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October 17, 2002

VIA HAND DELIVERY

Carol J. Mitten, Chair
The Zoning Commission for the District of Columbia
441 4th Street N.W.
Suite 210 South
Washington, D.C. 20001

**Re: Zoning Commission Case Number 01-02
Hearing Date October 17, 2002
Proposed Text Amendment on Antennas, Antenna Towers and Monopoles**

Dear Chairman Mitten:

In connection with the referenced matter, this firm is representing AT&T Wireless Services, Omnipoint Communications CAP Operations, LLC, a subsidiary of T-Mobile USA, Inc. (formerly VoiceStream) and Nextel Communications. We have participated in the process since the Zoning Commission conducted Roundtable discussions on the issue on March 5 and 19th, 2001 up to and including all of the Office of Planning sponsored meetings with the working group.

On previous occasions, we have written to express our concerns with the direction the proposed changes have taken. I would like to call your attention to my letter dated April 10, 2001 and the letter from all six licensed carriers, dated July 30, 2002 (both attached). In summary, the changes proposed by the Office of Planning ("OP") fail to address legitimate concerns and issues raised by the industry throughout this process. As a result, proposed text will create unnecessary bottlenecks and hurdles to wireless network deployment and will create prohibitions to new towers and poles without justification. Moreover, portions of the proposed text may, in their application to future siting requests, conflict with provisions of the Telecommunications Act of 1996.

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Despite our best efforts, the voice of the wireless industry was given short shrift in the working group. Instead, irrational fears and mischaracterizations were allowed to control much of the discussion. Our hope is that the Commission will be receptive to the concerns of the industry and weigh those against the OP report. There are a number of areas where staff presents little or no justification for the proposed changes, and we believe the Zoning Commission ought not to act on OP's recommendations without a fuller recitation by staff of its justifications for so substantial a revision to the District's antenna siting regulations.

A. The Proposed Changes and Impact on Network Design:

At the Zoning Commission hearing on October 17th, I will be joined by Mark Mayher, senior radio frequency (RF) engineer with Nextel Communications. Mr. Mayher will explain the technical aspects of network design and the particular challenges his company faces in providing quality service in the District of Columbia. Mr. Mayher will also explain how Nextel's efforts will be made all the more difficult if the proposed changes suggested by the Office of Planning are adopted. Through our testimony at the Commission's upcoming hearing, we hope to add to the Commission's understanding of the network planning and site assessment process that is a vital part of each provider's site selection process. In so doing, we hope that the Commission will gain an appreciation of the science of network design, and in particular, how RF characteristics, coverage objectives and call handling capacity demands all play a role in this process.

Among the challenges posed by these proposed regulations are the following:

- Prohibiting new towers and poles in all Residential and Mixed use Districts poses severe constraints on system design;
- Requiring that rooftop installations be "screened...to the greatest practicable extent" will eliminate many roofs from consideration;
- Placing further restrictions on rooftop and building mounted installations to account for "recreation space" beyond what is required under applicable federal guidelines is problematic; and
- Eliminating the ability of carriers to secure "by-right" approval of structure mounted installations such as on light poles, transmission facilities and other existing structures is contrary to good public policy, and places greater constraints on the network design.

From a business standpoint, I can tell you that the wireless service providers will see the District as an increasingly difficult environment in which to address customer demand. All statistics indicate that wireless penetration in the District is approximately 65 percent. Demand for ubiquitous coverage and reliable service is critical to businesspeople, residents, and public safety personnel. Anyone who has tried to make or receive calls on a busy afternoon -- and particularly in inclement weather -- can tell you that capacity is sometimes a challenge. Coverage and capacity are issues that every wireless service provider is struggling to overcome.

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They are also issues that exist for only one reason: the public's desire for dependable, accessible wireless service. Wireless carriers' network expansion and enhancement decisions are subject to stringent budget considerations. Simply stated, it is a matter of resource allocation. Adding uncertainty and delay to the site approval process without reasonable justification will not encourage improved wireless services within a community.

B. Contrary to the Directions of the Zoning Commission and the Stated Goal of the Office of Planning, the Proposed Text Does Not Accommodate the Growing Demand for Wireless Services.

