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Via E-mail [angela.calvillo@sfgov.org]

Angela Calvillo
Clerk of Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: New Cingular Wireless PCS, LLC, CUP No. 2012.0059C
431 Balboa Street (Site)

Dear President Chiu, Board Supervisors Mar, Farrell, Tang, Breed, Kim, Yee, Wiener, Campos, Cohen, and Avalos:

I write in response to the appeal by John Umekubo (Appellant) to the Planning Commission's September 18, 2014 unanimous approval of AT&T's CUP application No. 2012.0059C (Application). Appellant appeals the approval of AT&T's proposed rooftop installation stating that he objects "to the placement of nine antennas on a mixed use building in a residential neighborhood." Appellant does not provide any specific reasons in support of his appeal beyond that he objects to the proposed location. As explained below, the Site is a preferred location under Section 8.1 of the Planning Department's WTS Facilities Siting Guidelines, and the mere fact that Appellant would prefer that it not be located in his neighborhood does not support reversal of the Planning Commission approval, which would violate federal law. AT&T respectfully urges the Board to uphold the Planning Commission approval of this Site and deny the appeal.

I. Project description

The proposed facility includes the installation of nine roof-mounted screened antennas that will be located in three sectors. Sector A will feature three roof-mounted panel antennas located behind a faux extension of the parapet along the building's frontage along Balboa Street. The existing parapet, which rises approximately two feet above the 33-foot tall roof will be replaced and rise seven feet above the roof. Sector B will be composed of three panel antennas screened from view within elements intended to mimic 20-inch diameter vent pipes. The vent pipes will be mounted along the western edge of the building roof and set back approximately nine feet from the primary frontage.

The vent pipes will rise approximately seven feet above the roof. Sector C will feature three panel antennas housed within a faux mechanical penthouse near the rear of the roof. The screening will mimic wood lattice screening and will measure 12' wide, by 12' deep, by 7' high. The screening material used for the faux elements is fibre-reinforced plastic (FRP), which allows for the screening of panel antennas while still allowing radio waves to pass through.

The electronic equipment necessary to run the facility on the roof will be placed in two locations. A portion of the equipment will be located on the roof at locations (height and setback from roof edges) that are not visible from adjacent public rights-of-way. The relatively larger equipment cabinets will be located within an approximately 35 square-foot area on the first floor. Battery back-up cabinets, which provide backup power in the event of a power outage or disaster, will be located in this room.

Mounting the antennas on the roof as proposed would provide the height necessary for required signal propagation while not detracting from the existing architecture of the subject building and overall neighborhood environment. Moreover, although not a part of the proposed project, once the facility is constructed at the Site, AT&T will remove an existing micro WTS facility, featuring two small façade-mounted "chicklet" antennas (each approximately the size of a three-ring binder), which is located approximately 180 feet away from the Site at 500 Balboa Street.

II. The Site is necessary to close a significant service coverage gap

As AT&T's radio frequency expert explains in the statement attached to AT&T's Application (included in the record), AT&T has an existing capacity gap in the area for wireless services. The improved signal quality and capacity for the proposed geographic service area is shown on the coverage maps in Attachment A to the statement. Specifically, the Planning Commission's approval of the permit is supported by evidence that during periods of high data usage, AT&T's network experiences a significant service coverage gap in the area roughly bordered by Anza, 3rd Avenue, Cabrillo Street and 8th Avenue. This gap area is significant because it is within the neighborhood commercial, residential, and transit corridor of the Inner Richmond neighborhood. The gap area consists of a busy neighborhood commercial and residential corridor, which is filled with single-family homes and small scale apartment buildings, restaurants, recreational parks, and offices for businesses, as well as transit corridors and public transportation routes, which all require service improvement from AT&T.

On August 12, 2014, the city's independent consultant, registered professional engineer William Hammett of Hammett & Edison, Inc., issued his certified report (included in the record). This report summarizes the expert's concurrence with AT&T's significant gap information and conclusions. There is no basis for the Board to conclude that the Site is not necessary to close this significant service coverage gap.

III. The Site is the least intrusive means to close the gap

The Planning Department's Wireless Guidelines list the Site as a Preference 5 Preferred Site, in that the building is mixed-use with commercial (Sushi Bistro restaurant) on the ground floor and two residential units on the upper floor. The Site is located within the NC-2 (Neighborhood Commercial, small scale). The uses in the search ring area vary from residential, wholly commercial, and mixed-use. As a Preference 5 Preferred Location, with an architecturally compatible design, the Site is the least intrusive means by which AT&T can close the existing significant service coverage gap.

AT&T worked hard to identify the least intrusive means to close this significant service coverage gap. Per the March 13, 2003 Supplement to the WTS Guidelines, AT&T provided an alternative site analysis evaluating *58* sites in the area (included in the record). AT&T also held a community outreach meeting to meet with nearby residents to answer their questions and to consider their thoughts and suggestions for the Site. In this way, AT&T made sure to select the least intrusive means to close its coverage gap.

IV. Federal law requires affirming the Planning Commission's approval

The Telecommunications Act of 1996 (Act) preempts the city from taking action that would prohibit or have the effect of prohibiting a wireless carrier from providing personal wireless services. *See* 47 U.S.C. § 332(c)(7)(B)(i)(II). The Act allows a wireless carrier to bring an "effective prohibition" claim in federal court, and the appropriate remedy is a court order requiring the city to issue the requested permit and all applicable approvals.

To make a claim for effective prohibition, a wireless carrier needs to show that it has a significant gap in service coverage and that it proposes to close the gap by the least intrusive means. As summarized above, AT&T has shown that it has a significant gap in service coverage in the vicinity of the Site, and that the proposed facility aims to close the coverage gap by the least intrusive means. What qualifies as least intrusive means for this federal claim is based on the City Code. The question that a federal court would consider if called upon is whether the denial is consistent with the values expressed in the local government's code. AT&T's extensive analysis of alternative sites, which is a code-based evaluation of available locations from which AT&T feasibly can propagate a signal to close its coverage gap, illustrates that there is no other available location from which AT&T feasibly can close its coverage gap by a less intrusive means. The Board, consequently, should affirm the Planning Commission's approval, as doing so is consistent with federal law and is supported by ample substantial evidence.

Conclusion

Appellant has not raised any clear challenge to the need or appropriateness of AT&T's proposed facility at 431 Balboa Street. There is no basis or indication of a problem with Planning Commission's unanimous approval. In sum, AT&T has shown that there is a capacity gap in the area that causes a significant service coverage gap in its personal wireless services. AT&T's RF statement and propagation maps support this gap,

and its conclusions were confirmed by the independent consultant. Consequently, there is no basis for the Board to conclude that the Site is not necessary to close this significant service coverage gap. As demonstrated in its application and the alternative site analysis, the Site is the least intrusive means by which to close this gap. The Site is fully consistent with city land-use regulations and the WTS guidelines. It is also in compliance with the relevant code provisions, and will comply with all applicable code provisions, including building code and fire code. For the foregoing reasons, I urge the Board to affirm the Planning Commission's decision approving Conditional Use Permit No. 2012.0059C and to deny the appeal.

Very truly yours,

/s/ John di Bene

John di Bene