the generator from the proposal in this specific circumstance, responding to the concerns raised.

8. Compliance with Sonoma County Municipal Code & County Broadband Goals

The application meets all siting and design criteria for a new freestanding intermediate commercial facility in the DA district:

- **Stealth Design:** Three new stealth design options have been provided to ensure aesthetic integration into the surrounding environment: (1) faux water tank, (2) faux windmill, and (3) monoecalyptus.

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- **Siting Criteria:** The facility is sited within a preferred zoning district. Additionally, the Applicant has confirmed and demonstrated the absence of any feasible collocation opportunities within, or just outside the search radius.
- **Structure Height:** The proposed heights are 70 feet for both the faux water tank and monoecalyptus, and 77 feet for the faux windmill. All proposed heights are well below the maximum 130' height allowance for intermediate facilities.
- **Setback:** Each proposed stealth design ensures a setback from the nearest property line greater than the facility's height, thereby surpassing the County's code requirements for setbacks.

With the details outlined in the Application and the provided supplemental materials, the Proposed Facility is confirmed to be in full compliance with the County's siting and design criteria for this facility type.

Additionally, the mission of Access Sonoma Broadband, formed by the Sonoma County Economic Development Board, is to "close the digital divide, by connecting Sonoma County's unserved and underserved communities to fast, affordable, and reliable internet services."⁶ The proposed project supports and acts to further this mission by expanding the infrastructure necessary to support high-speed broadband access, including T-Mobile's Home Internet Service, enhancing connectivity in areas currently lacking sufficient service and supporting the County's broader broadband objectives.

9. Significant Gap in Coverage

Vertical Bridge is proposing to construct the Proposed Facility for the future collocation of multiple carriers. T-Mobile is the anchor tenant, proposing to collocate its equipment at a minimum 65' tip height elevation on the new structure.⁷ This proposed antenna tip height at 65' meets T-Mobile's coverage objectives providing in-building 4G and 5G wireless coverage within a rural area northwest of Sebastopol, in the vicinity of Mill Station Road & Ferguson Road, and surrounding residential areas presently not adequately served by T-Mobile's

⁶ Access Sonoma Broadband Action Plan: https://sonomaedb.org/Microsites/Economic_Development_Board/Documents/Broadband/06_08_21_EDB_Access_Sonoma_Plan_ENGLISH_ADA.pdf

⁷ Sonoma County is currently considering several different stealth design options for Vertical Bridge's proposed tower. T-Mobile requires a minimum of 65' antenna tip height to meet T-Mobile's engineering objectives, but the height of the overall structure may fluctuate based on the stealth design options Vertical Bridge has presented to the County for approval.

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network. This includes an area north of (and including) Occidental Road and areas outside the reach of adjacent T-Mobile facilities. This facility will allow T-Mobile to provide more reliable wireless service 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. T-Mobile is also providing new Home Internet Services which converts 5G into Wi-Fi, allowing customers to access high-speed broadband services wirelessly and enhances the availability and reliability of Home Internet Services in Sonoma County. Home Internet Services requires reliable in-building signal levels.

As stated previously, T-Mobile has already agreed to reduce the required height by 10'. T-Mobile originally requested an antenna tip height of 75' (overall monopine structure height is 80') to meet the service requirements for the proposed facility. T-Mobile has agreed to proceed with the requested antenna tip height of 65 ft (70' overall structure height) which is the minimum height necessary where a T-Mobile wireless device can reliably be used to make and receive telephone calls and use data service in the presence of varying signals within the intended service area. Reliable service coverage will be provided to 994 of Pops⁸ in the community with the proposed service enhancements at the 65' antenna tip height. See **Figure B of Attachment 6 – Coverage Objective and Engineering Justification**.

The BZA requested that further height reductions be analyzed. A comparison of the coverage that would be provided from the Proposed Facility with a 65' antenna tip height (70' structure height) and a facility with 45' antenna tip height (50' structure height) can be found in **Figure C of Attachment 6 – Coverage Objective and Engineering Justification**. A facility at this facility at this height would result in a 43% reduction (-428) in Pops covered compared to the proposed tower height. T-Mobile estimates that such a reduction would likely require additional towers to be built at a similar height, in adjacent RR zones, to address the loss in Pops covered. This does not include towers that may need to be built for other carriers due to lack of collocation options presented by shorter towers.