As we have pointed out in our past correspondence, the initial roundtable discussions with the Commission and the first report of OP indicated an understanding of the ever-increasing demand on the wireless networks and the providers. In direct contrast to these discussions, the proposed text will have a negative impact on network design and deployment, to the detriment of the citizens, business community and public safety interests in the District of Columbia

Because of the relatively flat terrain, and the built nature of the District, virtually all antenna facilities for the wireless carriers are located on buildings, existing towers and other structures. In response to a *television broadcast* tower in Tenleytown and another proposed, but later withdrawn monopole in the Penn Branch shopping center, the OP would prohibit all residential and mixed-use zones from consideration, even by special exception. Moreover, the OP staff rejected the idea of allowing the carriers to make use of creative and unobtrusive installations such as light pole replacements, and antenna placements on existing utility distribution and transmission towers and water towers.

Additional screening and other requirements for rooftop antenna installations, combined with the elimination of structure mounted facilities will mean that siting of much needed antennas in the District will be much more difficult and costly, and that network improvement will face greater delay and uncertainty. By summarily excluding large portions of the District from consideration for telecommunications facilities, even by special exception, we believe the limitations proposed in the text amendments will heighten the District's vulnerability to a challenge under Section 332 (c)(7)(B)(i) of the Telecommunications Act, which states as follows:

"The regulation of the placement, construction, and modification of personal wireless facilities by any State or local government or instrumentality thereof...shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

It bears noting that the scope of Section 332 is not limited to outright bans or general prohibitions on the placement of personal wireless service facilities. See *Virginia Metronet, Inc. v. Bd. of Supervisors of James City County, Virginia*, 984 F. Supp. 966, 971 (E.D. Va. 1998). Specifically, where local policies or attitudes have the effect of prohibiting personal wireless services, the Telecommunications Act is also violated even though there is no express

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prohibition. *See Sprint Spectrum v. Bd. Of County Comm'rs*, 59 F. Supp. 2d 1101 (D. Colo. 1999).

One wonders why the District would make such a change as is being proposed, when the existing regulatory scheme places the responsibility to deal with such applications right where it should be: with the Board of Zoning Adjustment.

OP's proposed text would, among other things, ban all monopoles and towers from all residential districts and many commercial areas of the District. This ban is based solely on OP's conclusory pronouncement that such structures are inherently incompatible with low-scale districts. In stark contrast to this position stands the positive experience described below.

Case Study: Garfield Elementary School

In 1996, AT&T Wireless identified a need for coverage along parts of the Suitland Parkway, Alabama Avenue and Jasper Street, SE and the surrounding area. Without any tall structure on which to locate its antennas, AT&T identified the Garfield Elementary School as an acceptable location for a facility. An unused area at the rear school property was identified, which provided a substantial setback from houses and pedestrians. A substantial tree buffer screened views from Suitland Parkway. Through a public-private partnership, AT&T and Garfield entered into a lease and agreement on amenities for the school and community that included job- training, loan-a-phones and dedicated minutes of use, contributions to a computer center, and more. The Board of Zoning Adjustment, with the support of the school, community and Office of Planning approved the special exception by a vote of 5-0. In its order, the Board found that "the proposed use is compatible with the residential neighborhood" and that "(T)he partnership developed between AT&T WS and the school will serve to benefit the school children of Garfield and the District" (See attached Order No. 16255).

Under the proposed regulations, such an application could not even be considered because the school is in a R-5 zone and such facilities would be prohibited even by special exception. A classic "win-win" solution was achieved, under the control of the BZA process, and yet this could not be repeated under the proposed amendment. The Zoning Commission should ask why.

C. Notwithstanding the Existing Regulatory Requirements, the Federal Preemption and Case Law, and the Advice from the District of Columbia Office of People's Counsel, the Office of Planning Recommends that the District Regulate RF Emissions:

Throughout the meetings of the working group, it was made clear that staff and particularly the citizen members wanted the District to assert a role in the regulation of RF emissions. Section 2601 contains requirements that any applicant for an antenna must certify certain things regarding emission levels, including levels from all other antennas within 200 feet.

