

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

ORIGINAL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS  
PCS, LLC (AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS TOWER FACILITY  
AT ST. MATTHEW LUTHERAN CHURCH AT  
224 LOVELY STREET IN THE TOWN OF AVON

DOCKET 373

March 24, 2009

I. LIST OF WITNESSES

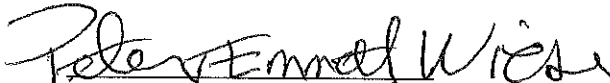
1. Peter Emmett Wiese
2. Henry R. Frey Jr.

RECEIVED  
MAR 24 2009

CONNECTICUT  
SITING COUNCIL

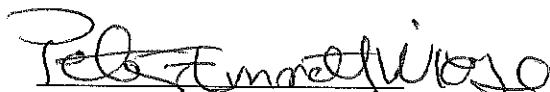
II. LIST OF EXHIBITS

1. February 17, 2009 Report of Duane Starr, Chairman Avon Planning and Zoning Commission
2. March 11, 2009 Letter of Phillip K. Schenck, Jr. Town Manager, Town of Avon
3. November 18, 2008 Minutes of Avon Planning and Zoning Commission
4. June 2008 Lease Agreement between AT&T and Saint Matthew Lutheran Church

  
Peter Emmett Wiese

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this  
24<sup>th</sup> day of March, 2009 to all parties of record

  
Peter Emmett Wiese

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS  
PCS, LLC (AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS TOWER FACILITY  
AT ST. MATTHEW LUTHERAN CHURCH AT  
224 LOVELY STREET IN THE TOWN OF AVON

DOCKET 373

March 24, 2009

WRITTEN TESTIMONY OF PETER EMMETT WIESE  
FOR THE MARCH 31, 2009 SITING COUNCIL HEARING

Thank you for giving me the opportunity to express my opposition to the proposed AT&T cell phone tower at St. Matthew Lutheran Church at 224 Lovely St., Avon, CT. I must begin my remarks by stating that I appear as a private citizen and I do not speak for anyone other than myself.

I reside in a single family dwelling located at 240 Lovely St., Avon, CT. I have lived in this home since 1979. Prior to this time I lived at my parent's home at 270 Lovely Street since my birth in 1952. The church property was previously owned by my great grandparents and thereafter my great uncle. Consequently I am very familiar with that site. My property is situated on the corner of Lovely Street and Greenwood Drive. I am an abutting property owner to the church.

I first learned about the tower when I received a certified letter dated December 23, 2008 from the attorney for AT&T. In the letter I was advised AT&T proposed to construct a "100-foot-self-supporting monopole tower, antennas and 50' x 50' fenced equipment compound designed to accommodate unmanned equipment in a single-story

equipment buildings or on concrete pads.” I was not consulted during the site selection or the design phases of the project.

In the January 9, 2009 application to the siting council AT&T represents in part that “[t]he visual impact of the proposed facility is not significant.” (p.9) “[T]he Town has reviewed the proposed Facility, offered its support and has required that space be made available for the municipal antennas.” (p.12.) “[W]e respectfully submit that the tower would be consistent with the Town’s overall planning and zoning objectives.” (p.14.) “As noted throughout this Application, the proposed tower at the Site was the subject of a number of discussions and communications with the Town. The site was identified in part as a result of initial consultations with the Town and subsequent correspondence has been supportive of this application. A Technical Report was filed with the town on October 11, 2008.” (p.15.)

I will address these assertions throughout my remarks that follow. I have two principle areas of concern which I will discuss in detail. They are site selection and tower design.

## I.

### Site Selection

The area to be served by the proposed tower is relatively small, approximately one square mile running along Lovely Street. I have Verizon cell phone service and in my experience when traveling south, I lose the service in the vicinity of Craigmere Circle and regain it at or near Country Club Road. I have cell phone service in my home approximately 50% of the time.

The church is located in an R-30 residential zone. The houses in the area can best be described as modest, approximately 2,000 square-foot, single-family dwellings. It is my understanding that a church in a residential neighborhood represents a special exception under our zoning laws. The placement of a 10-story, metal structure with a 2,500 square foot footprint will have a significant adverse impact upon the neighborhood. Its presence will be overwhelming and intrusive. Its stature is more appropriate for an industrial or commercial zone. The proposed site is relatively small and cannot support such a massive and visible structure. It will adversely affect property values and the character of the neighborhood and the peaceful enjoyment of my home.

The proposed tower will be located approximately 250 feet from the northeast corner of my property and will be clearly visible. AT&T has acknowledged that there are 39 residential dwellings within a 1,000 foot radius of the proposed tower. It has also acknowledged that the nearest private residential dwelling to the proposed tower is a mere 188.5 feet away at 15 Greenwood Drive. (February 5, 2009 Siting Council Interrogatories Nos. 7, 9) The home located at 18 Greenwood Drive (Church parsonage) is approximately 65 feet from the proposed tower.

The application refers to the church property as a 5 ¼ acre parcel, but much of this land is already developed with the church, parsonage, fenced in playground and parking areas. The designated site for the tower is not to the rear or center of the undeveloped portion of the property. Rather it is close to the back of the church, playground and adjacent to the parking lot on the south side of the property. This is an area that is used on a daily basis by individuals that participate in activities which take place in the church. It is also utilized by the children in the neighborhood. In the event

of a structural failure of the tower, persons and their property are at risk of injury. The placement of the tower, at this location on the property increases its visibility in the neighborhood.

The Town of Avon opposes the construction of the tower at St. Matthew Lutheran Church. A number of public hearings have been held by both the Town Council and the Planning and Zoning Commission (PZC). The PZC studied the application and issued a report dated February 17, 2009. (Wiese exhibit No. 1) The findings of the Commission are in stark contrast to the assertions of AT&T. “[T]he Commission believes that the proposed location, along with the type of proposed construction, will result in adverse impacts to surrounding properties. This area is located in a single-family residential zoning district. The introduction of this tower in this location may result in diminished property values and quality of life for nearby property owners. AT&T’s application to the Siting Council indicated consistency with the Avon Plan of Conservation and Development. However, it should be noted that this Plan does not encourage cell phone towers in any single-family residential zones.” (Wiese Exhibit No. 1) The Town Manager in a letter dated March 11, 2009 informed the Siting Council that the Avon Town Council endorsed these PZC recommendations. The Town Manager also indicated that any prior written communications from town officials concerning the proposed tower were superseded. (Wiese Exhibit No. 2)

The PZC specifically recommended that AT&T examine other sites including large parcels of town owned properties. These include properties known as the Found Land, Huckleberry Hill open space and Pond Ledge. The Found Land parcel is approximately 124 acres in size and appears to be within the zone of proposed cell phone

coverage. AT&T represents in its application that it examined 9 sites. These sites do not include the aforementioned properties. To my knowledge AT&T has not made a requested permission of the Town to evaluate these properties. It is my position that if there is a public need for cell phone service, then public property must be the first choice for tower location. In this regard there currently exists a 100 foot tower at the Avon landfill, 277 Huckleberry Hill Road. This parcel of land is approximately 73 acres in size. This tower is owned by Sprint and used by it and Cingular. The Town of Avon supported the project. (Siting Council Docket No. 297)