An additional analysis was done, comparing the coverage provided by the Proposed Facility with a 65' antenna tip height (70' structure height) and a facility with a 35' antenna tip height (40' structure height). A facility at this height would result in a 56% reduction (-557) in Pops covered compared to the proposed tower height. See **Figure D of Attachment 6 – Coverage Objective and Engineering Justification**. Similarly, additional towers would likely need to be built in the adjacent RR zones to address the reduction in Pops covered.

⁸ Pops refers to population numbers based on 2020 census data.

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As demonstrated in T-Mobile's Coverage Objective and Engineering Justification, and as affirmed in **Attachment 7 - Declaration of Chris Cubanske, T-Mobile**; T-Mobile has a significant gap in coverage in the vicinity of the Proposed Facility and has demonstrated its need to improve wireless services by improving its existing wireless network in the desired service area. The proposed antenna tip height of 65' (70' structure height) is the minimum height necessary for T-Mobile to fulfill this technical service objective. Requiring further reductions in the desired antenna height would materially inhibit T-Mobile's ability to provide high quality, reliable in-building service, including T-Mobile's new Home Internet Service, contrary to federal law.

The County may not impose conditions on T-Mobile for what level of service, or signal strength, that is designed for this facility, or services provided to the community. The introduction of T-Mobile's Home Internet Service requires in-building signal levels and will not work effectively with in-vehicle or outdoor signal strength.

10. Alternative Sites

The Proposed Facility is a freestanding intermediate commercial facility proposed in the DA-Diverse Agriculture zoning district, with a DA land use designation. Sec. 26-88-130(a)(2)(v) requires that approval of all commercial facilities is subject to the decision-making body finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative sites.

The Proposed Facility is Categorically Exempt (Class 3) from the provisions of CEQA, affirming that the project is considered not to have significant environmental impacts. To further mitigate visual impacts, three new stealth design options have been developed for BZA review. Each design is tailored to blend with the agricultural and rural residential character of the area, enhancing compatibility with the local landscape.

As detailed in the Colocation Viability Report on file with the County, there are no existing buildings within the search area capable of providing the necessary structure height for the Proposed Facility. This is due to the area being primarily comprised of rural residential single-family homes and open agricultural land. As a result, it was determined that an attached facility would not be a feasible alternative for this search ring.

As detailed in the Colocation Viability Report on file and in **Figure E – Attachment 6 - Coverage Objective and Engineering Justification**, there are no existing towers within the search radius. All existing towers located outside of the search radius are at or near existing T-Mobile antennas facilities and would not meet the service objectives of the Proposed Facility. As a

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result, it was determined that collocating on an existing facility or structure was not a feasible alternative for this search ring.

These evaluations demonstrate that the Proposed Facility represents the most environmentally considerate and feasible option for meeting T-Mobile's coverage objective, thereby fulfilling the criteria for resulting in fewer or less severe environmental impacts compared to any other feasible alternative site.

An alternative sites analysis meeting the criteria of SCMC Sec. 26-88-130(a)(3)(xiv) is not required for an intermediate freestanding facility in the DA zone with a DA land use designation.⁹ Despite not being required, the Applicant provided an analysis of other sites considered for the construction of a new freestanding facility, as part of the application which is on file with the County. All of the parcels within and just outside the defined the search area are all zoned DA- Diverse Agriculture and RR – Rural Residential.

Three additional parcels were assessed as potential locations that could potentially meet T-Mobile's service objective, all three parcels are located in the DA zoning district. None of the alternative locations were feasible. One parcel was deemed infeasible due to space constraints of available land on the parcel, and the other two property owners were unresponsive to the Applicant's inquiries. Parcels within and just outside the search area that are zoned RR were not pursued as they are considered less preferred under the County's regulations for the siting of a new intermediate facility.

