



October 16, 2018

Direct Dial: 320-257-3868
Aripple@RinkeNoonan.com

City of Menahga Board of Adjustment
c/o City Administrator
115 Second Street NE
P.O. Box C
Menahga, MN 56464

SENT VIA EMAIL TO: cmenahga@wcta.net

**Re: CONDITIONAL USE PERMIT APPEAL
Our File No. 28209-0003**

Dear Menahga Board of Adjustment:

Our office represents American Towers LLC. Pursuant to a telephone conference with City Administrator Ellingson on October 4, 2018, we were directed to appeal to the City Council, sitting as the Board of Adjustment, in order to exhaust all administrative remedies before seeking judicial review. We submitted such an appeal on October 5, 2018. Later in the day on October 5th after our submission, we were informed that the City reversed its opinion and we were directed to seek judicial review in accordance with Minnesota Statute 462.361 and not appeal to the Board of Adjustment. Then, on October 9, 2018, the City yet again reversed its opinion and stated that an appeal to the Board of Adjustment was necessary prior to seeking judicial review. On October 10, 2018, the City informed our office that a special council meeting would be held on October 18, 2018 at 2pm for the Board of Adjustment to hear the appeal of the grant of a conditional use permit. In order to have finality, we request that the City Council, sitting as the Board of Adjustment, hear our appeal regardless of any additional reversal of opinion.

This letter serves as that appeal on behalf of American Towers LLC with respect to the conditional use permit issued to Uniti Towers (“Uniti”) on September 10, 2018. This letter supplements our prior letters dated September 5, 2018, September 10, 2018, September 19, 2018, and October 5, 2018. Please enter this letter and the enclosed documents into the record of the appeal.

APPEAL

American Towers LLC is the owner of two existing cell towers located on 350th Street in Menahga, Minnesota (Site #273422 and Site #416466), which deliver wireless communication service to Menahga and the surrounding area. The two existing towers pre-date the current zoning ordinance. On July 31, 2018, Uniti Towers filed with the City an application for a conditional use permit (CUP) to build a new cell tower on a property currently zoned as part of

Menahga’s “agricultural residential district.” The tower site proposed by Uniti Towers is approximately four tenths of a mile and three tenths of a mile, respectively, from American Towers Site #273422 and Site #416466. The tower proposed by Uniti Towers would exactly duplicate services already provided by American Towers.

At a public meeting on September 6, 2018, the City’s planning commission considered Uniti Towers’ CUP application. American Towers objected to the proposed CUP both orally at the September 6, 2018 public meeting and in writing to the planning commission. The planning commission recommended the CUP for approval by the Menahga City council.

American Towers again objected to the proposed CUP at the September 10, 2018 City council meeting. On September 10, 2018, the Menahga City council passed and approved Resolution No. 2018-16 entitled “A Resolution of the Menahga City Council Issuing a Conditional Use Permit in the Agricultural Residential District to Uniti Towers for Property Located at 1043 Aspen Avenue South Menahga, Minnesota.” The City’s Resolution No. 2018-16 provides only the following findings and conclusions:

WHEREAS, the City of Menahga received a complete conditional use permit application from Uniti Towers; and

WHEREAS, the application requests a conditional use permit to build a new wireless telecommunications facility in the form of a 300’ tall guyed tower; and

WHEREAS, the property is zoned Agricultural Residential (AR); and

WHEREAS, the City of Menahga Planning Commission held a public hearing on September 6, 2018, and recommends the City Council approve the conditional use permit; and

WHEREAS, MMC 15.151.50 provides the City Council with the authority to issue conditional use permits based on certain criteria; and

WHEREAS, the City Council determines the following:

1. The conditional use is compatible with the existing neighborhood.
2. The conditional use supports the general welfare of the community.
3. The lease of property for a cell tower will not require subdivision.

Further, the Menahga City Code Section 151.50(A) provides:

Conditional use permits may be issued for any of the following:

- (1) Any of the uses or purposes for which the permits are required or permitted by the provisions of this chapter;
- (2) Public utility or public service uses or public building in any district when found to be necessary for the public health, safety, convenience or welfare; and

(3) To permit the location of any of the following uses in a district from which they are excluded by the provisions of this chapter: library, community center, church, hospital, fairgrounds, any institution of any education, philanthropic or charitable nature, cemetery, mausoleum or any other place for the disposal of the human dead.

Resolution No. 2018-16 clearly does not fit within the provisions of City Code Section 151.50(A)(3). The City Code does not define “public utility,” “public service uses,” or “public building,” the terms used in Section 151.50(A)(2). Cell towers are not public utilities according to the Menahga City Code or on any other basis, and any inference that they are is erroneous.

Relevant to City Code Section 151.50(A)(1), the conditional uses specifically designated for the agricultural residential district are specified at Section 151.15(C) of the City Code. Those conditional uses are:

- (1) Commercial outdoor recreation areas;
- (2) Organized group camps;
- (3) Extracation [sic] of gravel and minerals; and
- (4) Other rural residential uses determined by the Planning Commission to be of the same general character as the principal uses above and found not to be detrimental to the general public health and welfare.

Section 151.15(A) of the Menahga City Code states: “The purpose of the agricultural residential district is to establish and maintain a district that is rural in character.” Construction in Menahga’s residential agricultural district of an unnecessary cell tower that duplicates existing services is contrary to the spirit and the letter of the City Code because it works against the purpose of the zoning code, does not meet any of the criteria for issuance of a CUP, and is detrimental to the public welfare. The requested tower is unnecessary and no finding of necessity was made by the City. The City’s passage and approval of Resolution No. 2018-16 was unreasonable, arbitrary, and capricious because it was not based on a legally sufficient reason and was not supported by an adequate factual basis.

For these reasons, the Uniti CUP was improperly granted. American Towers appeals the granting of the Uniti CUP. The Uniti CUP should be rescinded.

Sincerely,



Adam A. Ripple
AAR/mjr

cc: American Towers LLC (via email)

Enclosures

- Letter from Rinke Noonan to Planning Commission dated September 5, 2018 with the following attachments:
 - August 31, 2018 letter from American Tower Engineer
 - 9 pages of photos from other overburdened sites
 - AT&T data coverage map
 - AT&T voice coverage map
- Letter from Rinke Noonan to City Council dated September 10, 2018 with a copy of the memo from LMC regarding cell towers
- Letter from Rinke Noonan to City and Uniti dated September 19, 2018
- Letter from Rinke Noonan to City dated October 5, 2018



City of Menahga Planning Commission
c/o Janette Bower, City Administrator
115 Second Street NE
P.O. Box C
Menahga, MN 56464

HAND DELIVERED AND SENT VIA EMAIL TO: cmengahga@wcta.net

**Re: CUP Objection Letter
Our File No. 28209-0001**

Dear Menahga Planning Commission and Ms. Bower:

Our office represents American Towers LLC and submits this letter and associated documents related to the conditional use permit request for a cell tower from Uniti Towers. **American Towers LLC objects to the granting of the requested conditional use permit because it is unnecessary and will be detrimental to the community.** Please enter this letter and enclosures into the record for conditional use permit.

American Towers currently has two cell towers in very close proximity to the site proposed by Uniti. American Towers is a global wireless tower company that values its assets and the communities it operates in; operating in a safe and compliant manner with respect for natural resources is a stated top priority. American Towers does not object to Uniti's request because it is a competitor, rather it objects based on Uniti's unscrupulous practice of taking advantage of jurisdictions such as Menahga, that do not have robust zoning regulations in place in order to unfairly compete. Uniti's tactic is to site new towers right next to existing towers, which leaves local residents to suffer with an unnecessarily high density of cell towers. Tillman Infrastructure is another company that uses the same scheme to overburden communities with cell towers. Menahga is the latest jurisdiction Uniti has singled out because the City's ordinances contain some regulatory gaps; tomorrow Menahga could find itself dealing with an application from Tillman Infrastructure try to take advantage of those gaps too. Pictures from similar situations in other jurisdictions are enclosed.

PERFORMANCE STANDARDS

The Menahga zoning code contains no definitions for "tower" or "public utility," and there are no specific performance standards, such as height limitations or setbacks, that apply to towers or

Suite 300 US Bank Plaza
1015 W. St. Germain St.
P.O. Box 1497
St. Cloud, MN 56302
320.251.6700

City of Menahga Planning Commission

public utilities. Within the Ag zoning district, the only performance standards relate to lot width and depth. Generally, cities throughout Minnesota distinguish cell towers from public utilities such as municipal services, cable, or gas and electric because the towers are typically owned by private business and leased to the carrier.

Further, nearly all cities in Minnesota impose significant performance standards on cell towers. Height limitations are required to prevent nuisance shadows on neighboring property and to protect the aesthetics of the community; height restrictions often vary among the various zoning districts in consideration of the various uses that might be allowed in each district. Setbacks from property lines are imposed for safety in the event of a failure and to protect public right of way. A common lot line setback requirement is 1.5 times the height of the tower. The guy line anchor points should also have appropriate setbacks. Cities also regulate interference with public safety communications, lighting, signage, accessory buildings associated with towers, and abandoned or unused towers. In applying these standards, cities typically require applicants to submit a site plan and have a professional engineer submit design information that identifies all potential antenna mounting locations, tower capacity, documentation showing that tower will not interfere with public safety communications, proof of FAA compliance, and compliance with state and federal structural and electrical standards.

The Menahga zoning code does not establish any meaningful performance standards for towers and exposes neighboring property owners and the City to potential harm.

CO-LOCATION

Most cities wish to encourage the thoughtful placement of as few cell towers as necessary to serve the area. This has resulted in many communities establishing co-location requirements, which is a way to ensure that antenna space on existing towers is properly utilized. This often results in restrictions for new towers within a mile of an existing tower unless an applicant can show: (1) a lack of capacity on an existing tower, (2) interference with existing equipment of existing towers, or (3) some other situation that prevents co-location.

Both of American Towers' existing towers are less than ½ mile from the site proposed by Uniti. Further, American Towers' existing towers are closer to the City and provide better coverage and have capacity for co-location at the same RAD height being proposed by Uniti. Enclosed are two coverage maps that show the existing coverage in the area for AT&T, which currently has an antenna on the American Towers structure. These maps show that AT&T currently has strong voice and data coverage in the area, so a new tower is not necessary for coverage (<https://www.att.com/maps/wireless-coverage.html>). Also enclosed is a letter and additional information from Micah Hawthorne, an engineer for American Towers that substantiates this.