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The working group had the benefit of a presentation by the lead authorities from the FCC on the issue of RF emissions, testing and control. Dr. Robert F. Cleveland spoke to the group and explained, in detail, that the emission levels from cellular and PCS antennas fall substantially below maximum permitted exposure levels, which are very conservative numbers derived from years of collaborative efforts by the FCC, OSHA, the EPA and the National Council on Radiation Protection and Measures (NCRP). In Dr. Cleveland's words:

(i)n a "worst case" situation (all transmitters operating simultaneously and continuously at the maximum licensed power)...in order to be exposed to levels near the FCC's limits for cellular frequencies, an individual would essentially have to remain in the main transmitting beam (at the height of the antenna) and within a few feet from the antenna."

At the hearing, the Commission will hear from Mr. Jules Cohen, a noted expert in the field of RF emissions. Mr. Cohen's report, a copy of which has been submitted previously, contains the following statements: "RF exposure in the vicinity of a base station is hundreds, and more often thousands of times below the maximum exposure permitted by FCC rules". (See Cohen report at page 5). And, "In recognition of the low power employed, showings of RF exposure need not be made except in rare instances of low antenna height and radiated power in excess of 1,000 watts". (See Cohen report at page 2). As Dr. Cleveland explained to the working group, because of signal re-use and the proximity of sites, effective radiated power (ERP) of ten (10) watts per channel and less is commonly used in urban areas.

The Office of People's Counsel ("OPC"), in its report to the Zoning Commission dated July 23, 2001, correctly stated that "the FCC has exclusive jurisdiction over RF emissions from personal wireless services", and that the FCC had "exempted certain classes of facilities from having to file routine Environmental Assessments (EAs), because they are deemed to be categorically excluded from such requirements." Finally, the OPC correctly and succinctly stated the prohibition contained in Section 332 of the Telecommunications Act and upheld in various court decisions:

Congress federally preempted the State and local governments' authority to regulate on the basis of health effects of radio frequency emissions. (Emphasis in original. See OPC report at page 5.)

Conclusion

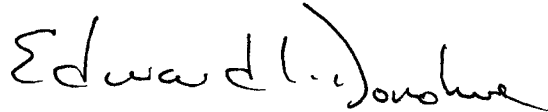
With all due respect to the Office of Planning, the recommendations contained in its report to the Zoning Commission should be rejected. They are overbroad and unnecessary. Furthermore, their implantation would run counter to OP's first stated goal in its Report to the Commission: "... the purpose of the regulation is to ...[a]ccommodate the growing demand for telecommunications facilities and antennas." The industry remains willing to work with OP

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toward a workable solution, but we respectfully submit that OP's current proposal will not serve the interests of community with a steadily growing reliance as wireless communication services.

We look forward to the opportunity to be heard on this matter at the hearing.

Sincerely,

A handwritten signature in black ink, reading "Edward L. Donohue". The signature is written in a cursive style with a large, stylized "E" and a long, sweeping underline.

Edward L. Donohue

cc: Jennifer Steingasser, DC Office of Planning
Tim Brenner, AT&T Wireless Services
Maureen Kane Smith, T-Mobile
Sean Hughes, Nextel Communications

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April 10, 2001

Chairman Carol J. Mitten
D.C. Zoning Commission
Government of the District of Columbia
Office of Zoning
441 4th Street, N.W., Suite 210-S
Washington, DC 20001

Re: Telecommunications Facilities Within the District of Columbia

Dear Chairman:

On behalf of AT&T Wireless Services, thank you for conducting the Roundtable Discussion of Issues Affecting Antennas and Antenna Structures. On March 19, 2001, the Commission announced the formation of a task force to further address issues related to antennas and antenna structures. We would like to take this opportunity to offer the Commission additional information with regard to personal wireless facilities, and to request that the Commission include the undersigned, representing AT&T Wireless, on the task force.

Among the issues we would like to address are: (1) the health effects of personal wireless facilities and federal preemption; (2) rooftop equipment requirements; and (3) adoption of tower siting regulations. The following is our position on these issues.

