Appeal and Protest of application approvals:

- AT&T Small Cell LDRAH-005A –5770 Uplander Way, U19-044;
- AT&T Small Cell LDRAH-001A –5839 Green Valley Circle, U19-0439;
- AT&T Small Cell LDRAH-004A –6174 Buckingham Parkway, U19-0443.

February 15, 2022,

Dear City Council members and staff:

Since I was unable to find a form for an appeal on the city website, I am submitting this document as notice of appeal and protest of the approval of the Small Cell Wireless Facility applications:

AT&T Small Cell LDRAH-005A –5770 Uplander Way, U19-0441.
AT&T Small Cell LDRAH-001A –5839 Green Valley Circle, U19-0439
AT&T Small Cell LDRAH-004A –6174 Buckingham Parkway, U19-0443

Please enter this PDF document into the public record.

Grounds for an appeal and protest include and are not limited to:

Error in fact and dispute of findings that the above-reference wireless facilities are not detrimental to the public health, safety and welfare; these facilities meet applicable requirements and standards of state and federal law; sufficient probative evidence provided by the applicant to determine whether the information submitted in the application is true and correct.

D.C. Circuit Court of Appeals in its unanimous 8/9/2019 ruling in case No.18-1129, vacated the portion of Federal Communications Commission (FCC) Order 18-30 that exempted "small" cells from environmental review under the National Environmental Policy Act (NEPA) and historic-preservation review under the National Historic Preservation Act (NHPA), and remanded the matter to the FCC.

The anticipated nationwide deployment of approximately 800,000 "small" WTFs by 2026 is clearly a federal undertaking, because the wireless industry licenses its wireless spectrum frequencies from the federal government. That makes every “small" WTF planned for the City of Culver City a part of this federal undertaking.

Therefore, this 8/9/2019 DC Circuit Court ruling renders every "small" WTF application in the City of Culver City incomplete, because the FCC has not yet addressed the remanded issue.

Per this ruling every Small Cell WTF, including the three aforementioned facilities should undergo an environmental review. Such review was not submitted, the city was informed about it, but no evidence was produced and added to the applications.

Thus, these facilities do not meet all the applicable requirements of federal law and applications should be denied.

The City determined that the installation is not detrimental to public health, safety and welfare, despite the large number of residents protesting and opposing these installations right across from homes, based on well documented property value reduction, disruption of the quiet enjoyment of our streets, complete lack of radiofrequency radiation monitoring and the obsolete FCC maximum exposure limits. See: Federal Court case, August 13th, 2021, regarding the FCC not addressing non-ionizing radiation health and environmental effects.

There is a large body of peer-reviewed scientific studies documenting negative health effects of non-ionizing radiation on people, all living organisms and nature, at much lower than current FCC RF exposure limits. Although health threats can not be grounds for denial of application, they should inform how seriously the application review is conducted because each small cell WTF installed is potentially detrimental to those exposed to it on a daily basis.

Properties with views sell for 42 percent more than those without views. Specifically for the application AT&T Small Cell LDRAH-004A –6174 Buckingham Parkway, U19-0443 an antenna devalues the views over the park from the property. The public has sent letters and provided information about property devaluation when any size cellular antenna is placed in the vicinity of the home.

Thus, approving the applications directly affects the welfare, health and safety of the public.

The city staff expressed on multiple occasions during in person meetings and over email and phone communication that they will work with the applicant to find solutions that are acceptable both for the community and AT&T. As per city staff, AT&T agreed to have a meeting in the community to do a walk around and identify possible alternative site locations that would meet the carrier's objective. The AT&T representative and the Public Works Director confirmed on Nov 15, 2021 that they would be present at the meeting. On November 16, 2021, the Public Works Director did not attend and the AT&T sent another representative (Eukon Group Bardo Osorio), who per his own assertion was not qualified to evaluate any potential alternative sites, to be installed further away from residences. The city staff reassured the residents that it is working with AT&T on the meeting, however, neither in November, December, January or February did such a meeting occurred. AT&T explained that the holidays did not allow for scheduling, yet after the holidays, they did not follow through. Finally, AT&T falsely stated that they already had a meeting on site (as explained earlier the meeting was not productive or helpful as their rep was not authorized or qualified to locate alternative sites) and would not be having another meeting.

The city had sufficient time to hire an independent consultant to research feasible alternative locations as they had more than 3 months to accomplish this task. They could have presented the result of such research to AT&T to expedite and aid in the process and avoid the long and fruitless wait for the walk through.

When asked to list specific alternative sites offered for applicant review by the city, which the applicant denied as feasible, the Public Works director did not produce such a list. Therefore, we conclude that the city did not provide specific alternative site options for the applicant to consider in lieu of the applicant's own lack of such efforts.

There is a credibility issue with AT&T, as per their conduct.

Andrew Campanelli, the top telecom attorney in the nation, who has written the most protective regulatory ordinances for wireless facilities, states "the agents of applicants seeking to build wireless facilities are known to submit patently false or materially misleading information and documentation to local zoning boards in support of applications seeking approvals for desired wireless facilities. The most common false documents proffered to local planning boards and zoning boards include things such as false or materially misleading propagation maps, patently false FCC compliance reports, false certifications of "need" and misleading and/or defective visual impact analyses, among others."