CUP STANDARD

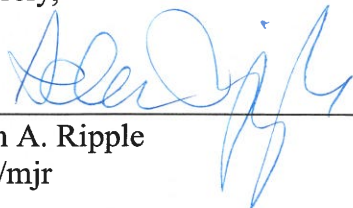
It appears that Menahga treats cell towers as public utilities, but that is unclear by the text of the zoning code. The Agricultural zoning district does not explicitly provide for towers, or even public utilities, as permitted or conditional uses within the Ag zoning district. Section 151.50(A)(2) looks like it provides the only authority to allow public utilities – assuming cell

City of Menahga Planning Commission

towers fall within that term – in the Ag district by conditional use permit. That section only allows utilities “when found to be necessary for public health, safety, convenience or welfare.” Uniti’s requested tower is unnecessary and does not meet the standard for granting a CUP under Section 151.50(A)(2) of the zoning code.

Again, American Towers, LLC requests that the City of Menahga deny the Uniti conditional use permit because it is unnecessary and will be detrimental to the community.

Sincerely,



Adam A. Ripple
AAR/mjr

Enclosures

cc: American Towers LLC (via email)



31 August 2018

RE: Tower Development Project — Menagha, MN

To Whom It May Concern:

My name is Micah Hawthorne and I am a Principal Sales Engineer at American Tower with an RF Engineering background designing service area coverage for wireless carrier networks. My resume has been provided in support of this statement.

American Tower Corporation has an existing tower structure (Site #273422) on 350th St, Menagha, MN. Today, the ATC tower has AT&T installed at Antenna Center Line (ACL) 296ft.

Uniti Tower has a 300ft. tower proposed with AT&T as the anchor tenant at ACL 296ft. This location is approximately 0.4mi (2,080ft.) from AT&T existing installation on ATC's 273422 tower.

With 0.4mi proximity between the two tower locations (Exhibit 1), similar equipment configuration, and similar antenna center line installation heights (existing 296ft. versus proposed 296ft.), the attached plots suggest the 700MHz LTE coverage produced by the new tower location (Exhibit 2) would be substantially similar to the 700 MHz LTE coverage (Exhibit 3) opportunity from their current installation.

In addition, ATC has an additional tower (Site #416466) which is approximately 0.3mi from AT&T's proposed tower. This tower also has space available at 296ft, matching the application. This coverage is shown in Exhibit 4.

Micah T Hawthorne,

Principal Sales Engineer



Exhibit 1: ATC towers approximately ~0.3mi (~1,600ft.) and ~0.4mi (~2,080ft.) from AT&T proposed tower on neighboring parcel.

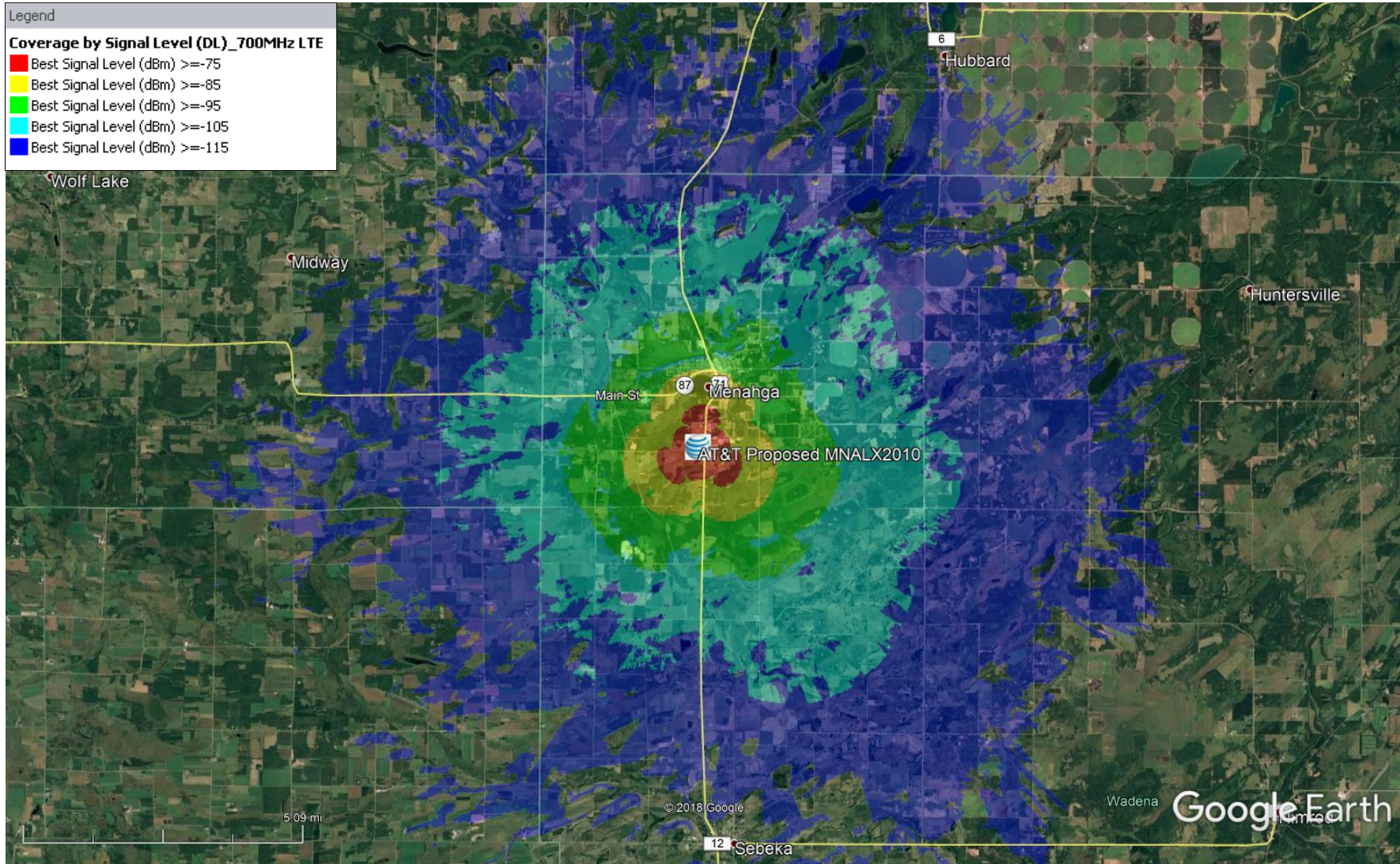


Exhibit 2: AT&T's proposed 700MHz LTE coverage at 296ft. ACL from Uniti tower on neighboring parcel. (AT&T PROPOSED)

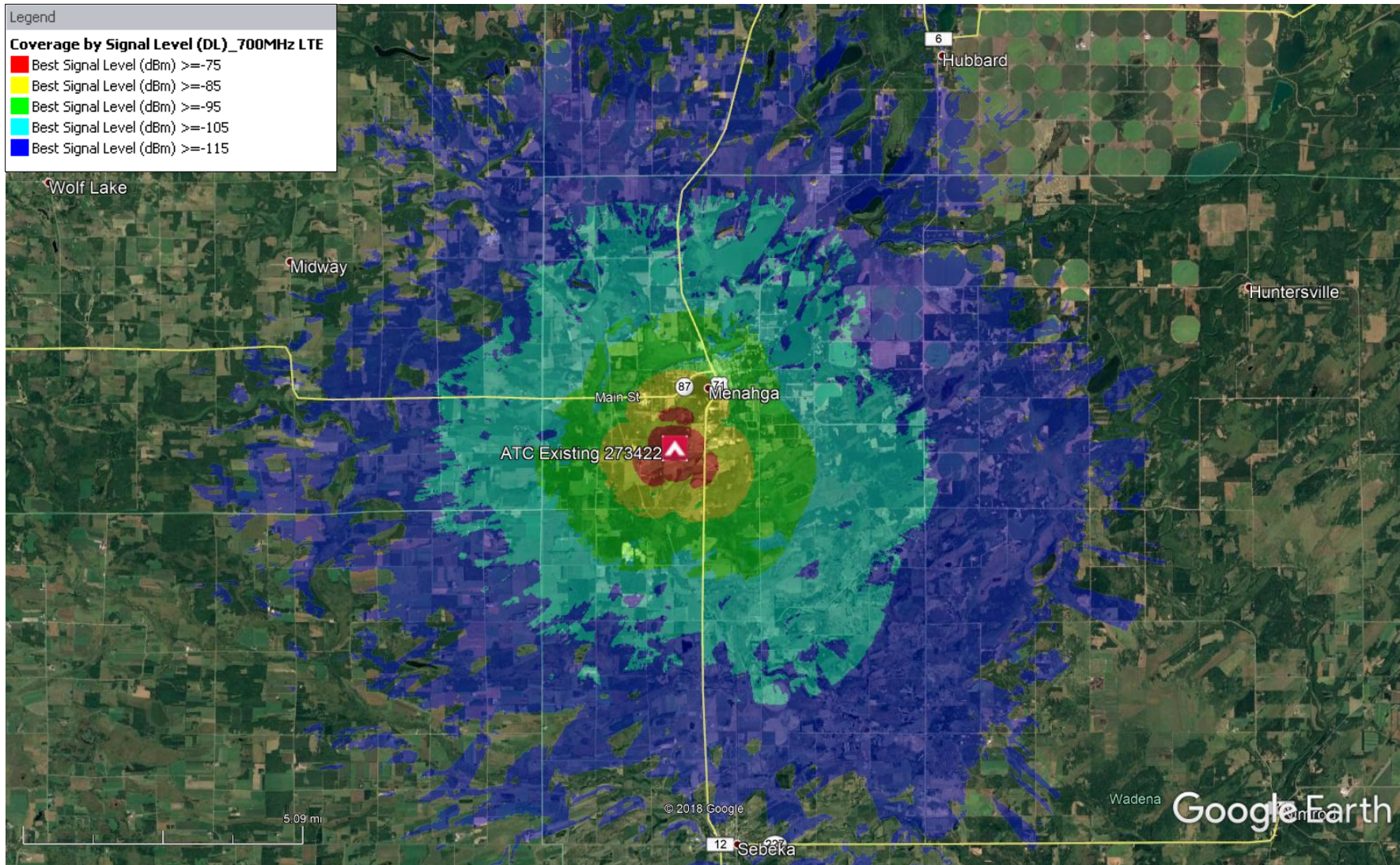


Exhibit 3: AT&T's 700MHz LTE potential coverage from ATC's 273422 existing tower. (AT&T INSTALLED)