Health Effects of Personal Wireless Facilities

Under the Telecommunications Act of 1996,¹ state and local governments (or any instrumentality thereof) are preempted from regulating "the placement, construction or modification of personal wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions."² When Congress passed the Telecommunications Act, it gave the

¹ Pub. L. No. 104-104, 110 Stat. 56 (1994 and Supp. II 1996)

² 47 U.S.C. § 332(c)(7)(B)(iv)

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Federal Communications Commission ("FCC") preemptive authority over the environmental effects of radio frequency emissions, and directed the FCC to establish rules and regulations.³ The FCC exercised its preemptive authority by establishing rules to regulate the safety of radio frequency emissions from wireless antenna sites.⁴

It should be noted that some individuals have cited an August 30, 1988 Memorandum in support of the view that the FCC's preemption does not extend to the Commission.⁵ However, the Memorandum explicitly reserved this issue for a later date,⁶ and Congress has since resolved the preemption issue, as discussed above.

The FCC has determined that most PCS and cellular antennas have no significant impact on the quality of the human environment, and therefore, are categorically excluded from environmental processing.⁷ The attached Q&A prepared by AT&T Wireless amply demonstrates that the levels of radio frequency emissions from typical cellular and PCS facilities are far below the maximum permissible exposure limits. Also, the FCC's guidebook entitled "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures and Practical Guidance" available on the FCC's website can assist you in understanding why health effects regarding these facilities should not be an issue when reviewing a facility for zoning approval.⁸

Given the FCC's preemption and the lack of negative health implications from personal wireless telecommunications facilities, we believe there is no legal authority, and indeed, no need to update the current zoning regulations with regard to health effects.

Rooftop Equipment Requirements

There is a disparity of opinions within the D.C. Zoning office as to whether equipment shelters, as opposed to equipment cabinets, should be permitted at rooftop telecommunications facilities. The D.C. Office of Planning and the D.C. Zoning Administrator are enforcing the

³ Id. at 152

⁴ See 47 C.F.R. §§ 1.1301-1.1319.

⁵ See Memorandum dated August 30, 1988, from Richard L. Aguglia, Deputy Corporation Counsel to Maybelle T. Bennett, Chairperson, Zoning Commission regarding Proposed Regulations Relating to the Size and Location of Antennas in the District of Columbia.

⁶ "The issue of whether the FCC federal preemption applies to a congressionally created commission that is statutorily mandated to consider the federal interest has been reserved." *Id.* at p. 1

⁷ 47 C.F.R. 1.1307(b)(most PCS and cellular facilities are categorically excluded given the aboveground clearance and power).

⁸ See <http://www.fcc.gov/oet/rfsafety/>

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current roof structure limitation that requires all penthouses and mechanical equipment be confined to a single enclosure. This limitation means that if a telecommunications provider cannot locate its equipment within an existing roof top structure, it is barred from installing its antennas on that roof. In AT&T's experience, this limitation has caused it to forego otherwise acceptable and visually unobtrusive antenna installations on building roofs.

Rooftop equipment enclosures such as an equipment shelter can be designed to be architecturally consistent with existing penthouse or mechanical room designs. Equipment shelters serve the same function as an equipment cabinet: housing telecommunications equipment. There is simply a size difference. Equipment shelters are generally 12 feet wide and from 20 to 30 feet long and are generally under 12 feet in height. These equipment shelters go through the same zoning approval process as an equipment cabinet (including setbacks and maximum percentage of roof coverage), but with the added benefit that they are designed for handling future telecommunications capacity.

Previously, telecommunications providers installed equipment cabinets of smaller dimensions to handle current call volume or small changes in equipment specifications. The resulting problem was that for every increase in call volume or technological innovation, the telecommunications provider was required to reapply to the Zoning Office to remove the current cabinet and install an improved or larger cabinet. By permitting equipment shelters on rooftops, the Zoning Office reduces the need for a telecommunications provider to make additional requests to increase its equipment. The equipment shelter was designed with future capacity and technological innovation in mind, so the telecommunications provider can make changes to its equipment within the shelter without having to seek zoning approval every time. Permitting rooftop equipment shelters will result in a decreased application review workload for an already overworked Zoning Office.