A new freestanding facility on any other parcel zoned DA would be considered an equal siting preference under the code as the subject property; therefore, there is no alternative location within the defined search area for a new freestanding facility that would be more preferred or less intrusive under the County's code criteria.

Furthermore, there has been no evidence introduced in the record for any an alternative location in the defined search area that is: (a) available to the Applicant, (b) technologically feasible to provide service in the significant gap in coverage, and (c) less intrusive than the Applicant's Proposed Facility.

11. Federal Law

⁹ An alternatives analysis is required for major freestanding facilities in all districts and for intermediate freestanding facilities in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation. SCMC Sec. 26-88-130(a)(3)(xiv).

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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.

- a. **Local jurisdictions may not materially limit or inhibit.** 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). According to the Federal Communications Commission (“FCC”) Order adopted in September 2018,¹⁰ a local jurisdiction’s action has the effect of prohibiting the provision of wireless services when it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”¹¹ Under the FCC Order, an applicant need not prove it has a significant gap in coverage; it may demonstrate the need for a new wireless facility in terms of adding capacity, introducing new services, updating new technologies, and/or maintaining high quality service.¹²

While an applicant is no longer required to show a significant gap in service coverage, 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).

- **Significant Gap.** 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 now recognize that a “significant gap” can exist based on inadequate in-building coverage. See, e.g., *T-Mobile Central, LLC v. Unified Government of Wyandotte County/Kansas City*, 528 F. Supp. 2d 1128, 1168-69 (D.Kan. 2007), *affirmed in part*, 546 F.3d 1299 (10th Cir. 2008); *MetroPCS, Inc. v. City and County of San Francisco*, 2006 WL 1699580, *10-11 (N.D. Cal. 2006).

¹⁰ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018), *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) (“FCC Order”).

¹¹ *Id.* at ¶ 35.

¹² *Id.* at ¶¶ 34-42.

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- **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 (9th Cir. 2005). These values are reflected by the local code’s preferences and siting requirements.
- b. **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). The Applicant has included with this application a report prepared by Hammett & Edison demonstrating that the proposed facility will operate in accordance with the Federal Communications Commission’s RF emissions regulations. See **Attachment 8—EME 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.
- c. **No discrimination amongst providers.** Local jurisdiction also 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.
- d. **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.* According to the Shot Clock rule for “macro” wireless facilities, a reasonable period of time for local government to act on all relevant applications is 90 days for a collocation, with “collocation”¹³ defined to include an attachment to any existing structure regardless of whether it already supports wireless, and 150 days for a new structure. Pursuant to federal law, the reasonable time period for review of this application is 150 days. Currently, the Applicant and the County have mutually agreed to toll the Shot Clock up to and including April 30, 2024.

12. Conclusion


¹³ 47 C.F.R. § 1.6002(g).

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In closing, we wish to reiterate our commitment to responsibly addressing the concerns of the BZA, the local community, and other stakeholders while fulfilling the technical service requirements necessary for improving wireless coverage in the area and fulfilling a significant gap in T-Mobile's service coverage. The comprehensive analysis provided, along with the proactive measures proposed to further mitigate visual impacts, demonstrate the Applicant's earnest effort to integrate the Proposed Facility into the community in the least intrusive way feasible.

We appreciate the opportunity to present this additional information and respectfully request that the Application be approved with the conditions recommended by Staff.

Sincerely,

DocuSigned by:

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Ariel Rubin, P.E.
Vice President of Tower Development
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487



Enclosures: Attachment 1 – Site Plans
Attachment 2 – Faux Water Tank Photosimulations
Attachment 3 – Faux Windmill Photosimulations
Attachment 4 – Monoeucalyptus Photosimulations
Attachment 5 – Arborist Report
Attachment 6 – Coverage Objective & Engineering Justification
Attachment 7 – Declaration of Chris Cubanske, T-Mobile
Attachment 8 – EME Report
Electronic Submission: Drone footage at heights of 70' and 79'

CC: Scott Orr, Deputy Director of Planning, County of Sonoma
Vanessa Meyer-Crooks, Project Manager, T-Mobile
Chris Cubanske, RF Engineer, T-Mobile
Hannah Borris, Vice President, Land Use, Wireless Policy Group