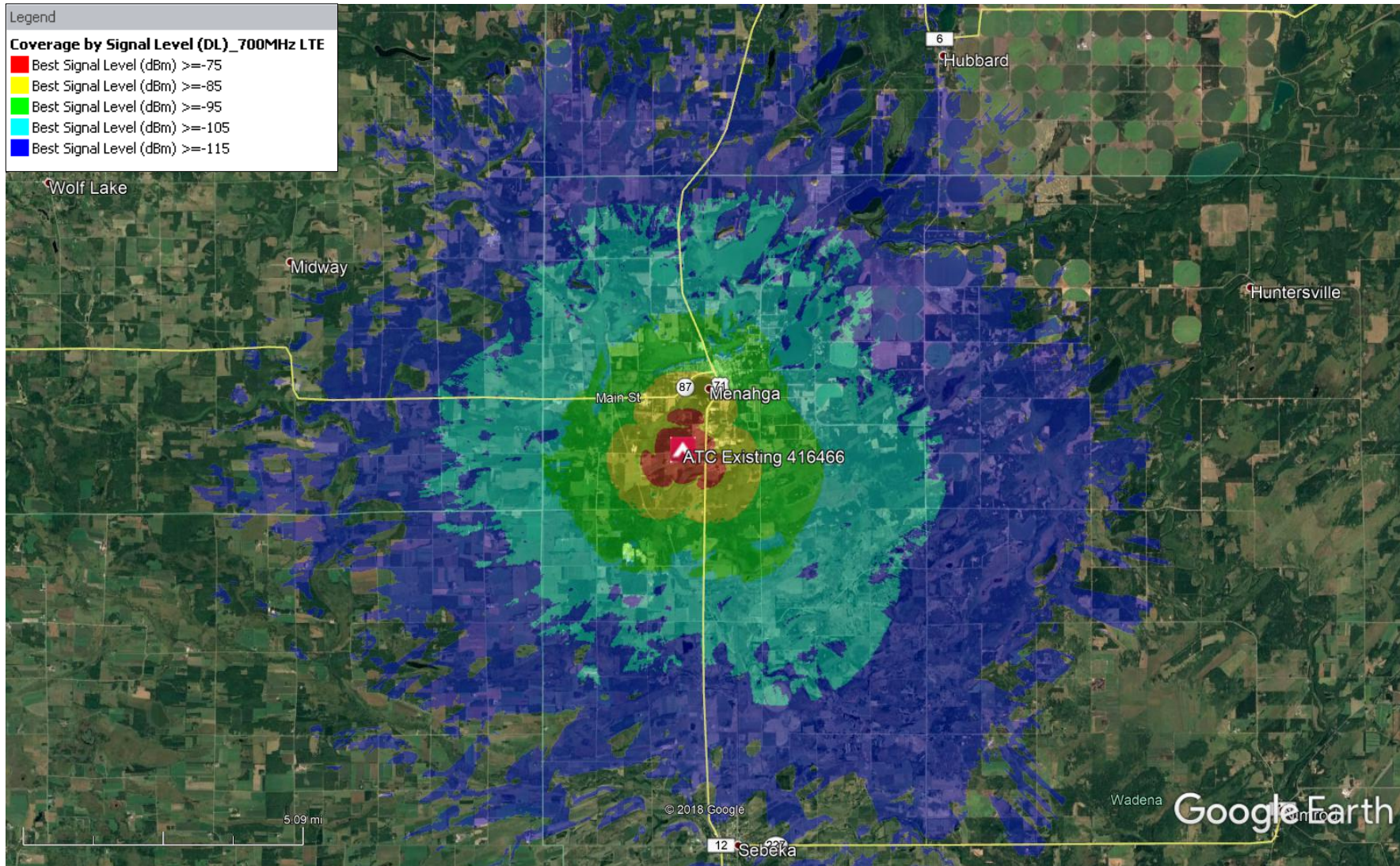


Exhibit 4: AT&T's 700MHz LTE potential coverage from ATC's 416466 existing tower. (AT&T NOT INSTALLED)

Micah Hawthorne

10 Presidential Way, Woburn, MA
linkedin.com/in/micahhawthorne

d: 781-926-4546
micah.hawthorne@americantower.com

SUMMARY

Proven implementation and results driven professional with 10+ years of technical program management and 5+ years of pre-sales engineering/consulting experience planning, implementing, deploying, and integrating wireless mobile networks. Recognized as a strategic thinker, consistent finisher, creative problem solver, and successful team leader. Exceptional oral and written communicator with an ability to influence through collaboration, business acumen, and technical subject matter expertise.

CORE COMPETENCIES

- Program & project management
- Multi-project engagement and coordination
- Cross-functional collaboration
- Speed-to-market risk analysis and planning
- RF/BH site planning and network deployment
- Pre-sales technical analyst and support

EDUCATION & TRAINING

MBA - High Technological Focused	Northeastern University, Boston, MA
Certificate in Applied Project Management	Boston University Corporate Education, Waltham, MA
BS in Electrical Engineering	University of South Alabama, Mobile, MA
Candidate for BS in Electrical Engineering	Massachusetts Institute of Technology, Cambridge, MA

PROFESSIONAL EXPERIENCE

AMERICAN TOWER, Woburn, MA **2012-2018**

Principal Sales Engineer - Project Manager & Network Development Planning Partner; 6 yrs.

- Proactively investigate and pursue incremental business with Sales team driving RF coverage solutions in challenging areas. Additionally support Sales team to achieve multiple \$100K+ MRR deals.
- Support Business Development efforts by analyzing requirements, understanding network coverage goals, and recommending innovative solutions to win comprehensive deals. Research technology trends to identify roadmaps that enhance long term contract value with Carrier and Vertical Market customers. Successes include 20+ new sites RFP with Pitkin County, CO., 200+ sites deal for AT&T In-Flight project, and 20+ sites deal with Pacific Data Vision long term equipment upgrade plans.
- Acquire and analyze carrier network performance data and develop metrics paired with site intelligence to proactively identify multi-tenant tower location opportunities. Released 400+ search areas over 1 year based on lack of 3G voice and 4G LTE data service in suburban growth markets and several heavily trafficked thoroughfares with no tower infrastructure. Partnered with Network Development teams to evaluate and lease land assets for proactive tower development.

ERICSSON (RF/BH organization spun off from Clearwire), Waltham, MA

2004-2012

RF/BH Manager New England – Program Manager; 9 mos.

- Directed a team of 10 Project Managers accountable for network performance monitoring, trouble ticket administration and closeout for post launch service optimization. The team served as 1st line local engineering support for capacity augments, RF repeaters, and In-Building DAS, for Clearwire's 4G network of 850+ sites stretching across 7 Northeast markets from Upstate NY to Boston, MA. Achieved Bonus Level for 35% of network KPIs within 6 months of customer launch weathering 30% head count reduction. Target exceeded on remaining 65% of KPIs. Coordinated action plans with Field Operations team to exceed 99.75% network availability target and timely trouble ticket closeouts in all markets.

CLEARWIRE (4G RF/BH organization spun off from Sprint Nextel), Waltham, MA

RF/BH Manager New England – Program Manager; 2.5 yrs.

- Managed project team of up to 11 RF/BH Engineers responsible for designing, planning, integrating, and launching 450+ sites across 5 New England markets. Met strategic coverage objectives with over 8M POPs served. Achieved MW BH connectivity on 97% of sites reducing BH Opex by approx. 80%.

- Coordinated the RF/BH team's design efforts, aligning metrics and goals with local and remote cross-functional teams, including Site Acquisition, Construction, Field Operations, National Engineering, and Sales & Marketing teams. Regularly evaluated, adjusted, and presented project milestone progress to executive team. Challenges included on-the-fly network redesigns due to difficult zoning. Collaborated daily with Network Deployment's construction efforts ensuring on time 2010 market launches in line with End of Year investor commitment.
- Developed RF/BH team led On-Air site integration and network acceptance process. Removal of implementation bottle necks enabled run rate of 40+ sites per week and associated MW backhaul links.

SPRINT NEXTEL (Nextel merger with Sprint in 2005), Bedford, MA

RF Design Manager New England North – Project Management Lead; 2 yrs.

- Headed team of RF design engineers responsible for 400+ single- and multi- technology site build plan deployment throughout New England area. Deployments of note included site relocations and Cell-On-Wheels (COWs) for capacity expansion in Boston core and special events.
- Standardized zoning message and presentation format for 3rd party Site Acquisition and Design team. Debated the efficacy via mock trials. Enabled consistent message platform for better public awareness to towns, engineer-to-engineer scheduling flexibility, and shorter time to permit for quicker NTPs.

RF Engineer III – Project Manager; 1.5 yrs.

- Prepared and released coverage goals for new and replacement site locations in accordance with build plan budgets. Sites chosen based on network performance KPI improvement requirements and Sales team coverage expansion needs. Presented RF coverage to local boards for zoning permits.
- Served as New England North Design Team POC for cross-functional groups to meet deliverable timeframes for On Air integration. Created RF plan for new sites and assisted project teams with site integrations in line with customer growth expectations, service quality degradation, Sales team customer specific requests, and budgetary constraints. Met service quality and coverage expansion needs in the metro Boston area with emphasis on urban core and reduced network trouble tickets by 50% over 1 year from customers in poorly served areas.

NEXTEL, (Converted to full time employee), Bedford, MA

2004-2005

RF Engineer II; 1 yr.

EXPERT WIRELESS SOLUTIONS, Vienna, VA

2003-2004

RF Engineering Consultant; 1 yr.

- Positioned, designed, and assisted permitting by 3rd party site acquisition teams of new tower assets for Nextel in NH, ME, and MA. Created interstate coverage footprint north of NH along I-95 through to Bar Harbor, ME and Manchester, NH through to Lake Winnepesaukee area increasing sales opportunities to resort POIs.
- Reported in-field drive test analysis enabling service optimization for initial launch of Cingular's GSM network in San Antonio, TX.

RF CONSULTING SERVICES, Marietta, GA

2001-2003

RF Engineering Consultant; 1.5 yrs.

