



October 12, 2018

via electronic mail to: cmenahga@wcta.net

City of Menahga – City Council
Menahga City Council Chambers
115 2nd Street NE
Menahga, MN 56464

Re: ***Response to American Tower Corporation appeal of a CUP approval for a new Wireless Antenna Structure in the City of Menahga, Minnesota.***

This letter is in response to a conditional use permit (“CUP”) appeal submitted by the law firm of Rinke-Noonan on behalf of American Tower Corporation LLC (“ATC”) dated October 5, 2018. In its appeal, ATC objects to the unanimous CUP approval Uniti Towers LLC (“Uniti”) was granted by the City of Menahga City Council on September 10, 2018. Uniti also received unanimous recommendation for approval by the City of Menahga Planning Commission on September 6, 2018.

After reviewing ATC’s submittal, we find no valid basis to support their appeal. The City of Menahga conducts a stringent process in order to acquire a CUP, which includes administrative reviews, two public hearings, notification of neighboring property owners of the proposed use and hearing dates along with posted hearing notices. There were no objections received or concerns voiced by residents prior to or during the hearings related to Uniti’s CUP.

ATC’s appeal first claims that Uniti was represented as a public utility in the process. This is incorrect. Perhaps because wireless antenna infrastructure is not specifically addressed in the zoning ordinance, the City of Menahga decided to follow the most stringent standard available – a public utility CUP process – in an effort to thoroughly consider the application and provide the residents of Menahga ample opportunity to comment on the proposal. This process is similar to the City’s public utility CUP requirements cited by ATC. However, by objecting to the use of this process, ATC is, in essence, objecting to a jurisdictional approval standard that is likely as stringent or more stringent, than the process it was required to follow in order to obtain approvals for the two tower sites it owns or manages in the area. It does not logically follow then that the City’s adherence to a similarly rigorous process in the case of Uniti is somehow now unreasonable, arbitrary or capricious.

ATC’s next assertion is that the City’s lack of a wireless-antenna-structure-specific ordinance gives it cause to be aggrieved. This assertion is simply unfounded. A municipality is free to include or not include a variety of requirements in their zoning ordinances or make the decision that they do not want any zoning ordinances altogether. The Menahga City CUP process is materially similar to the requirements of



Uniti Group Corporate Headquarters
10802 Executive Center Drive
Benton Building, Ste. 300
Little Rock, AR 72211
501.850.0820 | uniti.com

municipalities that do have specific wireless antenna structure ordinances. Moreover, during this process, ATC was given ample opportunity to present its arguments against Uniti's CUP and its arguments were diligently reviewed and considered by the City of Menahga City Council. Only after review of such arguments and all other material information did the City of Menahga City Council make a determination to unanimously support Uniti's application.

Finally, ATC argues that despite Uniti not being a public utility, the City of Menahga was somehow obligated to consider the necessity of Uniti's proposed tower in accordance with public utility requirements. Section 151.50(A)(2) of the Menahga Code does not in fact, define the word "necessary" but the subsequent Section 151.50(B) states multiple times that the City Council determines and deems various actions as "necessary". Therefore, in the event that the City of Menahga was somehow obligated to consider the requirements of Section 151.50(A)(2) in reference to Uniti's application, it can easily be inferred that the City of Menahga City Council has the power to make such determinations of necessity in its sole and absolute discretion.

It is overwhelmingly clear that, upon receiving Uniti's application, the City of Menahga City Council set forth a rigorous and thorough process (similar in nature to that of a public utility CUP process) in order to provide the general public with abundant opportunity to evaluate Uniti's proposal and provide comment. It is likewise clear that the City of Menahga City Council thoughtfully considered the arguments presented by ATC and despite such arguments, unanimously passed and approved Resolution No. 2018-16. The City of Menahga City Council has a duty to enforce and interpret its Municipal Code and no duty to insulate ATC from fair market competition.

Sincerely,

A handwritten signature in blue ink, appearing to read "KH", with a long horizontal flourish extending to the right.

Keith Harvey
VP – Deputy General Counsel

Uniti Fiber Division Headquarters
107 St. Francis Street, Ste. 1800
Mobile, AL 36602
251.662.1170 | unitifiber.com

New Orleans | Birmingham | Jackson | St. Petersburg | Dallas | Monroe

Uniti Towers Division Headquarters
10801 Executive Center Drive, Shannon Bldg., Ste. 100
Little Rock, AR 72211
501.850.0820 | unititowers.com
Domestic | International