Representatives of AT&T attended a PZC meeting on November 18, 2008. The proposed tower was discussed at this meeting. The application to the Siting Council contains only a portion of the meeting minutes. (Tab 5) A review of the entire meeting minutes reveals that the PCZ had many concerns about the proposal and was not supportive of it. (Wiese Exhibit No. 3)

AT&T has represented in its application to the Siting Council that the Vibert property at 335 Lovely Street “was investigated but not deemed appropriate due to certain site conditions. Discussions with the Town also did not indicate that this was a viable location.” (Site Search Summary p 3) However they have now been forced in their February 27, 2009 responses to Siting Council prehearing interrogatories to acknowledge that “[t]he Town did not specifically object to the site and the site was not suggested or offered as a possible siting alternative at any time.” (February 5, 2009 Siting Council Interrogatory No. 5)

AT&T has also represented in their application to the Siting Council that the Briarcliff Lake Swim Club, 107 Craigmore Circle was investigated for adequacy. (Site

Search Summary p 3) However they have now been forced in their February 27, 2009 responses to Siting Council prehearing interrogatories to acknowledge that “a radio frequency analysis was not conducted for the Briarcliff Lake Swim Club Property. The property owners were also not contacted.” (February 5, 2009 Siting Council Interrogatory No. 4)

Finally although AT&T asserts in their application that the Brighenti Properties 99, 165, and 225 Lovely Street were investigated for tower placement, the record tells a very different story. In response to the February 5, 2009 prehearing interrogatories AT&T states in part; “By letter dated August 5, 2008 representative of AT&T advised Mr. Brighenti of AT&T’s interest in locating a telecommunications facility in the area. Mr. Brighenti subsequently returned a form provided by representatives of AT&T indicating that there was no interest in hosting such a facility....A subsequent letter of interest was sent to Jackson, Inc. specifically inquiring as to placing a wireless facility at 99 Lovely Street.” (February 27,2009 Response to Interrogatory No. 3) The written communications are attached as exhibit C. The first AT&T communication is a letter dated August 5, 2008. The second appears to be dated February 23, 2009. Clearly these letters do not support the claim that these properties were analyzed along with the church property since AT&T had already entered into a lease agreement with the church in June 2008. (Wiese Exhibit No. 4) In fact the letter inquiring about 99 Lovely Street is dated nearly two months after AT&T filed their application to the Siting Council, on January 9, 2009.

AT&T has not fulfilled its obligation to exercise due diligence to investigate other more appropriate tower location sites. I would submit that they have chosen the most

financially advantageous location and are now merely attempting to justify it. This superficial approach is fatally flawed. On this basis alone the Siting Council should reject AT&T's application. I respectfully request that the Siting Council order AT&T to fully investigate and accurately report its findings concerning all potential sites including those suggested by the Town of Avon.

## II.

### TOWER DESIGN

The proposed tower is a 100 foot self-supporting monopole. At the top of the tower the town plans to install communication antennas which will extend the height an additional 10 to 20 feet. This is the height of a twelve story building, 188.5 feet from a one story, privately-owned, single family residence located at 15 Greenwood Drive. AT&T plans to install up to 6 panel antennas on a platform at a height of 97 feet. This diameter is projected to be a minimum of 10 feet. At least two other carrier's antenna platforms are planned to be located below. The lowest is projected to be installed at a height of approximately 78 feet above ground. This will result in the top portion of the tower having a profile of approximately 10 feet by 30 feet. This imposing structure will be made even more visible by its silver-gray metallic appearance. On January 8, 2009 I met with Kevin Day a representative of AT&T. During the meeting Mr. Day informed me that flush mounted antennas would be adequate.

As presently situated the proposed site would be visible to the residents on Greenwood Drive and many surrounding neighborhoods. The application asserts that the



tower will be hidden by several pine trees in the area. I submit that this will not be the case for several reasons. First, the massive tower will be approximately 40-60 feet higher than any tree in the area. Second, the trees are old and have a limited life expectancy. Many years ago these pine trees were planted by my great uncle. I recall them from my childhood. There is no plan to replace on site vegetation and it would take many years to grow a 60 foot high tree. In fact, AT&T's site plan requires the removal of a number of trees in the area.

The church steeple is approximately 70 feet in height. The tower will be 30 feet higher than the steeple and 50 feet higher with the Town of Avon's communication antennas. The tallest private resident in the neighborhood is located at 21 Greenwood Drive, the McMahon property. This residence is located 238 feet from the proposed tower and is approximately 26 feet in height. The remaining private residences are single story or Cape style homes. The AT&T application contains photo simulations which purport to depict the tower in relationship to the church steeple and trees. (Tab 4, Attachment C) These photographs are not a fair and accurate representation of the tower. They show a tower which appears lower than the church steeple and slightly above the tree line with only one rack of antennas.

At ground level the site would initially consist of a 50 foot by 50 foot compound enclosed by a wooden stockade fence. Within this compound AT&T would place a 49 foot by 49 foot chain link fence topped with barbed wire. A 12 foot by 20 foot equipment shelter would be constructed within this compound. The site plan indicates that the shelter would be higher than the stockade fence. As other providers install their antennas it is expected that they will construct buildings and place generators within the

compound. It is reasonable to expect that the facility will also include heating, air conditioning and ventilation equipment. The June 2008 lease agreement permits the enlargement of the compound. The lease provides in part “[if] Tenant requires an additional portion of the Property...for such modification or upgrade, subject to Landlord’s approval, ...Landlord agrees to lease to Tenant the Additional Premises...” (Wiese Exhibit No. 4 para 2)

Motor vehicle access to the facility will come from the rear parking lot on the south side of the church facing Greenwood Drive on a 30 foot gravel road. Greenwood Drive, a cul-de-sac, will provide access to the parking area. The compound will contain equipment which will require electricity and fuel. This equipment is valuable and will require maintenance by the cell carrier’s employees. The maintenance work on the tower and equipment will bring increased motor vehicle traffic and noise to the neighborhood. Pursuant to the June 2008 lease agreement AT&T will have unrestricted access to the proposed site. The lease provides; “Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises”. (Wiese Exhibit No. 4 para 12) It will be a significant attraction to the many children who, on a daily basis, play on or near the church property. For these reasons the nature of the structure and the telecommunications equipment will pose public health and safety risks and be an attractive opportunity for vandals and thieves.

The initial footprint of the 2500 square foot compound is significantly larger than any home in the neighborhood. The presence of the tower and compound will negatively

affect the quality of my life and our scenic neighborhood. It will also have a direct and adverse impact on the value of my property.