Furthermore, the equipment shelter itself encourages co-location by providing another platform in which a telecommunications provider can flush mount antennas, thus preserving the aesthetics of the existing building. Rooftop equipment shelters can be designed to look like a second penthouse unit or mechanical room, with a facade that matches the building and its antennas flush mounted to the shelter structure rather than pipe-mounted or sled-mounted antennas. The D.C. Zoning Office has the opportunity to make rooftop equipment shelters the rule rather than the exception. Therefore, additional language should be added to the Zoning Regulations to permit the installation of equipment shelters at rooftop telecommunications facilities within the District of Columbia. For example, the most common language in surrounding jurisdictions is that an equipment structure can be used at a telecommunications facility so long as it is no greater than 500 square feet or no taller than 12 feet in height.

Tower Siting Regulations

As the Commission considers updating the zoning regulations, it should keep in mind the distinction between commercial broadcast antenna towers and other antenna structures such those used for as PCS and cellular antennas. D.C. Municipal Regulations already recognize this

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distinction in the antenna siting regulations for both residential and commercial districts.⁹ AT&T believes it would be inadvisable to include structures used for cellular and PCS antennas in the regulations that apply to commercial broadcast antenna towers and vice versa, given the very different siting needs and characteristics of these facilities. The mere fact that all commercial broadcast facilities require tower structures several hundred feet tall is differentiation enough. As I testified at the earlier hearing, the vast majority of site for AT&T Wireless are co-located on existing buildings, and other structure at heights of approximately 100 to 150 feet.

We will be happy to discuss these comments further or to provide any additional information that would be of assistance to the Commission.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edward L. Donohue". The signature is fluid and cursive, with the first name "Edward" being more prominent.

Edward L. Donohue

Attachment

⁹ See 11 DCMR §§ 211 and 212 (residential districts); §§ 701 and 721 (commercial districts); and § 2520.1(c) (regulating antennas "that, because of their shape and relatively large mass, potentially have the greatest visual impact and include, by example, large satellite earth station antennas and certain microwave terrestrial antennas.")

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16255 of the D.C. Public Schools, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 212 to allow the erection of an antenna other than commercial broadcast in an R-5-A District at premises 2435 Alabama Avenue, S.E. (Square 5725, Parcel 215/32).

HEARING DATE: June 18, 1997
DECISION DATE: July 2, 1997

ORDER

SUMMARY OF EVIDENCE:

1. The subject property, 2435 Alabama Avenue, S.E., is located at the Garfield Elementary School in Ward 8 and is bounded by Alabama Avenue to the north, Jasper Street to the east, and two apartment complexes to the south and west.

2. The site is improved with a three-story red brick school building with a two-story addition attached to it.

3. The school's playground is located in the northeast corner of the property. On the western edge of the school is an alley which provides access to the rear of the building and the fenced in parking area.

4. The applicants' request is for a special exception to allow AT&T Wireless Services to construct and operate a telecommunications facility ("Radio Link") at the Garfield Elementary School. This use is permitted by special exception in accordance with 11 DCMR 3108.1, and Sections 212 and 2520.

5. The applicants testified that the Radio Link would consist of an eighty foot monopole, nine panel antennas, and an equipment cabinet. The Radio Link would be located at the rear of the school between the parking area and the building, approximately 140 feet from Alabama Avenue. The monopole and equipment cabinet would be partially screened from view by the height of the school building and an existing storage shed. The peak of the school is sixty feet tall and the monopole will only extend 20 feet past that height.

6. The applicants testified that the monopole measures 42 inches at its base and tapers to approximately 18 inches at the top. The equipment cabinet measures approximately 6 1/2 feet tall, 3 1/2 feet wide and 5 feet long. The existing chain link fence

which encloses the storage shed will be replaced by a 10 foot chain link fence which will enclose the storage shed and the Radio Link compound.

7. The applicants submitted a list of 37 existing radio links in the District of Columbia (33 of which are located on existing buildings and four on towers). These sites include several apartment buildings, three hospitals, churches and others. The applicants testified that they have located such links at schools in other jurisdictions and that a number of jurisdictions accord public spaces, including schools, preferential treatment in siting decisions.

8. The applicants testified that the Radio Link compound will not have an adverse impact on any recreational or parking areas of the school. The applicants further testified that the facility will not affect the operations of the school in any way.