- Implemented turnkey solutions for Cingular's dual band GSM conversion, including design, deployment, and drive test optimization in Puerto Rico market for on time launch of modernized network.
- Oversaw field-testing team responsible for beta testing in-house proprietary software tool for engineering release. Trained and mentored drive test engineers for data processing, coverage analysis, and frequency allocation tool properties for product release to Cingular in two OH and the PR markets.

GALAXY ENGINEERING SERVICES, Alpharetta, GA

2000-2001

RF Design Engineering Consultant; 3 mos.

- Proposed search locations in Northeast region for American Tower's Build-To-Fill project. Maximized potential interested carriers per tower for preemptive site builds with shortest ROI.

RF Associate Engineering Consultant; 1 yr.

AWARDS

Perfect Performance for achieving Bonus Level KPI performance supporting the Clearwire network

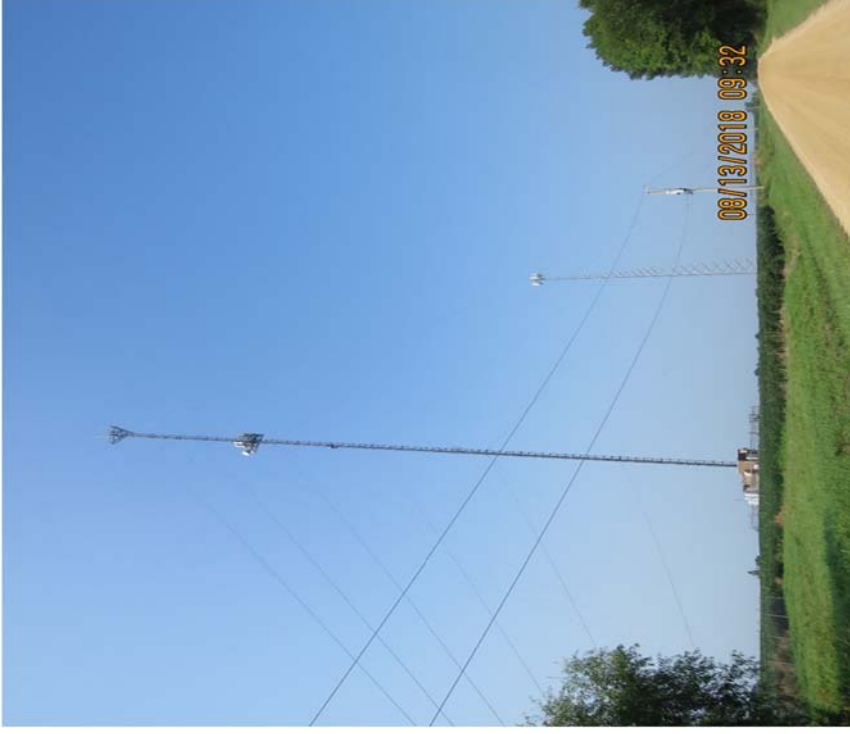
Flushing Township, OH

Uniti Towers, LLC/AT&T Built New Tower 0.03 Miles From Existing ATC Site



Stephenson County, IL

Uniti Towers, LLC/AT&T Built New Tower 0.08 Miles From Existing ATC Site



Decatur County, IA

Uniti Towers, LLC/AT&T Built New Tower 0.12 Miles From Existing ATC Site



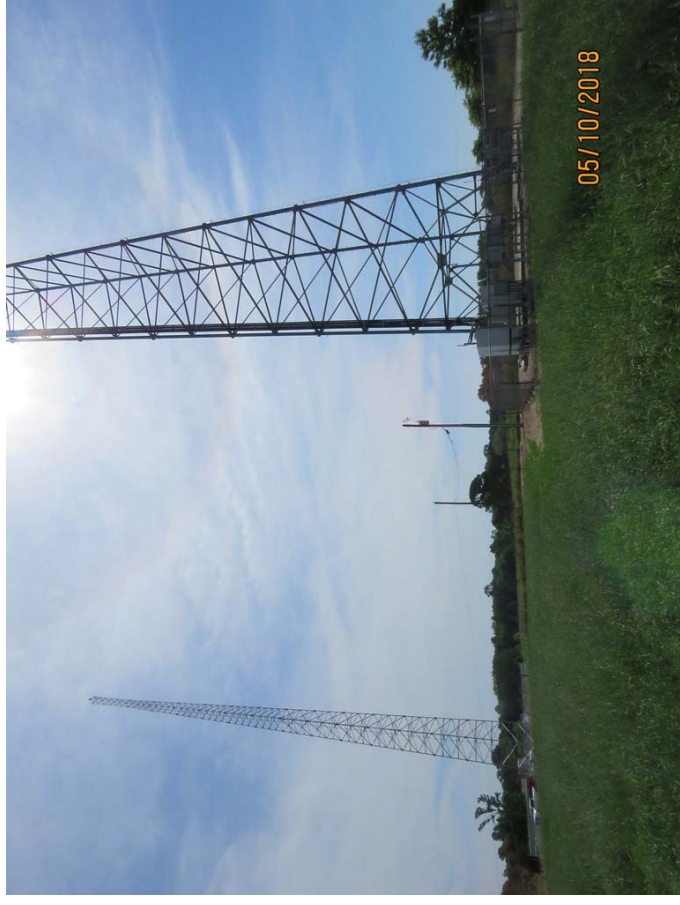
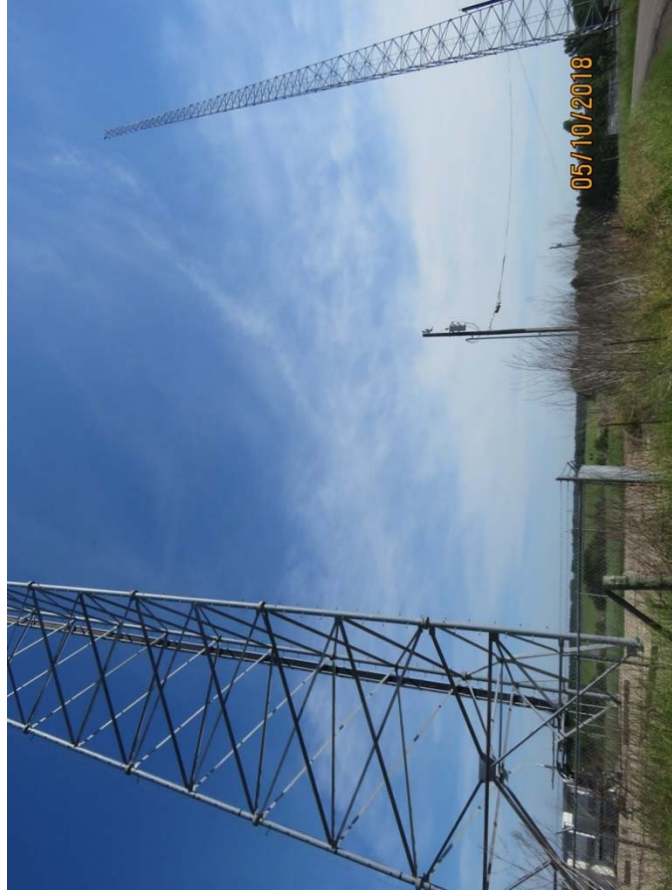
Pettis County, MO