AT&T's assertion that "[t]he visual impact of the proposed Facility is not significant." (Application p.9) flies in the face of common sense and the data contained within the application and AT&T's February 27, 2009 responses to the council prehearing interrogatories. (Exhibit No. H) My layman's analysis of the View Shed Analysis Map, the Visual Resource Evaluation Report, and the Visual Resource Evaluation Report and Interrogatory Report lead me to conclude that any proposed tower will have an imposing presence. The View Shed area would include a number of Connecticut Department of Environmental resources, and a Town of Avon historic structure located within  $\frac{3}{4}$  of a mile of the site. These include Briarcliff Club, Red Mountain Lane Open Space, Juniper Road Open Space, Horseguard State Park Scenic Reserve, Lofgren Road Open Space, Avon Land Trust (Route 177), Roaring Brook Elementary School, Huckleberry Hill Road Open Space and 361 Lovely Street. (Application Tab 4: Visual Resource Evaluation Report)

AT&T has also been notified by the Connecticut Department of Environmental Protection (DEP) in a letter dated September 19, 2008 that a state species of special concern, Eastern Box turtle, is present in the vicinity of the church. (Application Tab 7) The DEP Wildlife Division has recommended that a herpetologist conduct a site survey during the months between April and September to determine the presence of the turtle. The letter concludes by stating in relevant parts:

Consultation with the Wildlife Division should not be substituted for site-specific surveys that may be required for environmental assessments. The time of year when this work will take place will affect these species if they are present on the site when the work is scheduled. Please be advised that


should state permits be required or should state involvement occur in some other fashion, specific restrictions or conditions relating to the species discussed above may apply. In this situation, additional evaluation of the proposal by the DEP Wildlife Division should be requested. If the proposed project has not been initiated within 6 months of this review, contact the NDDDB for an updated review. (Id.)

I am very familiar with the Eastern Box turtle. This protected reptile has a strong presence on my neighborhood. AT&T has not taken further steps to investigate the presence of the species or made efforts to protect it.

The February 17, 2009 report of the Avon PZC adopted by the Town Council on March 5, 2009 completely rejects the proposed tower design. It states in relative parts “the Planning and Zoning Commission strongly encourages the Siting Council to require the installation of this equipment within a church steeple....The Commission recommends a detailed evaluation to see if an additional steeple can be added to the church or perhaps a freestanding steeple structure can be built to the rear. This would provide an opportunity to completely hide the proposed antennas within the structure....The Commission also recommends that the height of the structure, whether it be a steeple or freestanding structure, be reduce to approximately 80 feet in height....because of the compatibility concerns discussed earlier, the Commission believes that a lower structure is critical in this particular application”. (Wiese Exhibit No. 1) The PZC also recommended that AT&T reduce the size of the proposed compound. I respectfully submit that if and only if the Siting Council is convinced that AT&T has done its due diligence in identifying the church property as the only remaining appropriate site for this cell tower, would these modifications for tower design be appropriate. I would fully expect that AT&T will raise many objections to this sensible

recommendation notwithstanding the fact that these designs exist on other churches in the area (2 School Street and 61 Main Street in Farmington). However I believe that these objections will be driven by purely economic concerns. These concerns pale in comparison to the multitude of adverse effects that will impact my life and property and the entire neighborhood.

I thank the Siting Council for the opportunity to present this written testimony and express my grave concerns. I am prepared to answer any questions that the Siting Council and other parties may have.



CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this 24<sup>th</sup> day of March, 2009 to all parties of record



Peter Emmett Wiese

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:  
APPLICATION OF NEW CINGULAR WIRELESS  
PCS, LLC (AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS TOWER FACILITY  
AT ST. MATTHEW LUTHERAN CHURCH AT  
224 LOVELY STREET IN THE TOWN OF AVON

DOCKET 373

March 31, 2009

WRITTEN TESTIMONY OF HENRY R. FREY JR.  
FOR THE MARCH 31, 2009 SITING COUNCIL HEARING

I have been a licensed full-time Real Estate broker/Realtor in the Farmington Valley for the past 40 years. I was a licensed Real Estate Appraiser until the year 2000 when I decided to devote my business efforts solely to real estate sales. I have testified in the Connecticut Superior Court as an expert witness on numerous occasions. In these instances I was qualified as an expert witness in foreclosure proceedings to express opinions concerning the fair market value of real properties.

I have been a life long resident of the Town of Avon. I am very familiar with the St. Matthew Lutheran Church property and the surrounding neighborhood including the home owned by Peter Emmett Wiese at 240 Lovely Street. I am also aware of the proposed AT&T cell phone tower.

I have been asked to express my opinion concerning the effect this tower will have on the fair market values of Mr. Wiese's property as well as surrounding homes. My opinions are expressed within a reasonable degree of probability.

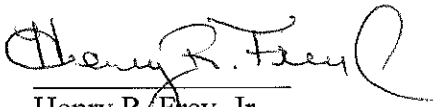
I have had a recent and ongoing experience with selling a home near the AT&T tower located at 8 Upper Meadow Lane in Granby, CT. The tower is a galvanized steel tower similar to the one proposed on the St. Matthew's Church property.

The home that has been adversely affected by the tower is located at 4 Upper Meadow Lane. The shortest distance between the 100-foot leased tower area and the home is 490 feet. This spectacular 3826 square foot home on 8.185 acres was built in 2006 by H. John Hartwell Jr., Inc., and was first listed for sale with William Raveis Real Estate on January 10, 2006, for \$749,900. The list price was lowered to \$699,900 and then to \$674,900 but did not sell. The builder then listed it for sale with Coldwell-Banker on August 29, 2006, for \$624,900 and offered a \$5,000 bonus to the selling Realtor. In December 2006, I brought the buyers to the home. They paid the list price for the home and closed on January 5, 2007. In order to get this price, the builder had to install wood floors on the entire second floor (carpet was planned) and he paid me (the Selling Realtor) a \$5,000 bonus in addition to the normal commission. The net result to the builder was a substantial financial loss. A home that should have sold for over \$700,000 was sold for \$624,900. I thought that if the builder had been more patient, he could have

sold for more. All the time that the property was being marketed, including to the day of the closing, the tower had not yet been built. All potential buyers were shown the plan that showed where it was to be built.

The tower has now been built and my clients would like to sell the home. The home is still in perfect condition, even better than new because the owners have made significant improvements. The lawn and landscaping have been improved, and some upgrades including kitchen appliances and decorating touches have been added. I listed the home for sale on July 1, 2008 for 699,900. I thought this list price was a fair one. The list price was lowered to \$685,000 on October, 2008, and to \$649,900 in November, 2008. Every effort has been made to sell the house. Most that have inquired were not willing to look at the house after they saw the tower. At open houses, about half of the potential buyers just turned around and left without going inside. Those that have looked at the house have almost without exception cited the tower as the first reason they are not further interested in the house. The sellers and I have been patient, but the home is still not sold. The effect of the tower is greater than we had initially anticipated, and the list price will have to be lowered further if they are to sell.

In summary, it is clear that most of all potential buyers are afraid of the potential electromagnetic field that cell towers may emit and are not willing to live too close to one. I am certain that a home near or in view of a cell tower will sell for at least 10% less than a home of similar value that is not near or in view of a cell tower like the one proposed at St. Matthew's Church. In the case of the home on Upper Meadow, it is my opinion that because of the proximity of the cell tower, the value of this home appears to be reduced by at least 15% or about \$100,000. A less offensively designed tower would still negatively affect the value of all residential real estate in view of or near it. Even a tower concealed within a structure would have a negative effect on residential property values.