9. The applicants testified that the proposed use will have no adverse effect on road congestion or safety as no on-site personnel are required. Once the telecommunications facility is completed the only traffic to the site would be for routine maintenance or emergency repair which is expected to be only one or two visits per month. The Radio Link will be accessed by the existing alley and parking area.

10. The applicants testified that there will be no adverse impact on the health, safety, security, morals or general welfare of residents, visitors or workers in the area and no adverse impact on the use and development of the surrounding properties. Instead, the citizens and the surrounding properties will benefit from the improved mobile telephone (PCS) communications. The applicants testified that the proposed facility will be in harmony with the general character of the neighborhood.

11. The applicants testified that public health and safety will benefit in that a number of city agencies, including police, fire and rescue, utilize PCS telephone communications in performing their important missions. Furthermore, vehicular accidents or crimes can be reported immediately after their occurrence when observed by a PCS user which results in faster response time by the police or rescue officials.

12. The applicants testified that there will be no noise generated by this facility. The equipment will be enclosed in a metal cabinet and the outside antennas and transmission lines will be silent. There will be no offensive odors emitted by the equipment, transmission lines or antennas. There will be no harmful emissions nor any electrical or blanketing interference from the equipment, transmission lines or antennas.

13. The applicants testified that there will be no need for water or sewer service and no special requirement for other public facilities or services.

14. Mr. Christopher Doherty, Director of Public Affairs for AT&T Wireless Services (AT&T WS), testified that this Radio Link was needed in this location in order for AT&T WS to provide seamless coverage of its PCS system. Mr. Doherty testified that the Garfield site was selected after AT&T WS thoroughly searched the surrounding area and was unable to locate any viable existing structure on which it could place its facilities. Mr. Doherty testified that the proposed facility will be in full compliance with all applicable regulations including the Federal Communications Commission (FCC) and the Zoning Regulations. Mr. Doherty testified that AT&T WS participated in a community meeting at Garfield Elementary at which AT&T WS answered questions from parents, teachers, students, and neighbors.

15. Ms. Patricia Kilby-Robb, Vice Principal of Garfield Elementary, testified to the special partnership which has developed between Garfield Elementary and AT&T Wireless Services. Ms. Kilby-Robb described the package of benefits being provided to the school by AT&T WS and how it would assist the students to be competitive in the 21st century. Ms. Kilby-Robb also introduced two Garfield students, Mr. Maurice Bryant and Ms. Arlette Thompson, who testified in support of this application. Mr. Bryant and Ms. Thompson testified that they represented their fellow students and that they heartily endorsed this partnership between AT&T WS and Garfield Elementary School.

16. Mr. Carlos Ostria, a professional engineer, testified that the construction schedule for the Radio Link was typically three weeks and AT&T WS and the Garfield Administration would like to finish construction during the summer months while school is out. Through his testimony, Mr. Ostria also confirmed the safety and structural integrity of the Radio Link facility.

17. Mr. Alan Rosner, a health expert, testified that there will be no adverse health effects from this facility. Mr. Rosner testified that this facility will operate well below the federally mandated levels of emissions.

18. A letter of support was received from Ward 8 Councilwoman Sandra Allen.

19. No one testified in opposition to this application.

20. The Advisory Neighborhood Commission (ANC) 8B was notified by the applicants, but did not participate in the proceedings.

21. The Office of Zoning (OZ), by report dated June 11, 1997, recommended that this application be granted. OZ was of the opinion that the granting of this special exception would not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map. Furthermore, the proposed use would not adversely affect the use of neighboring properties but would be in harmony with the Zoning Regulations. OZ suggested four conditions in their report. The applicants agreed to those conditions and the Board will impose them.

FINDINGS OF FACTS:

Based on the evidence of record, the Board finds as follows:

1. The school building will largely screen the views from Alabama Avenue and Jasper Street and adjoining properties. The existing storage shed will screen the base of the monopole and the equipment cabinet.

2. The location of this facility is appropriate as it will not interfere with the operations of the school.

3. The location of the facility is necessary for the applicants' provision of seamless PCS coverage.

4. The present character and future development of the neighborhood will not be adversely affected.

5. The proposed use will have no adverse effect on road congestion or safety since this is an unmanned facility. There will be no need for water or sewer service and no special requirement for other public facilities or services.