Tillman/AT&T Built New Tower 0.18 Miles From Existing ATC Tower



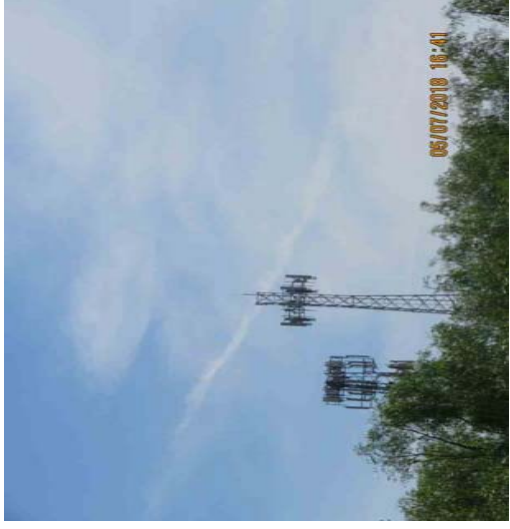
Wood County, TX

Tillman/AT&T Built New Tower 0.06 Miles From Existing ATC Tower

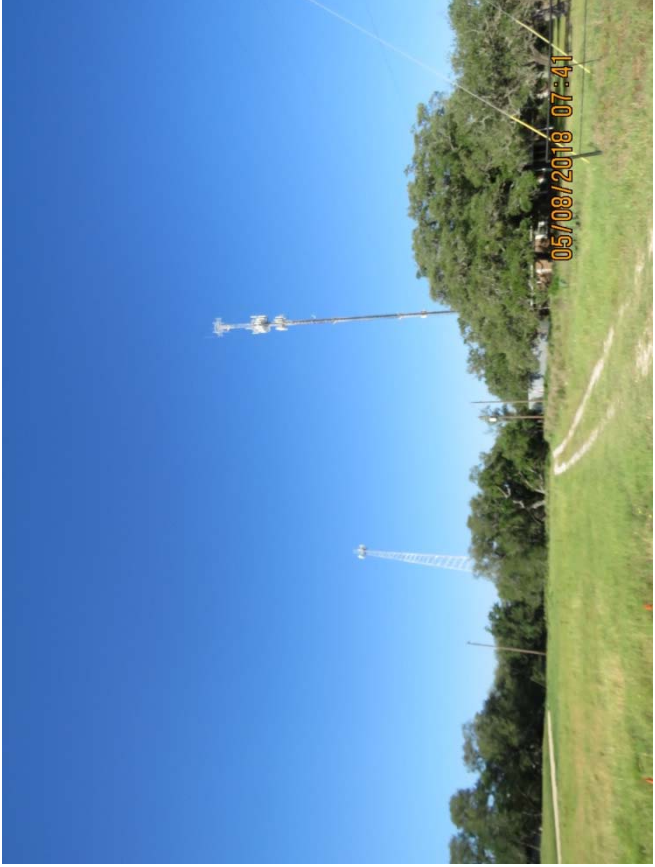


Tom Green County, TX

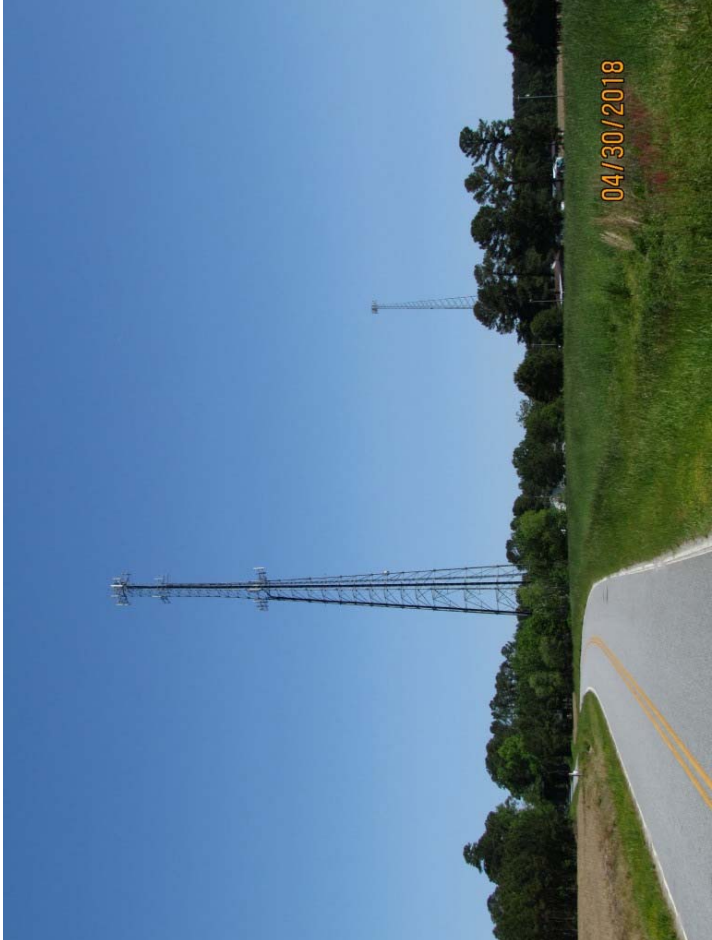
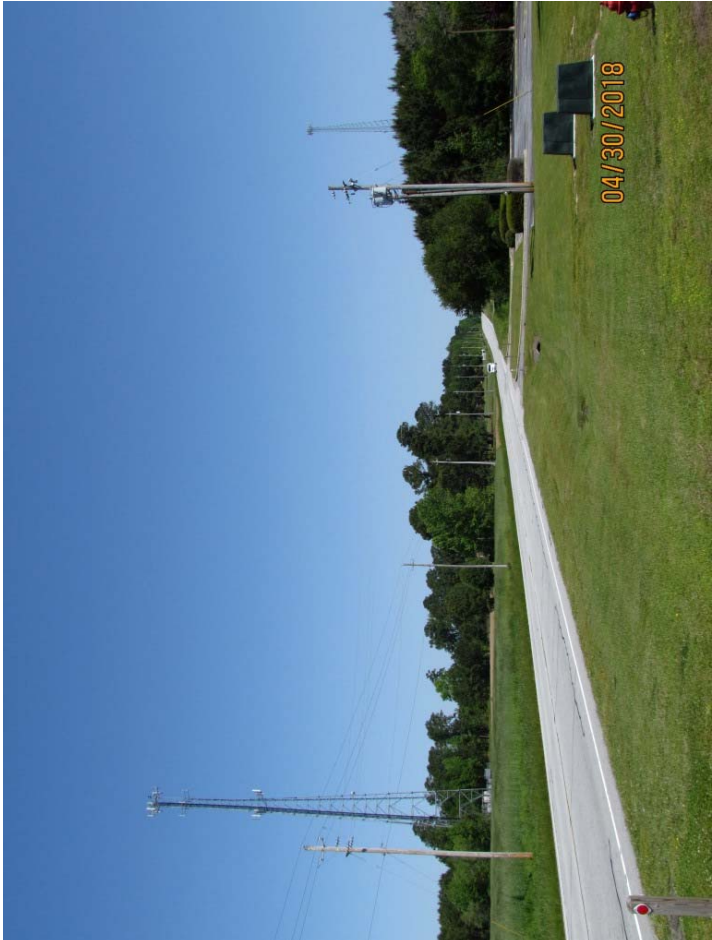
Tillman/AT&T Built New Tower 0.02 Miles From Existing ATC Tower



Atascosa County, TX
Tillman/AT&T Built New Tower 0.09 Miles From Existing ATC Tower



***Lenoir County, NC
Tillman/AT&T Built New Tower 0.25 Miles From Existing ATC Tower***



*Orange Township, OH
Tillman/AT&T Site Built 0.06 Miles From Existing ATC Site*



46.733890, -95.103890

Search

Return to search location

Wireless Coverage Type

Domestic

- Voice
- Data
- AT&T PREPAID™ Service

View Coverage by Device Type

- 4G LTE*
- 4G
- 3G

Compatible device required

International

- Voice
- Data

Domestic Wireless Data Coverage

This map shows an approximation of wireless data coverage in the United States, Puerto Rico, and the U.S. Virgin Islands.



Your search

4G LTE*

4G*

3G*

3rd Party Coverage

3rd Party Coverage May Be 2G Speed

[Learn more about legend](#)

Map displays approximate outdoor coverage and actual coverage may vary. Coverage is not guaranteed and is subject to change without notice.

[Learn more](#)

46.733890, -95.103890

Search

Return to search location

Wireless Coverage Type

Domestic

- Voice
- Data
- AT&T PREPAID™ Service

View Coverage by Device Type

- AT&T HD Voice
- Voice

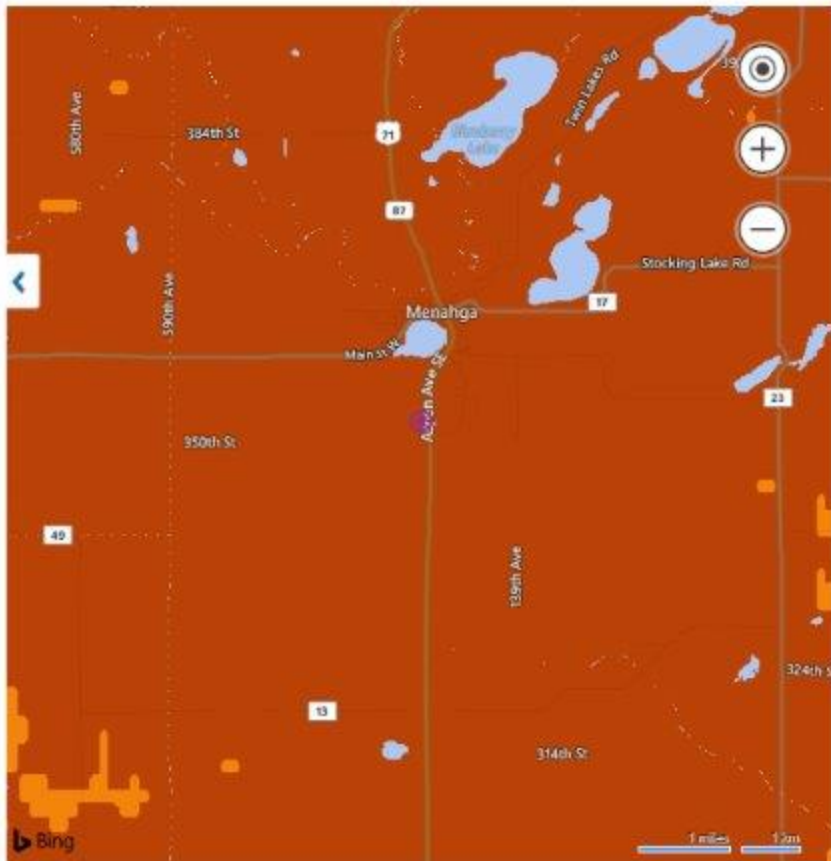
Compatible device required

International

- Voice
- Data

Domestic Wireless Voice Coverage

This map shows an approximation of wireless voice coverage in the United States, Puerto Rico, and the U.S. Virgin Islands.



- Your search
- AT&T HD Voice
- Voice
- 3rd Party Coverage

[Learn more about legend](#)

Map displays approximate outdoor coverage and actual coverage may vary. Coverage is not guaranteed and is subject to change without notice.

[Learn more](#)



September 10, 2018

Direct Dial: 320-257-3868
Aripple@RinkeNoonan.com

City of Menahga City Council
c/o City Administrator
115 Second Street NE
P.O. Box C
Menahga, MN 56464

HAND DELIVERED AND SENT VIA EMAIL TO: cmenahga@wcta.net

**Re: CUP Objection Letter
Our File No. 28209-0001**

Dear Menahga City Council and City Administrator:

Our office represents American Towers LLC and submits this letter and associated documents related to the conditional use permit request for a cell tower from Uniti Towers; a prior objection was also field with the Planning Commission. **American Towers LLC objects to the granting of the requested conditional use permit because it is unnecessary and will be detrimental to the community.** Please enter this letter and enclosures, as well as the letter filed on September 5, 2018, into the record for conditional use permit. We will be in attendance at tonight's meeting. Also, please note that we will be exercising our right to tape record the meeting since the Planning Commission meeting went unrecorded. Further, we request a copy of the correspondence from the City Attorney discussed at the Planning Commission meeting as it was not included in the public copy of the meeting packet or in the City's response to our dated practice request on September 5, 2018. We also request copies of any additional information submitted to the City or considered by the City Council as a part of Uniti's CUP request; another completed "Information Disclosure Request" for is included.

CELL TOWER IS NOT A PUBLIC UTILITY

Cell towers are not listed as a conditional use in the Ag zoning district. It appears that the cell tower is being improperly allowed in the Ag district by conditional use permit because it is being incorrectly classified as a "public utility." The Menahga zoning code contains no definitions for "tower" or "public utility." However, as the applicant, Mr. Buell, stated at the public hearing, the tower is not a public utility. Unlike telephone, gas, electric, or cable service public utilities, the City does not have a franchise agreement with the applicant. The City subdivision code, Chapter 150, implies that public utilities are those services that are linear in nature—underground gas, sewer, and waterlines or overheard electric and telecommunication lines. State law does not

consider cell towers a “public utility” for purposes of being able to be located in public right of way. (See Minn. Stat. §§ 161.45 and 237.163.) Enclosed is a copy of a memorandum prepared by the League of Minnesota Cities that provides some additional context and explains that while small cell wireless facilities may be public utilities, traditional cell towers are not. (See LMC memo pages 2-3.)