  
Henry R. Frey, Jr.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid on this  
24<sup>th</sup> day of March, 2009 to all parties of record

---

Peter Emmett Wiese



# Wiese Exhibit No. 1



## TOWN OF AVON

60 West Main St. Avon, CT 06001-3743  
www.town.avon.ct.us

**POLICE, FIRE & MEDICAL  
EMERGENCY - 911**

**TOWN MANAGER'S OFFICE**

Tel. (860) 409-4300  
Fax (860) 409-4368

**ASSISTANT TOWN MANAGER**

Tel. (860) 409-4377  
Fax (860) 409-4368

**ACCOUNTING**

Tel. (860) 409-4339  
Fax (860) 677-2847

**ASSESSOR'S OFFICE**

Tel. (860) 409-4335  
Fax (860) 409-4366

**BUILDING DEPARTMENT**

Tel. (860) 409-4316  
Fax (860) 409-4321

**COLLECTOR OF REVENUE**

Tel. (860) 409-4306  
Fax (860) 677-3428

**ENGINEERING DEPARTMENT**

Tel. (860) 409-4322  
Fax (860) 409-4364

**FINANCE DEPARTMENT**

Tel. (860) 409-4346  
Fax (860) 409-4366

**FIRE MARSHAL**

Tel. (860) 409-4319  
Fax (860) 409-4321

**HUMAN RESOURCES**

Tel. (860) 409-4303  
Fax (860) 409-4366

**LANDFILL**

281 Buckleberry Hill Rd.  
Tel. (860) 673-3677

**PLANNING & ZONING**

Tel. (860) 409-4328  
Fax (860) 409-4375

**POLICE DEPARTMENT**

Tel. (860) 409-4200  
Fax (860) 409-4206

**PROBATE**

Tel. (860) 409-4348  
Fax (860) 409-4368

**PUBLIC LIBRARY**

281 Country Club Road  
Tel. (860) 673-9712  
Fax (860) 675-6364

**PUBLIC WORKS**

11 Arch Road  
Tel. (860) 673-6151  
Fax (860) 673-0338

**RECREATION AND PARKS**

Tel. (860) 409-4332  
Fax (860) 409-4334  
Cancellation (860) 409-4366

**REGISTRAR OF VOTERS**

Tel. (860) 409-4350  
Fax (860) 409-4368

**SOCIAL SERVICES**

Tel. (860) 409-4346  
Fax (860) 409-4366

**TOWN CLERK**

Tel. (860) 409-4310  
Fax (860) 677-3428

**TDD-HEARING IMPAIRED**

Tel. (860) 409-4361

February 17, 2009

John Carlson, Chairman  
Avon Town Council  
Town of Avon  
60 West Main Street  
Avon, CT 06001

Dear John:

As requested by the Town Council, at their meeting of February 10, the Planning and Zoning Commission, once again, reviewed the request by AT&T to construct a cellular communications tower at 224 Lovely Street on property owned by St. Matthews Lutheran Church.

As you know, the Planning and Zoning Commission also reviewed this matter at their meeting on November 18, 2008. At this meeting representatives of AT&T were present to describe this application. AT&T had not yet sent written notice to adjoining property owners and, as a result, no residents of the neighborhood were present to provide input to the Commission. At our more recent meeting, the Commission did receive a significant amount of testimony from residents who live in the vicinity of the proposed site as a result of a December 23, 2008, notice AT&T had sent to abutting property owners. However, neither AT&T nor representatives of the church were present at our February 10 meeting, although both were invited to attend.

The Commission clearly appreciates the need for additional cell phone coverage in the vicinity of this location for reasons related to public safety. Improved signal strength in this area will be an aid to all emergency personnel in Avon, as well as the Staff at the Roaring Brook School. In addition, we understand that AT&T will be offering to the Town an opportunity to place emergency police and fire antennas at the top of the tower, which will also enhance emergency communications. However, having now had an opportunity to listen to testimony from residents and evaluating AT&T's proposal further, the Commission believes that the proposed location, along with the type of proposed construction, will result in adverse impacts to surrounding properties. This area is located in a single-family residential zoning district. The introduction of this tower in this location may result in diminished property values and quality of life for nearby property owners. AT&T's application to the Siting Council indicates consistency

with the Avon Plan of Conservation and Development. However, it should be noted that this Plan does not encourage cell phone towers in any single-family residential zones.

Although AT&T's application indicates full compliance with electromagnetic radiation standards, there appears to be some dispute within the scientific community about the hazards relating to EMF's. One resident in attendance at the Commission's February 10 meeting presented two reports which describe this concern. These reports are entitled, "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" and "Advice on Limiting Exposure to Electromagnetic Fields (0-300 GHz)".

Because of these concerns the Commission recommends that AT&T explore other sites either located in a commercial area such as locations along Route 44 or possibly in larger undeveloped tracks which could include Town-owned properties such as the Found Land or the Huckleberry Hill Open Space. It is not clear whether these other properties will satisfy the deficiencies identified by AT&T; however, these properties are substantially larger in area and might make it possible to incorporate the tower in a way which minimizes the concerns discussed earlier. The Commission also recommends investigating the ridge known as "Pond Ledge", as well as other technologies such as a tower-to-tower relay system which might permit the use of a shorter tower. Finally, we recommend a thorough evaluation of all existing towers and structures in the area to determine if they might be feasible for solving the AT&T signal deficiency in this area

Should the CT Siting Council approve the St. Matthews Lutheran Church location for the installation of communication equipment, the Planning and Zoning Commission strongly encourages the Siting Council to require the installation of this equipment within a church steeple. We understand that the existing structure is not sufficiently sized to accommodate these antennas. The Commission recommends a detailed evaluation to see if an additional steeple can be added to the church or perhaps a freestanding steeple structure can be built to the rear. This would provide an opportunity to completely hide the proposed antennas within the structure. Although it would not address the concerns relating to EMF's, it would certainly go a long way towards addressing the neighborhood compatibility issues discussed at our February 10 meeting.

The Commission also recommends that the height of the structure, whether it be a steeple or freestanding structure, be reduced to approximately 80 feet in height. We understand that this will limit the possibilities of additional tenants being added in the future. We also understand the CT Siting Council has a policy of co-location to reduce the number of future towers which will be necessary. However, because of the compatibility concerns discussed earlier, the Commission believes that a lower structure is critical in this particular application.

Should the Siting Council conclude that the construction of a new steeple is simply not possible in this instance and, instead, approve a freestanding structure the Commission recommends the following techniques to help reduce neighborhood impacts:

1. The use of a flagpole without a flag. Our understanding is that this will permit the installation of all the antennas internal to the pole which will help with aesthetics.
2. If a flagpole is not technically feasible, utilize a monopole painted in an earth tone color to better blend with the surrounding environment. Utilize a structure which has the minimum diameter necessary to support the structure. In this instance, AT&T should

also utilize a more compact form of antenna mounting where the antennas are mounted flush with the pole. It is our understanding that this would also eliminate an "ice bridge", which is shown on the current application.