It is a fact that the wireless providers have been negligent and/or untruthful. Thus, blatantly trusting the applicant statements does not produce conclusive determination. On multiple occasions city staff stated that they "trust the applicant and thus do not feel the need" to inquire further evidence of the claims made by the applicant. The application review process is flawed as it does not require the City Engineer to critically analyze information provided and instead encourages complete reliance on the applicant's supposed integrity, not factual evidence.

The TCA typically only requires approvals of applications for wireless facilities where the respective applicant establishes that it suffers from *"a significant gap"* in personal wireless services, and their proposed application is the least intrusive means of remedying such gap.

Significant Gap in Coverage and Least Intrusive Means to close a *proven* gap in coverage are defined by the United States Court of Appeals, Ninth Circuit in METROPCS v. The CITY AND COUNTY OF SAN FRANCISCO (http://caselaw.findlaw.com/us-9th-circuit/1406360.html): as the ability to make a call (a Telecommunications Services).

The U.S. Court of Appeals for the 9th Circuit's interpretation of the TCA is still the prevailing case law today. *MetroPCS, Inc. v. City & County of San Francisco* (9th Cir. 2005) 400 F.3d 715. Computer generated propagation maps alone cannot be admitted as evidence. Drive test data and maps for the significant gap of coverage and dropped calls logs for claims of capacity increase should be submitted with the application to be considered.

There was not enough probative evidence in the applications of a significant gap of coverage and that the chosen sites are the only feasible and least intrusive locations possible to close the gap. The reviewing authority failed to request sufficient hard data

proof from the applicant to demonstrate that all the alternative sites options were considered and exhausted before requesting the placement of AT&T's chosen location.

Carriers such as AT&T are increasing the density of their wireless networks to provide faster video streaming and internet data. Cell phone towers and services are regulated under Title Two, in the Telecommunications Act. Cell towers are only for cell phone calls and texts, not for the internet of things, not for data transmission, which is regulated under Title One. Data transmission is already paid for by our taxes and should be wired aka Fiber Optics To The Premises (FTTP) for faster, more secure and safer internet downloads.

AT&T wants these Small WTF to improve capacity issues. Yet, there was no probative evidence in the application to substantiate this claim. Such bold and conclusory claims by an applicant that a potentially less intrusive alternative site cannot be used because it "would not meet" the applicant's ***"****coverage objectives****"*** should be uniformly rejected because such terminology is inherently meaningless.

Among the most important of "coverage objectives" desired by site developers is to place their facilities at the least expensive sites possible, irrespective of whatever adverse impacts they might inflict upon adjacent and nearby properties.

An applicant asserts a claim that a proposed wireless facility is *necessary* to remedy a *capacity deficiency.* The city did not require an applicant to provide *probative evidence,* that being hard data in the form of actual dropped call records from the carrier which purportedly suffers from the capacity deficiency being alleged. Similar to drive test results, dropped call records are inexpensive to provide, and provide accurate hard evidence of the *existence or absence of a capacity deficiency in a carrier's personal wireless services*. Wireless carriers possess dropped call data and can provide simple printouts reflecting the number, and percentage of dropped calls they sustained in any geographic area for any period of time. This data shows what percentage of calls in a specific geographic area are "a failed", meaning that their customers were unable to initiate, maintain and conclude calls without loss of service.

Thus, there is lack of findings of the sufficient probative evidence provided by the applicant to determine whether the information submitted in the application is true and correct.

Last and not least, the applicant's proof of insurance is only required after the fact the application had already been approved. With each Small WTF approved the city increases the radiation pollution of the street and potentially exposes itself to costly lawsuits by the injured residents, since there is no insurance coverage for this occurrence in the applications. This must change now and starting with these applications, since the clause that "City bears no risk or liability as a result of the installations" is already in the ordinance. That is, unless the City Council is willing to answer to the public when people will start getting injured.

In closing, if these installations are to become operational, how often and who will be testing the RF emissions from these WTF's and how would the residents know that the testing was accurate?

Based on false, misleading or incomplete information in the applications, lack of a NEPA review and applicant's failure of keeping an agreement to meet in the field with the Fox Hill community members to look into acceptable and less intrusive alternative sites, the applications should not have been approved.

To remedy the aforementioned lack of information, the Public Works Director/City Engineer or City Council could have done the following:

Conducted a review of these applications by an independent RF Engineer who works for a 3rd party without conflicts of interest to the carrier and the City, to confirm or disprove AT&T various claims, lacking probative evidence.

Modified the condition for the approval of these applications, dependent on AT&T giving good faith effort to provide alternative sites which are further away from the residences, to meet community's needs, as per their initial agreement (for the walk through meeting in Fox Hills). As per the city ordinance, "The approving authority (Public Works Director/City Engineer or City Council, as the case may be) may impose additional conditions, remove conditions, or otherwise modify the standard conditions applicable to a wireless encroachment permit in its sole discretion on a case-by-case basis."
The City Council unanimously agreed to consider updating the ordinance to create more protection for the residents, and the recent updated ordinance draft identifies 600 feet setback from schools, child care facilities and parks. All the three approved application permits are within 600 feet of either a park or a school. And adding such modifications would adhere to the planned changes in the ordinance.

We request that City Council decides the issues *de novo*.

Please confirm that you received this document.

Thank you for your consideration of this very important matter.

Respectfully,

Dr. Evelina Baras, on behalf of the Fox Hill Residents
and Culver City for Safe Technology, culvercityforsafetech.org
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