NO NECESSITY

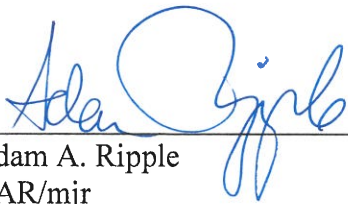
Both of American Towers’ existing towers are less than ½ mile from the site proposed by Uniti. Further, American Towers’ existing towers are closer to the City and provide better coverage and have capacity for co-location at the same RAD height being proposed by Uniti. This is explained in detail in our submission to the Planning Commission. Uniti has not submitted any information to demonstrate that the new tower is needed or necessary. A new tower will not provide better coverage nor will it reduce rates for cell phone users in Menahga. The proposed new tower is entirely unnecessary and does nothing to advance public health, safety, convenience or welfare.

CITY ORDINANCE IS INADEQUATE

Again, nearly all cities in Minnesota impose significant performance standards on cell towers. The Menahga zoning code does not establish any meaningful performance standards for towers and exposes neighboring property owners and the City to potential harm. Uniti and AT&T are taking advantage lack of proper regulations. We urge the City to deny, or at least table, the tower application until the City re-examines and reinforces its zoning regulations for cell towers.

Again, American Towers, LLC requests that the City of Menahga deny the Uniti conditional use permit because it is not a public utility, it is unnecessary and will be detrimental to the community.

Sincerely,



Adam A. Ripple
AAR/mjr

Enclosures

cc: American Towers LLC (via email)



INFORMATION MEMO

Cell Towers, Small Cell Technologies & Distributed Antenna Systems

Learn about large and small cell tower deployment and siting requests for small cell, small wireless and distributed antenna systems (DAS) technology. Better understand the trend of the addition of DAS, small wireless or small cell equipment on existing utility equipment. Be aware of common gaps in city zoning, impact of federal and state law, reasons for collocation agreements and some best practices for dealing with large and small cell towers, small wireless facilities and DAS.

RELEVANT LINKS:

[47 U.S.C. § 253](#) (commonly known as Section 253 of Telecommunications Act).

[47 U.S.C. § 332](#) (commonly known as Section 332 of Telecommunications Act).

[FCC Website](#).



[47 U.S.C. § 253](#) (commonly known as Section 253 of Telecommunications Act).

[47 U.S.C. § 332](#) (commonly known as Section 332 of Telecommunications Act).

I. Deployment of large cell towers or antennas

A cell site or cell tower creates a “cell” in a cellular network and typically supports antennas plus other equipment, such as one or more sets of transceivers, digital signal processors, control electronics, GPS equipment, primary and backup electrical power and sheltering. Only a finite number of calls or data can go through these facilities at once and the working range of the cell site varies based on any number of factors, including height of the antenna. The Federal Communications Commission (FCC) has stated that cellular or personal communications services (PCS) towers typically range anywhere from 50 to 200 feet high.

The emergence of personal communications services, the increased number of cell providers, and the growing demand for better coverage have spurred requests for new cell towers, small cell equipment, and distributed antenna systems (DAS) nationwide. Thus, some cellular carriers, telecommunications wholesalers or tower companies, have attempted to quickly deploy telecommunications systems or personal wireless service facilities, and, in doing so, often claim federal law requires cities to allow construction or placement of towers, equipment, or antennas in rights of way. Such claims generally have no basis. Although not completely unfettered, cities can feel assured that, in general, federal law preserves local zoning and land use authority.

A. The Telecommunications Act and the FCC

The Telecommunications Act of 1996 (TCA) represented America’s first successful attempt to reform regulations on telecommunications in more than 60 years, and was the first piece of legislation to address internet access. Congress enacted the TCA to promote competition and higher quality in American telecommunications services and to encourage rapid deployment of new telecommunications technologies.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[FCC website interpreting Telecommunications Act of 1996.](#)

[47 U.S.C. § 253 \(Section 253 of Telecommunications Act\).](#)

[47 U.S.C. § 332\(c\)\(7\).](#)

[FCC 09-99, Declaratory Ruling \(Nov. 18, 2009\).](#)

[47 U.S.C. § 253\(c\)\(e\) \(Section 253 of Telecommunications Act\).](#)

[47 U.S.C. § 332\(c\)\(7\).](#)

[FCC 09-99, Declaratory Ruling \(Nov. 18, 2009\).](#)

[Sprint Spectrum v. Mills, 283 F.3d 404 \(2nd Cir. 2002\).](#)

[USCOC of Greater Missouri v. Vill. Of Marlborough, 618 F.Supp.2d 1055 \(E.D. Mo. 2009\).](#)

[FCC 09-99, Declaratory Ruling \(Nov. 18, 2009\).](#)

The FCC is the federal agency charged with creating rules and policies under the TCA and other telecommunications laws.

The FCC also manages and licenses commercial users (like cell providers and tower companies), as well as non-commercial users (like local governments). As a result, both the TCA and FCC rulings impact interactions between the cell industry and local government.

The significant changes in the wireless industry and its related shared wireless infrastructures, along with consumer demand for fast and reliable service on mobile devices, have fueled a frenzy of requests for large and small cell/DAS site development and/or deployment. As a part of this, cities find themselves facing cell industry arguments that federal law requires cities to approve tower siting requests.

Companies making these claims most often cite Section 253 or Section 332 of the TCA as support. Section 253 states “no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Section 332 has a similar provision ensuring the entry of commercial mobile services into desired geographic markets to establish personal wireless service facilities.

These provisions should not, however, be read out of context. When reviewing the relevant sections in their entirety, it becomes clear that federal law does not pre-empt local municipal regulations and land use controls. Specifically, the law states “[n]othing in this section affects the authority of a state or local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights of way ...” and that “nothing in this chapter shall limit or affect the authority of ... local government ... over decisions regarding the placement, construction, and modification of personal wireless service facilities”.

Courts consistently have agreed that local governments retain their regulatory authority and, when faced with making decisions on placement of towers, antenna or *new* telecommunication service equipment on city facilities, they generally have the same rights that private individuals have to deny or permit placement of a cellular tower on their property. This means cities can regulate and permit placement of towers and other personal wireless service facilities, including, in most situations (though some state law restrictions exist regarding regulations of small wireless support structures), controlling height, exterior materials, accessory buildings, and even location. Cities should be careful to make sure that local regulations don't have the effect of completely banning all cell towers or personal wireless service facilities. Such regulation could run afoul of federal law (not to mention state law as well).

RELEVANT LINKS:

[Vertical Broadcasting v. Town of Southampton](#), 84 F. Supp.2d 379 (E.D.N.Y. 2000).

[Paging v. Bd. of Zoning Appeals for Montgomery Cty.](#), 957 F.Supp. 805 (W.D. Va. 1997).

[Letter from Minnesota Department of Commerce to Mobilitie.](#)

[Minn. Stat. § 237.162](#)
[Minn. Stat. § 237.163](#)
Chapter 94, Art. 9, 2017
Regular Session.

[Minnesota Public Utilities Commission, Meeting Agenda \(Nov. 3, 2016\).](#)

[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163](#)
Chapter 94, Art. 9, 2017
Regular Session.

Some cellular companies try to gain unfettered access to city right of way by claiming they are utilities. The basis for such a claim usually follows one of two themes—either that, as a utility, federal law entitles them to entry; or, in the alternative, under the city’s ordinances, they get the same treatment as other utilities. Courts have rejected the first argument of entitlement, citing to the specific directive that local municipalities retain traditional zoning discretion.

B. State law

In the alternative, the argument that a city’s local ordinances include towers as a utility has, on occasion and in different states, carried more weight with a court. To counter such arguments, cities may consider specifically excluding towers, antenna, small cell, and DAS equipment from their ordinance’s definition of utilities. The Minnesota Department of Commerce, in a letter to a wireless infrastructure provider, cautioned one infrastructure company that its certificate of authority to provide a local niche service did not authorize it to claim an exemption from local zoning. The Minnesota Department of Commerce additionally requested that the offending company cease from making those assertions.

In Minnesota, to clear up confusion about whether wireless providers represent telecommunications right-of-way users under state law and to address concerns about deployment of small wireless technology, the Legislature amended Minnesota’s Right-of-Way User statutes, or Minnesota ROW Law, in the 2017 legislative session to specifically address small wireless facilities and the support structures on which those facilities may attach.

Because of these amendments, effective May 31, 2017 additional specific state statutory provisions apply when cities, through an ordinance, manage their rights of way, recover their right-of-way management costs (subject to certain restrictions), and charge rent for attaching to city-owned structures in public rights of way. Rent, however, is capped for collocation of small wireless facilities. State law defines “collocate” or “collocation” as a means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

The Minnesota ROW Law allows cities to require telecommunications right-of-way users to get a permit for use of the right of way; however, it creates a separate permitting structure for the siting of small wireless facilities.

RELEVANT LINKS:

[USCOC of Greater Missouri v. Vill. Of Marlborough](#), 618 F.Supp.2d 1055 (E.D. Mo. 2009).

[Minnesota Towers Inc. v. City of Duluth](#), 474 F.3d 1052 (8th Cir. 2007).

[NE Colorado Cellular, Inc. v. City of North Platte](#), 764 F.3d 929 (8th Cir. 2014) (denial of CUP for tower must be “in writing” but need not be a separate finding from the reasons in the denial).

[Smith Comm. V. Washington Cty, Ark.](#), 785 F.3d 1253 (8th Cir. 2015) (substantial evidence' analysis involves whether the local zoning authority's decision is consistent with the applicable local zoning requirements and can include aesthetic reasons).

[FCC 09-99, Declaratory Ruling](#), Nov. 18, 2009.

[Tower and Antenna Siting FAQ sheet from FCC.](#)

[T-Mobile West V. Crow](#), No. CV08-1337 (D. AZ. Dec. 16, 2009).

Because of the recent significant changes in the state law and the specific requirements for deployment of small wireless facilities that do not apply to other telecommunications right-of-way users, cities should work with their city attorneys to review and update their ordinances.