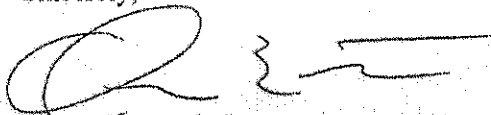
3. Reduce the size of the proposed compound. If the height of the pole is reduced and the number of future tenants is limited, the size of the compound could also be reduced.
4. Ensure that no fuel-powered electrical generators are utilized on this site for the current tenant or future tenants.
5. Applicant should utilize a high quality residential wood fence tall enough to screen the proposed utility cabinet in lieu of the proposed chain-link fence. The use of barbed wire should be prohibited on this site.
6. Applicant should hire a landscape architect to assess the views of the tower and fenced compound from nearby properties. Landscaping should be done on the outside of the fencing on all four sides and additional plants should be added to minimize views from adjoining properties. If necessary, applicant should install plants on adjacent properties to mitigate views. Applicant should refer to Avon Zoning Regulations for minimum buffer yards between commercial structures and adjoining residential uses.
7. Ensuring that should technology change in the future such that the tower is no longer necessary, that AT&T be responsible to demolish the tower and restore the site.

The Commission would like to note that in reviewing the application submitted by AT&T to the CT Siting Council, it appears that only a portion of the Planning and Zoning Commission's meeting minutes from November 18 were included. We would ask that the Siting Council consider the entirety of this discussion, as well as the one which took place on February 10.

Finally, it is our understanding that the Town Council will decide on March 5 whether to seek party status. The Commission supports this, as it is our understanding that doing so will afford the Town certain rights which may be helpful in addressing the above concerns.

If I can be of any assistance in helping to clarify any of the concerns stated in this letter, please let me know.

Sincerely,



Duane Starr, Chairman  
Avon Planning and Zoning Commission

Copy: Planning and Zoning Commission  
Philip K. Schenck, Jr., Town Manager

# Wiese Exhibit No. 2

## TOWN OF AVON

60 West Main St. Avon, CT 06001-3743  
www.town.avon.ct.us



**POLICE, FIRE & MEDICAL  
EMERGENCY - 911**

**TOWN MANAGER'S OFFICE**  
Tel. (860) 409-4300  
Fax (860) 409-4368

**ASSISTANT TOWN MANAGER**  
Tel. (860) 409-4377  
Fax (860) 409-4368

**ACCOUNTING**  
Tel. (860) 409-4339  
Fax (860) 677-2847

**ASSESSOR'S OFFICE**  
Tel. (860) 409-4335  
Fax (860) 409-4366

**BUILDING DEPARTMENT**  
Tel. (860) 409-4316  
Fax (860) 409-4321

**COLLECTOR OF REVENUE**  
Tel. (860) 409-4306  
Fax (860) 677-8428

**ENGINEERING DEPARTMENT**  
Tel. (860) 409-4322  
Fax (860) 409-4364

**FINANCE DEPARTMENT**  
Tel. (860) 409-4346  
Fax (860) 409-4366

**FIRE MARSHAL**  
Tel. (860) 409-4319  
Fax (860) 409-4321

**HUMAN RESOURCES**  
Tel. (860) 409-4303  
Fax (860) 409-4366

**LANDFILL**  
281 Huckleberry Hill Rd.  
Tel. (860) 673-3677

**PLANNING & ZONING**  
Tel. (860) 409-4328  
Fax (860) 409-4375

**POLICE DEPARTMENT**  
Tel. (860) 409-4200  
Fax (860) 409-4206

**PROBATE**  
Tel. (860) 409-4348  
Fax (860) 409-4368

**PUBLIC LIBRARY**  
281 Country Club Road  
Tel. (860) 673-9712  
Fax (860) 675-6364

**PUBLIC WORKS**  
11 Arch Road  
Tel. (860) 673-6151  
Fax (860) 673-0338

**RECREATION AND PARKS**  
Tel. (860) 409-4332  
Fax (860) 409-4334  
Cancellation (860) 409-4365

**REGISTRAR OF VOTERS**  
Tel. (860) 409-4330  
Fax (860) 409-4368

**SOCIAL SERVICES**  
Tel. (860) 409-4346  
Fax (860) 409-4366

**TOWN CLERK**  
Tel. (860) 409-4310  
Fax (860) 677-8428

**TDD-HEARING IMPAIRED**  
Tel. (860) 409-4361

March 11, 2009

Mr. S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 0605

Re: Town of Avon Location Preferences and Siting Criteria For  
Docket No. 373, AT&T Proposed Telecommunications Tower,  
Avon, CT

Dear Mr. Phelps:

Pursuant to Connecticut General Statutes § 16-50gg, the Town of Avon ("Town") hereby submits its preferences for location and other siting criteria (collectively "Town Criteria") for the above-referenced telecommunications tower, which is proposed to be located at St. Matthew Lutheran Church at 224 Lovely Street in Avon (the "Site").

By way of background, the Town Council asked the Town's Planning & Zoning Commission ("P&Z Commission") to adopt Town Criteria, which it did following its February 10, 2009 meeting. See Attachment A, Letter dated February 17, 2009 from Duane Starr, Chairman, Avon Planning and Zoning Commission to John Carlson, Chairman, Avon Town Council. These Town Criteria were subsequently endorsed by the Town Council on March 5, 2009. The Town Criteria set forth in Attachment A supersedes any prior written communication from Town Officials regarding the proposed telecommunications tower.

In addition to Town Criteria, pursuant to Conn. Gen. Stat. § 16-50x(a), the Town requests that the Council consider relevant criteria set forth in the Town of Avon's Zoning Regulations ("Regulations"). A memorandum for the Council's consideration identifying such criteria is attached hereto as Attachment B.


1070118v1

March 11, 2009  
Page 2

Finally, the Town would like to note that AT&T's application to the Council appears to contain only a select portion of the P&Z Commission's meeting minutes from November 18, 2008. The Town requests that the Council consider the entirety of that discussion, as well as the one which took place on February 10, 2009. Complete Minutes from both the November 18, 2008 and February 10, 2009 P&Z Commission Meeting are attached hereto as Attachment C.

Given the impact of the proposed structure to the surrounding properties, the Town respectfully requests that the Council consider the aforementioned Town Criteria and applicable land use regulations.

Very truly yours,



Philip K. Schenck, Jr.  
Town Manager, Town of Avon

App. #4393 - West Avon LLC, owner, Umang Bhatt and RK LLC, applicant request for Special Exception under Section VI.B.3.d. of Avon Zoning Regulations to permit wine and spirit shop, 427 West Avon Road, Parcel 4520427, in an NB Zone.

Mr. Frey motioned for approval of App. #4393. The motion, seconded by Mr. Thompson, received approval from Messrs. Starr, Frey, Thompson, Whalen, and Freese and Ms. Keith. Mrs. Primeau voted in opposition of the approval.