6. There will be no noise generated by this facility. There will be no offensive odors emitted by the equipment, transmission lines or antennas. There will be no harmful emissions nor any electrical or blanketing interference from the equipment, transmission lines or antennas.

7. There will be no adverse impact on the health, safety, security, morals or general welfare of residents, visitors or workers in the area and no adverse impact on the use and development of the surrounding properties.

8. The proposed facility will be in harmony with the general character of the neighborhood.

9. The special exception will be in harmony with the general purpose and intent of the R-5-A Zoning District Regulations in that improved wireless communications will advance public health and safety interests, will help alleviate road congestion, and will

help expedite the provision of police and fire protection, disaster evacuation and accident assistance.

10. The partnership developed between AT&T WS and Garfield Elementary will serve to benefit the school children of Garfield and the District.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicants are seeking a special exception to allow an antenna other than a commercial broadcast within an R-5-A District. In order to be granted such an exception, the applicants must demonstrate substantial compliance with the requirements of Sections 3108.1 and 212 of the Zoning Regulations.

The Board concludes that the proposed use is compatible with the residential neighborhood in which it will be located.

The Board concludes that the applicants have met the requirements of Section 212. The proposed use, location, and conditions related to this proposed facility are consistent with the purposes set forth in Section 2520. The location and other characteristics of the antenna are reasonably necessary for the intended use of the antenna. The present and future development of the neighborhood shall not be adversely affected.

The Board further concludes that the special exception for the proposed Radio Link can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and as conditioned by this order, will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Map.

In light of the foregoing, the Board ORDERS that the application be GRANTED, subject to the following conditions:

1. Approval shall run concurrently with the lease agreement between the property owner and AT&T Wireless Services.
2. The monopole shall be painted or fabricated in a neutral color to blend in with its surroundings and shall not exceed a height of 80 feet above grade and shall contain no more than nine panel antennas.
3. Adequate signage indicating that the Radio Link is secured shall be posted surrounding the compound.

4. AT&T Wireless Services shall construct a ten-foot high chain link fence to enclose the Radio Link compound including the monopole and the equipment cabinet.

Vote: 3-0 (Laura M. Richards, John G. Parsons and Sheila Cross Reid to grant; Susan Morgan Hinton, not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

THIS ORDER WAS ADOPTED BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING ON JULY 2, 1997.

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: JUL 21 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



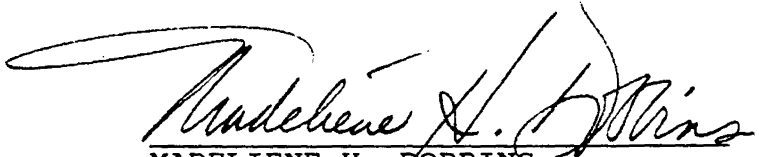
BZA APPLICATION NO. 16255

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 21 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. DOBBINS
Director

DATE: JUL 21 1997

July 30, 2002

Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Re: Proposed zoning text amendments regarding Antennas, Antenna
towers and Monopoles

Dear Chairman Mitten:

The undersigned counsel to District of Columbia's wireless telecommunications service providers (AT&T Wireless, Cingular Communications, Nextel, Sprint Wireless, Verizon Wireless and VoiceStream Wireless, collectively the "providers") wish to enter into the record of this proceeding their response to the Zoning Text Amendments proposed by the Office of Planning ("OP"), which was set down for hearing at the June 10, 2002 Zoning Commission Regular Meeting.

While the wireless providers commend the OP staff for its diligent efforts on this issue and supports the objectives of the OP to harmonize the wireless zoning regulations into one section, we take exception to overly burdensome and costly regulations recommended in the OP's Preliminary Report. Further, it is clear from the discussion at the June 10th meeting that the Commission has a desire to attempt to regulate in areas that are preempted by federal law, including the 1996 Telecommunications Act.