C. Limitations on cities' authority

1. Federal law

Although federal law expressly preserves local governmental regulatory authority, it does place several substantive and procedural limits on that authority. Specifically, a city:

- Cannot unreasonably discriminate among providers of functionally equivalent services.
- Cannot regulate those providers in a manner that prohibits or has the effect of prohibiting the provision of telecommunications services or personal wireless services.
- Must act on applications within a reasonable time.
- Must document denial of an application in writing supported by “substantial evidence.”

Proof that the local zoning authority's decision furthers the applicable local zoning requirements or ordinances satisfies the substantial evidence test. Municipalities cannot cite environmental concerns as a reason for denial, however, when the antennas comply with FCC rules on radio emissions. In the alternative, cities can request proof of compliance with the FCC rules.

Bringing an action in federal court represents the recourse available to the cellular industry if challenging the denial of a siting request under federal law. Based on the limitations set forth in the federal law on local land use and zoning authority, most often, when cities deny siting requests, the challenges to those denials claim one of the following:

- The municipal action has the effect of “prohibiting the provision of personal wireless service.”
- The municipal action unreasonably discriminates among providers of functionally equivalent services (i.e., cell providers claiming to be a type of utility so they can get the same treatment as a utility under city ordinance).

RELEVANT LINKS:

[Minn. Stat. § 237.162](#)
[Minn. Stat. § 237.163](#)
[Chapter 94, Art. 9, 2017](#)
Regular Session.

See further discussion of
state law restrictions in
Section II-A, below

[Minnesota Towers Inc. v. City of Duluth](#), 474 F.3d 1052 (8th Cir. 2007). [Smith Comm. V. Washington City, Ark.](#), 785 F.3d 1253 (8th Cir. 2015).

[Voicestream PCSII Corp. v. City of St. Louis](#), No. 4:04CV732 (E.D.Mo. August 3, 2005) (city interpretation of city ordinance treats communication facility as a utility).

[USCOC of Greater Missouri v. Vill. Of Marlborough](#), 618 F.Supp2d 1055, 1064 (E.D. Mo. 2009) (TCA explicitly contemplates some discrimination amount providers of functionally equivalent services).

2. State law

In addition to mirroring some of the federal law requirements, such as the requirement of equal treatment of all like providers, state law permits cities, by ordinance, to further regulate “telecommunications right-of-way users.”

Minnesota’s Telecom ROW Law expressly includes wireless service providers as telecommunications right-of-way users, making the law applicable to the siting of both large and small, wire-lined or wireless telecommunications equipment and facilities, in the rights of way.

State law places additional restrictions on the permitting and regulating of small wireless facilities and wireless support structure placement. Accordingly, cities should work with city attorneys when drafting, adopting, or amending their ordinance. The Telecom ROW Law still expressly protects local control, allowing cities to deny permits for reasonable public health, welfare, and safety reasons, with no definitions of or limitations on what qualifies as health, welfare, and safety reasons.

D. Court decisions

The 8th U.S. Circuit Court of Appeals (controlling law for Minnesota) recognizes that cities do indeed retain local authority over decisions regarding the placement and construction of towers and personal wireless service facilities.

The 8th Circuit also has heard cases where a carrier or other telecommunications company argued they are a utility and should be treated as such under local ordinances. Absent a local ordinance that includes this type of equipment within its definition of utilities, courts do not necessarily deem cell towers or other personal communications services equipment functionally equivalent to utilities.

Additionally, courts have found that the federal law anticipates some disparate application of the law, even among those deemed functionally equivalent. For example, courts determined it reasonable to consider the location of a cell tower when deciding whether to approve tower construction (finding it okay to treat different locations differently), so long as cities do not allow one company to build a tower at a specific location at the exclusion of other providers.

RELEVANT LINKS:

For regulation of telecommunications right-of-way users, see Appendix A, Sample Ordinances and Agreements.

[Minn. Stat. 237.163, Subd. 2 \(f\), Chapter 94, Art. 9, 2017 Regular Session.](#)



E. City approaches

Regulation of placement of cell towers and personal wireless services can occur through an ordinance. The Minnesota ROW Law provides cities with comprehensive authority to manage their rights of way. With the unique application of federal law to telecommunications and the recent changes to state law, along with siting requests for locations both in and out of rights of way, many cities find having a separate telecommunications right-of-way user ordinance (in addition to a right-of-way ordinance) allows cities to better regulate towers and other telecommunications equipment, as well as collocation of small wireless facilities and support structures.

Some cities also have modified the definitions in their ordinances to exclude cell towers, telecommunications, wireless systems, DAS, small cell equipment, and more from utilities to counter the cell industry’s requests for equal treatment or more lenient zoning under the city’s zoning ordinances.

In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit (or many of these regulations include a provision for variances, if needed). While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district. Cities will want to review their zoning to make sure it complies with the Minnesota ROW Law.

II. Deployment of small cell technologies and DAS

Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall.

RELEVANT LINKS:



[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163.](#)
[Chapter 94, Art. 9, 2017 Regular Session.](#)
See Appendix A, Sample Ordinances and Agreements.

See League [FAQ on Minnesota 2017 Telecommunication Right of Way User Amendments](#) (July 2017).

See Appendix A, Sample Ordinances and Agreements

Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower. Cities sometimes are asked to provide the power needed for the radios, which the city can negotiate into the leasing agreement with the cell provider.

A. Additional zoning and permitting needs under state law

Historically, many cities' ordinances address large cell sites, but not small cell towers or DAS. With the recent changes to state law, cities should work with their city attorney to review their ordinances in consideration of the new statutory permit process for the siting of small wireless facilities.

Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. Cities should work with their city attorney to get assistance with drafting these agreements and any additional documents, like a bill of sale (for transfer of pole from carrier to city), if necessary.

The terms and conditions of these agreements, called collocation agreements, for siting of small wireless facilities, most likely will mirror agreements formerly referred to as master licensing agreements, often including provisions such as:

- Definitions of scope of permitted uses.
- Establishment of right-of-way rental fee (note statutory limitations).
- Protection of city resources.
- Provision of contract term (note statutory limitations).
- Statement of general provisions.
- Maintenance and repair terms.
- Indemnity provisions.
- Insurance and casualty.
- Limitation of liability provision.
- Terms for removal.

RELEVANT LINKS:

[Minn. Stat. § 237.162](#)
[Minn. Stat. § 237.163](#)
Chapter 94, Art. 9, 2017
Regular Session.

See League [FAQ on Minnesota 2017 Telecommunication Right of Way User Amendments](#) (July 2017).

State law does not require a separate agreement, and some cities have chosen to put these provisions in their ordinance or permit instead. For cities that choose to have a separate agreement in place, they must develop and make that agreement publicly available no later than November 31, 2017 (six months after the effective date of this act) or three months after receiving a small wireless facility permit application from a wireless service provider. The agreement must be made available in a substantially complete form; however, the parties to the small wireless facility collocation agreement can incorporate additional mutually agreed upon terms and conditions. The law classifies any small wireless facility collocation agreement between a local government unit and a wireless service provider as public data, not on individuals, making those agreements accessible to the public under Minnesota's Data Practices Law.

Additionally, the new amendments to Minnesota's Telecom ROW Law set forth other requirements that apply only to small cell wireless facility deployment. The 2017 amendments changed Minnesota's ROW Law significantly, the details, of which, can be found in the League's [FAQ on Minnesota 2017 Telecommunication Right of Way User Amendments](#) (July 2017). However, after the amendments, the law now generally provides:

- A presumption of permitted use in all zoning districts, except in districts zoned residential or historical districts.
- The requirement that cities issue or deny small wireless facility requests within 90 days, with a tolling period allowed upon written notice to the applicant, within 30 days of receipt of the application.
- An allowance to batch applications (simultaneously submit a group of applications), with the limitation to not exceed 15 small wireless requests for substantially similar equipment on similar types of wireless support structures within a two-mile radius.
- Rent not to exceed \$150 per year with option of an additional \$25 for maintenance and allowances for electricity, if cities do not require separate metering.
- The limitation that cities cannot ask for information already provided by the same applicant in another small cell wireless facility application, as identified by the applicant, by reference number to those other applications.
- A restriction that the height of wireless support structures cannot exceed 50 feet, unless the city agrees otherwise.
- A restriction that wireless facilities constructed in the right of way may not extend more than 10 feet above an existing wireless support structure in place.

RELEVANT LINKS:

[47 U.S.C. § 332](#) (commonly known as Section 332 of Telecommunications Act).

[FCC 09-99, Declaratory Ruling](#) (Nov. 18, 2009).

[FCC 14-153, Report & Order](#) (October 21, 2014).

[Minn. Stat. § 237.163, Subd. 3a\(f\), Chapter 94, Art. 9](#), 2017 Regular Session.

See Appendix A, Sample Ordinances and Agreements.

- A prohibition on moratoriums with respect to filing, receiving, or processing applications for right-of-way or small wireless facility permits; or issuing or approving right-of-way or small wireless facility permits. For cities that did not have a right-of-way ordinance in place on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

NOTE: These additional state law requirements do NOT apply to collocation on structures owned, operated maintained or served by municipal utilities. Also, the small wireless statutory requirements do not invalidate agreements in place at the time of enactment of the 2017 amendments (May 31, 2017).

The siting of DAS or new small cell technologies also must comply with the same restrictions under federal law that apply to large cell sitings. Specifically, a city:

- May not unreasonably discriminate among providers of functionally equivalent services.
- May not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services.
- Must act on applications within a reasonable time.
- Must make any denial of an application in writing supported by substantial evidence in a written record.

Because of the complexities in the state law and the overlay of federal regulations, some cities have found it a best practice to adopt or amend a telecommunications right-of-way ordinance separate from their general right-of-way management ordinance. Cities that do not choose to adopt separate ordinances, at a minimum, should work with their attorney to review and amend their existing right-of-way ordinances, if necessary, to accommodate for telecommunications right-of-way users and the recent state law amendments for small wireless facilities. For example, since state law now recognizes small wireless facilities as a permitted use, zoning ordinances that require conditional use permits for these facilities likely will need amending.

Since wireless providers seek to attach their small cell and DAS equipment to city-owned structures, many cities choose to have a separate agreement in place to address terms and conditions not included in ordinances or permits. If the city chooses to do so, the law requires the city to have these agreements available in a substantial form so applicants can anticipate the terms and conditions. Again, cities should work with the city attorney to draft a template agreement governing attachment of wireless facilities to municipally owned structures in the right of way.