App. #4400 - Marion L. Barrak, owner/applicant request for Special Exception under Section IV.A.4.p. of Avon Zoning Regulations to create one rear lot, 66 Eddy Street, Parcel 2170066, in an R15 Zone.

Mr. Whalen motioned for approval of App. #4400. The motion, seconded by Mr. Freese, received unanimous approval.

### **OUTSTANDING APPLICATION**

App. #4387 - Donald and Pamela Battiston, Trustees, owners/applicants, request for Site Plan Approval to expand parking and landscaped areas and add access drive to abutting property to the west, 369 West Main Street, Parcel 4540369, in a CR Zone.

Mr. Kushner reported that he received a call late in the day today from Mr. Jeffrey Battiston. Mr. Battiston asked Mr. Kushner, on his behalf, to request an extension to the Commission's next meeting.

Mr. Freese motioned to table App. #4387 to the next meeting. The motion, seconded by Ms. Keith, received unanimous approval.

### **OTHER BUSINESS**

Referral from CT Siting Council - Cell Tower at St. Matthews Church - Cuddy and Feder LLP

Present were Attorney Christopher Fisher, Cuddy and Feder, LLP; Kevin Dey, AT&T; and Richard Hines, Avon resident.

In response to Attorney Fisher's question, Mr. Starr noted that it is his understanding that the Siting Council has final approval authority but they will accept input, either for or against, from the Town. Mr. Fisher noted that Mr. Starr's understanding is correct and added that part of the statutory process in Connecticut is to provide the Town with technical information as to why the facility is needed (i.e., proposed location, site plan information and possible environmental issues). This process gives residents a chance to comment and provide input before the proposal is formally presented to the Siting Council.

Mr. Starr commented that the photo simulations in the handout were well done and questioned whether the immediate neighbors around the church were consulted. Mr. Fisher commented that all the immediate abutters to the subject property will receive notification via the U.S. mail once the process with the Siting Council begins; a legal notice will also be published.

Mr. Fisher noted that the Siting Council, at some point in the process, will conduct a public hearing in Avon.

Mr. Starr questioned whether it has been anticipated or is known what the view of the proposed tower will be for the abutters.

Mr. Fisher commented that some individual properties can be seen in some of the photos that were taken. The proposed tower will be located in the valley with ridgelines on either side. There are some substantial and mature evergreens on the subject site which will help to provide a visual buffer from the residences in the Greenwood Drive area. Mr. Fisher noted that the proposed tower will clearly be visible from some surrounding hill areas (i.e., Bridgewater Subdivision) as they will be looking down on it. Mr. Fisher commented that he feels an advantage of the subject site is that it is located against the backdrop of the land in the valley as opposed to being out in the open, up high on a ridge. The overall view shed, near and far, is quite contained due to the overall height of the facility and the fact that it would be located down in the valley.

Mrs. Primeau commented that there are houses all around the proposed tower and they will be viewing it. Mr. Fisher agreed that there are some areas of visibility as there are houses nearby but there are also many evergreen trees in the area that will provide screening. Mrs. Primeau commented that she feels the proposed location is not the best, as people will see it when they look up. She questioned why it couldn't be located at the top of a hill like the area across from St. Ann's Church.

In response to Mrs. Primeau's question, Mr. Dey noted that the Brighenti family owns the property across from St. Ann's Church and they have indicated that they are not interested in having a tower located there. Mr. Dey explained that towers must be placed in areas where there is no coverage; the towers can't be located just anywhere. The subject site is the largest parcel in the area that currently has no coverage. The topography of the area was also studied to keep the tower as short as possible. The proposed tower, in the subject location, would only have to be 100 feet in height. Mr. Dey explained that it is possible that if a tower were placed up on the hill across from St. Ann's Church that it would have to be 150 feet high to clear the ridge. Mr. Dey further explained that the proposed tower location is just about in the center of the area where the coverage is needed. The proposed location is also where the houses are located and the people who want the coverage.

In response to Mrs. Primeau's comments, Mr. Fisher explained that property owners cannot be forced to agree to locate a tower on their land; eminent domain does not exist in this regard. Mr. Fisher commented that sensitivity to the community environment is considered and research is done to find the right parcel. St. Matthews Church happens to be located right in the middle of an area that currently has no coverage. Mr. Fisher noted that Mr. Dey contacted many of the surrounding properties in search of the best location.

Mr. Starr noted that the report states that 8 properties were reviewed. Mr. Fisher agreed.

Mr. Frey questioned whether there is a day care or a nursery school operated at the church. In response Mr. Hines clarified that there is no longer a school operation at the church.

Mr. Hines stated that the church is very much in favor of the tower, as they feel it is a good community use. Mr. Hines commented that AT&T is required to meet all the regulations with regard to emissions.

In response to Mr. Frey's question, Mr. Fisher noted that tower emissions are regulated by the FCC. Mr. Fisher explained that the measurements from this tower are at less than 5% of the regulation standard; somewhere between 50 and 100 cell sites at this one location would be needed to exceed the standard.

Mr. Whalen questioned how far above the existing church steeple the tower would reach. Mr. Hines noted that the steeple is 60 feet high but the trees around it are approximately 70 to 80 feet high. Mr. Hines noted that the tower should be concealed by the trees but the antennas will be visible.

In response to Mrs. Primeau's question, Mr. Hines noted that the neighbors to the north have been contacted in writing but the neighbors on Greenwood Drive have not been contacted. Mr. Hines added that he never got a response from the neighbors that were contacted. Mr. Hines added that he did speak with Silvio Brighenti (property owner to the west) who indicated that while he is in favor of the tower he does not want it on his property.

Marianne Clark, Alternate Commission Member and resident of Westland Road, commented that she has a clear view of the steeple from her house and questioned if there was any way to camouflage it.

Mr. Starr commented that the steeple is lit at night but the tower will not be lit. Mr. Hines concurred.

Ms. Keith noted her concerns with the proposal including the height, the size of the proposed antennas, and the proposed crown on top. She suggested a modified tower which would provide some service to those individuals without any service right now.

In response to Ms. Keith's comments, Mr. Fisher commented that the evergreen trees in the area are 80 feet high and the antennas must be above that; it's a practical issue. Aesthetics can be considered but it is a balancing act with regard to the available physical space on the pole. Mr. Fisher noted that he would take into consideration any specific recommendations the Commission may have regarding views and aesthetics.

In response to Mr. Starr's questions, Mr. Fisher commented that there is a lease with the church and the process is currently in the statutory technical review stage with the Town. Data is being collected with other State agencies before a formal application/presentation is made to the Siting Council. Mr. Fisher noted that notice of a public hearing, to be held in Avon, will be made by the Siting Council within 2 to 3 months after the formal application process has begun. The Commission could submit recommendations, if any, in writing before the application is filed with the Siting Council.

In response to Ms. Clark's question, Mr. Fisher commented that property owners on Westland and Northington were not notified.