As noted in the Prehearing Report, the wireless providers participated in the Antenna Regulations Review Group, which was formed and coordinated by the Office of Planning. The Review Group was comprised of the OP representative, five citizen representatives and the providers' representatives. Over the course of the Review Group's many meetings, the providers endeavored to explain their antenna siting needs and policies, their technologies and the limitations of those technologies. Further, the wireless providers provided an assessment of the many ways that the current zoning requirements are working in a positive fashion. Throughout the process, the wireless providers did their best to respond to questions by the citizen participants and to OP's questions.

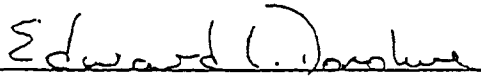
The Review Group spent an inordinate amount of time addressing questions and concerns about alleged "health effects" from wireless base stations. The Review Group had the benefit of an extensive briefing from the Federal Communications Commission's Office of Engineering and Technology. Many, many hours were spent explaining the nature of the devices in use today, comparing the levels associated with wireless phones and antennas as compared with broadcast and transmissions facilities, and the protections already in place because of federal regulations. Moreover, the representatives cautioned staff and the Group about the prohibitions contained the Telecommunications Act. This information was not reflected in the OP report and was apparently not communicated to the Commission.

Throughout, we remained hopeful that the end result would be a proposal for revised local antenna siting policies and regulations that would reflect a balancing of the community's concerns over aesthetics and safety with the needs of providers trying to respond to an escalating public demand for ubiquitous, reliable wireless communication services throughout the District of Columbia and its neighboring metropolitan areas. The wireless providers worked cooperatively with the Antenna Review Group in hopes that the process could lead to a consensus regulatory approach in keeping with the charge handed to OP last year by the Zoning Commission.

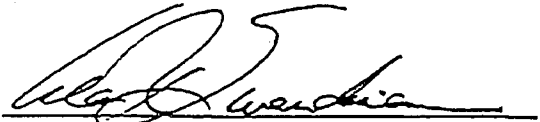
Instead, the process has resulted in two documents — the Preliminary Report and the Proposed Text Amendments — neither of which, we feel, reflects the providers' substantive input on wireless technology and business practices and in fact are contrary to the directions given by the Zoning Commission at the initial roundtables. As acknowledged in the Preliminary Report, these documents do not reflect a consensus viewpoint. The providers view many of OP's proposals as unnecessarily burdensome, unreasonably restrictive and of questionable enforceability given the provisions of the federal Telecommunications Act of 1996.

Moreover, these proposals run counter to OP's first stated goal in its Report to the Commission—"the purpose of the regulations is to... [a]ccommodate the growing demand for telecommunications facilities and antennas." Most importantly, by inhibiting wireless carriers' ability to provide adequate coverage and capacity, the recommended proposals could have a lasting detrimental impact on the quality of wireless service utilized by the District's residents, businesses, visitors, and emergency service personnel.

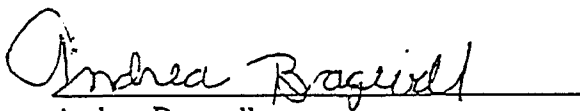
The wireless providers will continue to be a resource to the Office of Planning and the Zoning Commission. We remain hopeful that the Office of Planning will revise its recommendations so that the Commission has the benefit of a more balanced and workable approach to the zoning regulation of wireless antennas, towers, and monopoles based upon technology, business practices, and the needs of the community--including those who use wireless technology in their everyday business and personal lives. We look forward to appearing before the Commission on this issue.



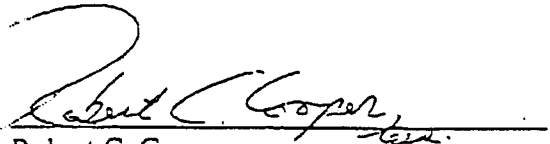
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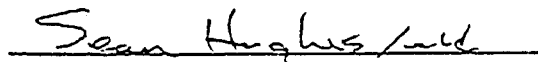
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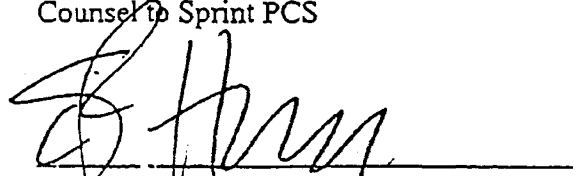
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