RELEVANT LINKS:

[Section 6409\(a\) of the Middle Class Tax Relief and Joe Creation Act of 2012, codified at 47 U.S.C. § 1455.](#)

[FCC Public Notice AD 12-2047](#) (January 25, 2013).

[FCC 14-153, Report & Order](#) (October 21, 2014).

[FCC Public Notice AD 12-2047](#) (January 25, 2013).

[FCC Public Notice AD 12-2047](#) (January 25, 2013).

[City of Arlington Texas, et. al. V. FCC, et. al.](#), 133 S.Ct. 1863, 1867 (2013) (90 days to process collocation application and 150 days to process all other applications, relying on §332(c)(7)(B)(ii)).

This model ordinance and other information can be found at [National Association of Counties Website](#).

With the nationwide trend encouraging deployment of these new technologies, if a city denies an application, it must do so in writing and provide detailed reasonable findings that document the health, welfare, and safety reasons for the denial. With the unique circumstances of each community often raising concerns about sitings, cities may benefit from proactively working with providers.

B. Modifications of existing telecommunication structures

If a siting request proposes *modifications to and/or collocations of wireless transmission equipment on existing FCC-regulated towers or base stations*, then federal law further limits local municipal control. Specifically, federal law requires cities to grant requests for modifications or collocation to existing *FCC-regulated structures* when that modification would not “substantially change” the physical dimensions of the tower or base station.

The FCC has established guidelines on what “substantially change the physical dimensions” means and what constitutes a “wireless tower or base station.”

Once small cell equipment or antennas gets placed on that pole, then the pole becomes a telecommunication structure subject to federal law and FCC regulations. Accordingly, after allowing collocation once, the city then must comply with the more restrictive federal laws that allow modifications to these structures that do not substantially change the physical dimensions of the pole, like having equipment from the other cell carriers.

Under this law, it appears cities cannot ask an applicant who is requesting modification for documentation information other than how the modification impacts the physical dimensions of the structure. Accordingly, documentation illustrating the need for such wireless facilities or justifying the business decision likely cannot be requested. Of course, as with the other siting requests, state and local zoning authorities must take prompt action on these siting applications for wireless facilities (60-day shot clock rule).

Two wireless industry associations, the WIA (formerly known as the PCIA) and CTIA, collaborated with the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors to: (1) develop a model ordinance and application for reviewing eligible small cell/DAS facilities requests under federal law; (2) discuss and distribute wireless siting best practices; (3) create a checklist that local government officials can use to help streamline the review process; and (4) hold webinars regarding the application process.

RELEVANT LINKS:

[Minn. Stat. § 237.163, Subd. 2\(d\), Chapter 94, Art. 9, 2017 Regular Session.](#)

III. Moratoriums

The cellular industry often challenges moratoriums used to stall placement of cell towers, as well as small cell/DAS technology, until cities can address regulation of these structures. Generally, these providers argue that these moratoriums do one of the following:

- Prohibit or have the effect of prohibiting the provision of personal wireless services.
- Violate federal law by failing to act on an application within a reasonable time.

State law now prohibits moratoriums with respect to: (1) filing, receiving, or processing applications for right-of-way or small wireless facility permits; or (2) issuing or approving right-of-way or small wireless facility permits. For cities that did not have an ordinance enabling it to manage its right-of-way on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

IV. Conclusion

With the greater use of calls and data associated with mobile technology, cities likely will see more new cell towers, as well as small cell technology/DAS requests. Consequently, it would make sense to proactively review city regulations to ensure consistency with federal and state law, while still retaining control over the deployment of structures and the use of rights of way.

Appendix A: Sample Ordinances and Sample Agreements

Many cities address cell towers in their ordinances already. For informational purposes only, the links below reference some telecommunications facilities ordinances in Minnesota. PLEASE NOTE, these ordinances reflect each city's unique circumstances and may pre-date the 2017 Legislative Session which, then, would not have considered the amendments to Minn. Stat. §§ 237.162, 237.163 when drafted.

Sample Telecommunications Ordinances

[Revised Model Right-of-Way Ordinance](#)

City of Edina (predates 2017 amendments)

Ordinance: ([Chapter 34: Telecommunications](#))

City of Brainerd

Memo to Planning Commission from City Planner, July 13, 2017 Re: [Draft Ordinance: Section 35: Antennas and Towers](#)

City of Minneapolis

[Ordinance: \(Amendment to Ordinance to accommodate Small Cell/DAS equipment\)](#)
[CPED Staff Report, City of Minneapolis regarding Amendment](#)

City of Bloomington

Ordinance: (Part II City Code, [Chapter 17: Streets and Rights-of-Way](#))

Ordinance: ([No. 2017-16, Amending Section 14.03 of the City Code Concerning the Permit Fee](#))

Permit: [Small Cell Permit](#)

Sample Collocation Agreement for DAS/Small Cell

[Texas City Attorney Association](#)

Addendum to Local Gov. Code, Chapter 283

[San Antonio, Texas](#)

[Boston, Massachusetts](#)

[San Francisco, California](#)

League of Minnesota Cities Model [Small Wireless Facility Collocation Agreement](#)



September 19, 2018

Direct Dial: 320-257-3868
Aripple@RinkeNoonan.com

City of Menahga City Council
c/o City Administrator
115 Second Street NE
P.O. Box C
Menahga, MN 56464

Uniti Towers
10801 Executive Center Drive
Shannon Building Suite 100
Little Rock, AR 72211

Uniti Towers
10802 Executive Center Drive
Benton Building Suite 300
Little Rock, AR 72211

U.S. MAIL AND SENT VIA EMAIL TO: cmenahga@wcta.net and scottbuell@gmail.com

**Re: Notice of Intent to Appeal
Our File No. 28209-0001**

Dear Menahga City Council and Uniti Tower Representative:

As you know, our office represents American Towers LLC and objected to the Uniti Tower conditional use permit application. This letter is to notify the parties of our client's intent to appeal the decision of the City of Menahga's granting of the conditional use permit requested by Uniti. Formal appeal documents will be forthcoming.

Sincerely,

Adam A. Ripple
AAR/mjr

cc: American Towers LLC (via email)



October 5, 2018

Direct Dial: 320-257-3868
Aripple@RinkeNoonan.com

City of Menahga Board of Adjustment
c/o City Administrator
115 Second Street NE
P.O. Box C
Menahga, MN 56464

SENT VIA EMAIL TO: cmenahga@wcta.net

**Re: CONDITIONAL USE PERMIT APPEAL
Our File No. 28209-0003**

Dear Menahga Board of Adjustment:

Our office represents American Towers LLC. Pursuant to a telephone conference with City Administrator Ellingson on October 4, 2018, it is my understanding that the City believes an appeal to the City Council, sitting as the Board of Adjustment, must be made in order to exhaust all administrative remedies before seeking judicial review. This letter serves as that appeal on behalf of American Towers LLC with respect to the conditional use permit issued to Uniti Towers (“Uniti”) on September 10, 2018. This letter supplements the two letters dated September 5, 2018 and September 10, 2018, which were previously submitted to the City by our office.

CELL TOWERS ARE NOT PUBLIC UTILITIES

The Menahga City Code does not define “public utility,” “public service uses,” or “public building,” the terms used in Section 151.50(A)(2). Cell towers are not public utilities according to the Menahga City Code or on any other basis, and any inference that they are is erroneous. Scott Buell, the representative for Uniti stated on the record at the September 6, 2018 Planning Commission meeting the proposed cell tower was not a public utility. This makes sense because cell service is not monopolistic like other utilities—people have choices. Further, unlike telephone, gas, electric, or cable service public utilities, the City does not have a franchise agreement with the applicant. The City’s subdivision code, Chapter 150, implies that public utilities are those services that are linear in nature—underground gas, sewer, and waterlines or overhead electric and telecommunication lines. State law does not consider cell towers a “public utility” for purposes of being able to be located in public right of way. (See Minn. Stat. §§ 161.45 and 237.163.) Construction in Menahga’s residential agricultural district of an

unnecessary cell tower that duplicates existing services is contrary to the spirit and the letter of the City Code because it works against the purpose of the zoning code, does not meet any of the criteria for issuance of a CUP, and is detrimental to the public welfare. The City's passage and approval of Resolution No. 2018-16 was unreasonable, arbitrary, and capricious because it was not based on a legally sufficient reason and was not supported by an adequate factual basis.

THE MENAHGA CITY CODE DOES NOT CONTEMPLATE CELL TOWERS

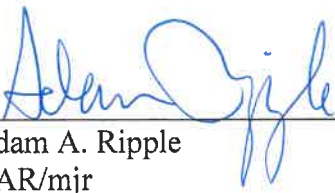
The Menahga City Code does not contemplate cell towers. The Menahga City Code fails to establish performance standards for the construction of cell towers such as co-location requirements, height restrictions, or mandatory setbacks, exposing neighboring property owners and other residents to potential harm in the form of visual pollution, nuisance shadows, unnecessary construction projects, residue from unnecessarily retired or duplicated towers. To the extent a city's land-use ordinances are vague, Minnesota law mandates that they should be construed against the city. The City Code is so vague regarding cell towers that it renders any decision on a CUP application for the construction of a new cell tower unreasonable, arbitrary, and capricious. American Towers is aggrieved by the City's failure to define public utility in its ordinances or to contemplate regulation of new cell tower construction.

NO NECESSITY

Even if cell towers could be construed as public utilities, there is no necessity for the Uniti tower as required by Menahga code Section 151.50(2). Both of American Towers' existing towers are less than ½ mile from the site proposed by Uniti. Further, American Towers' existing towers are closer to the City, provide better coverage and have capacity for co-location at the same RAD height being proposed by Uniti. This is explained in detail in our submission to the Planning Commission on September 5, 2018. Uniti has not submitted any information to demonstrate that the new tower is needed or necessary. There is no evidence in the record and no finding that suggests a new tower will provide better coverage or will it reduce rates for cell phone users in Menahga. The proposed new tower is entirely unnecessary and does nothing to advance public health, safety, convenience or welfare.

For these reasons, the Uniti CUP was improperly granted. American Towers appeals the granting of the Uniti CUP. The Uniti CUP should be rescinded.

Sincerely,



Adam A. Ripple
AAR/mjr

cc: American Towers LLC (via email)