In response to Ms. Clark's comment, Mr. Starr explained that the legal notice announcing the public hearing will serve as notification to the residents. When the public hearing takes place sometime in early 2009 residents can attend the hearing and offer input at that time.

In response to a discussion regarding noticing, Mr. Fisher clarified that notices will be mailed to the abutters. The only other form of notice will be a newspaper legal notice.

In response to Mr. Kushner's question, Mr. Fisher explained that once the application is formally filed it will be posted online on the Siting Council's webpage.

Mrs. Primeau suggested that camouflage be used in any way possible.

In response to Ms. Keith's question, Mr. Fisher explained that locating a facility at the Shoppes at Farmington Valley in Canton would be redundant with what already exists along the Route 44 corridor. Mr. Fisher further explained that this type of technology is low power and functions on line of sight and really needs to be located in the area it will serve; it is utility in nature. Mr. Fisher noted his appreciation for the Commission's concerns relative to residential areas but this proposal is part of a needed utility infrastructure.

Mr. Frey noted his dislike with the aesthetics of the "tree-like" antennas. He commented that he feels a normal antenna, as small and as short as possible, is the best idea.

Mr. Starr commented that while there doesn't necessarily appear to be a consensus amongst the Commission, valuable input was received from many individual members.

Mr. Hines commented that the Town has received a letter from AT&T inquiring about any concerns they may have. Mr. Hines noted that Philip Schenck, the Town Manager, responded to AT&T requesting that space be reserved on the tower for Town use. Mr. Hines added that the church is in favor of the tower and wishes to be a good neighbor.

Mr. Fisher stated that written confirmation will be sent to the Town noting that if space is needed on the tower for Town purposes, that space would be rent free to the Town.

#### Section 8-24 Referrals:

- Roof replacement and associated HVAC units for Avon Middle School
- Expansion of Town Clerk's Vault

Mrs. Primeau stepped down.

Present to represent these proposals was Blythe Robinson, Assistant Town Manager

Ms. Robinson explained that the Town Council would like to plan a voter referendum for the end of February 2009. The middle school needs a new roof and the associated HVAC units. A privacy screen is also needed to meet the State's requirements. There will be no change to the size or footprint of the building but a small change to the roof to create a ½ inch and 1-foot slope

Market: CT/WMA  
Cell Site Number: 1257  
Cell Site Name: Avon-Lovely Street  
Fixed Asset Number: 10117744

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN., also known as the ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN., INC., formerly known as ST. MATTHEW'S LUTHERAN CHURCH OF COLLINSVILLE, CONN., and also formerly known as ST. MATTHEW'S LUTHERAN CHURCH OF COLLINSVILLE, CONN., a Connecticut Corporation having its principal place of business in the Town of Avon, County of Hartford and State of Connecticut (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 (hereinafter referred to as "**Tenant**").

## BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 224 Lovely Street, in the County of Hartford, State of Connecticut (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 2,500 square feet including the air space above such room/cabinet/ground space as described on attached **Exhibit 1**, together with unrestricted access for Tenant's uses from the nearest public right-of-way along the Property to the Premises as described on the attached **Exhibit 1** (collectively, the "**Premises**").
2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, , equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or surrounding property as described on **Exhibit 1** hereto (the "**Surrounding Property**"), as may reasonably be required during construction and installation of the Communications Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("**Tenant Changes**"). Tenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises, at Tenant's expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement.

Tenant will be allowed to make such alterations to the Property, subject to Landlord's approval, said approval not to be unreasonably withheld, conditioned or delayed, in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, and Tenant requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, subject to Landlord's approval, said approval not to be unreasonably withheld, conditioned or delayed, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises, by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. TERM.

(a) The initial lease term will be five (5) years ("Initial Term"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least sixty (60) days prior to the end of the fourth (4<sup>th</sup>) extended term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4<sup>th</sup>) extended term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "Rent Commencement Date"), Tenant will pay the Landlord a monthly rental payment of [REDACTED] ("Rent"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly Rent will increase by three percent (3%) over the Rent paid during the previous year.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

(d) Payable with Rent, Tenant shall pay Landlord twenty-percent (20%) of lease rents or license fees that Tenant receives from any third party that uses the Premises ("Shared Rents"). Shared Rents shall not include any monies that Tenant receives from any third party, such as, but not limited to, application fees, capital reimbursements, attachment fees, utility and/or tax reimbursements, or any reimbursements or charges for services that Tenant may perform on behalf of any third party.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Governmental Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) By Tenant upon written notice to Landlord for any reason, at any time prior to commencement of construction by Tenant; or

(d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b), 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 23(j) of this Agreement.

7. **INSURANCE.**

Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Five Hundred Thousand Dollars \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the

rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord, its Board members, collectively or individually, its volunteers, its employees, agents or independent contractors harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its Board members, collectively or individually, its volunteers, its employees, agents or independent contractors.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(c) Notwithstanding anything to the contrary in this Agreement, and as more specifically limited in Section 13 of this Agreement, Tenant agrees to repair or pay for any damage to the Property caused by the installation or removal of its Communications Facility.

10. **WARRANTIES.**

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord has legal title to the Property; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) to Landlord's actual knowledge, Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use commercially reasonable efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

11. **ENVIRONMENTAL.**

(a) To the best of Landlord's knowledge, Landlord represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental

or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

12. **ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Lease. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

13. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remains Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Tenant will not be responsible for the replacement of any trees, shrubs, or other vegetation, nor will Tenant be required to remove from the Premises or the Property any underground utilities.

14. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility

company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Landlord, to Tenant's parent or member company or any affiliate or subsidiary of, or partner in, Tenant or its parent or member company or to any entity which acquires all or substantially all of the Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located, by reason of merger, acquisition, or other business reorganization. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant shall have the right to sublease the Premises, in whole or in part, without the Landlord's consent. Tenant may not otherwise assign this Agreement without the Landlord's consent.

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:  
New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
6100 Atlantic Boulevard  
Norcross, GA 30071  
Re: Site #1257 Avon-Lovely Street (CT)  
Fixed Asset No: 10117744

With a copy to:  
New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
5 Wood Hollow Road  
Parsippany, NJ 07054  
Re: Site #1257 Avon-Lovely Street (CT)  
Fixed Asset No: 10117744

If to Landlord: St. Matthew Lutheran Church of Avon  
224-228 Lovely Street  
Avon, CT 06001

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord

- a. Old deed to Property
- b. New deed to Property
- c. Bill of Sale or Transfer
- d. Copy of current Tax Bill
- e. New W-9
- f. New Payment Direction Form
- g. Full contact information for new Landlord including all phone numbers

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed.

20. **WAIVER OF LANDLORD'S LIENS.**

(a) Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law and Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

(b) In the event of Tenant's bankruptcy, Landlord retains the right to recover costs related to removal of Tenant's above-ground improvements.



21. **TAXES.** Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes levied upon Tenant's leasehold improvements (including Tenant's equipment building and tower) on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefore. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

22. **SALE OF PROPERTY/RIGHT OF FIRST REFUSAL.**

(a) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

(b) If at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Agreement ("**Purchase Offer**"), Landlord shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Tenant shall have the right within thirty (30) days after it receives such copy and representation to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer. Such writing shall be in the form of a contract substantially similar to the Purchase Offer. If Tenant chooses not to exercise this right of first refusal or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may assign the rental stream pursuant to the Purchase Offer, subject to the terms of this Agreement (including without limitation the terms of this Paragraph 22, to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer and (ii) the assignment occurs within ninety (90) days of Tenant's receipt of a copy of the Purchase Offer. If such third party modifies the Purchase Offer or the assignment does not occur within such ninety (90) day period, Landlord shall re-offer to Tenant, pursuant to the procedure set forth in this Subparagraph 22(b), the assignment on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (i) survive any transfer of all or any part of the Property or assignment of all or any part of the Agreement; (ii) bind and inure to the benefit of, Landlord and Tenant and their respective heirs, successors and assigns; (iii) run with the land; and (iv) terminate upon the expiration or earlier termination of this Agreement.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(j) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(k) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It is understood that all parties need not sign the same counterpart.

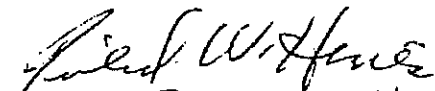
(l) **Signing Bonus.** Providing that Landlord has appropriately signed this Agreement and delivered all other related documentation as required at time of Landlord's signature(s); and delivered the signed Agreement and all other related documentation to Tenant no later than June 12, 2008, then Tenant shall pay Landlord the sum of two-thousand-five-hundred dollars, (\$2,500.00) as a Signing Bonus.

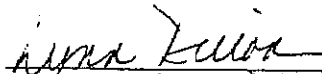
[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

**WITNESSES:**

CHURCH OF AVON, CONN

  
Print Name: RICHARD WITNER

  
Print Name: Lynn Dillon

**"LANDLORD"**

ST. MATTHEW LUTHERAN

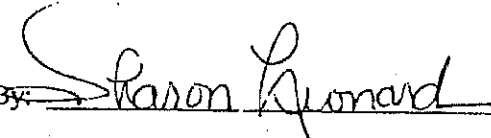
a Connecticut corporation

By: 

Print Name: Sim Austin

Its: President

Date: 6/4/08

By: 

Print Name: Sharon Leonard

Its: Secretary


Date: 6/4/08

**"TENANT"**

New Cingular Wireless PCS, LLC,

By: AT&T Mobility Corporation

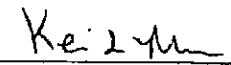
Its: Manager

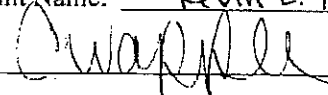
By: 

Print Name: James R. Hormann

Its: Executive Director-Network

Date: 6/12/08

  
Print Name: Kevin L. Mason

  
Print Name: Connie Wappel

**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

to the Agreement dated JUNE 12, 2008 by and between ST. MATTHEW LUTHERAN CHURCH OF AVON, CONN , a Connecticut corporation, as Landlord, and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, as Tenant.

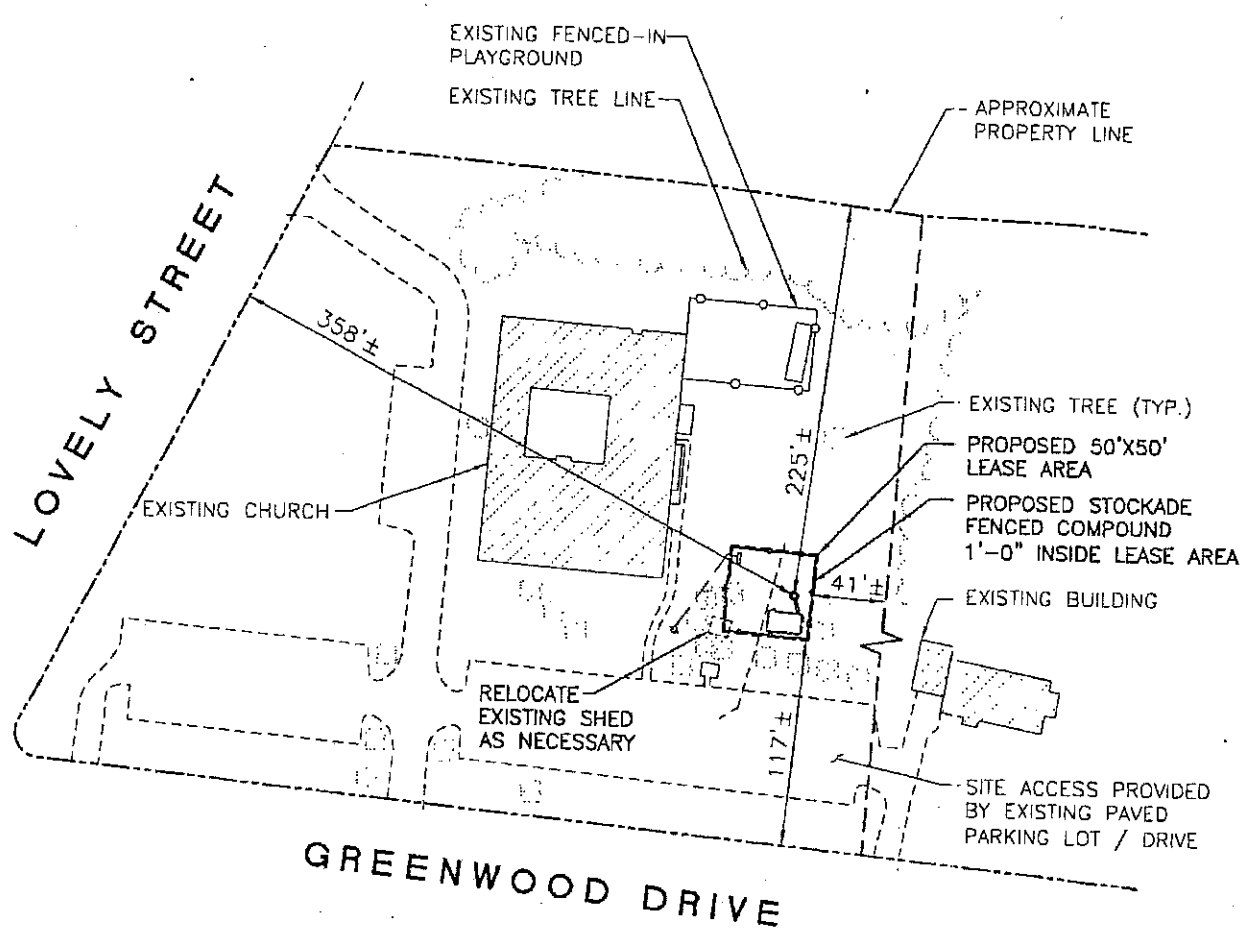
The Premises are described and/or depicted as follows:

-SEE ATTACHED DRAWINGS DATED 04/08/08-

1. SITE PLAN
2. COMPOUND LAYOUT
3. EAST ELEVATION

**Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.



SITE PLAN  
N.T.S.



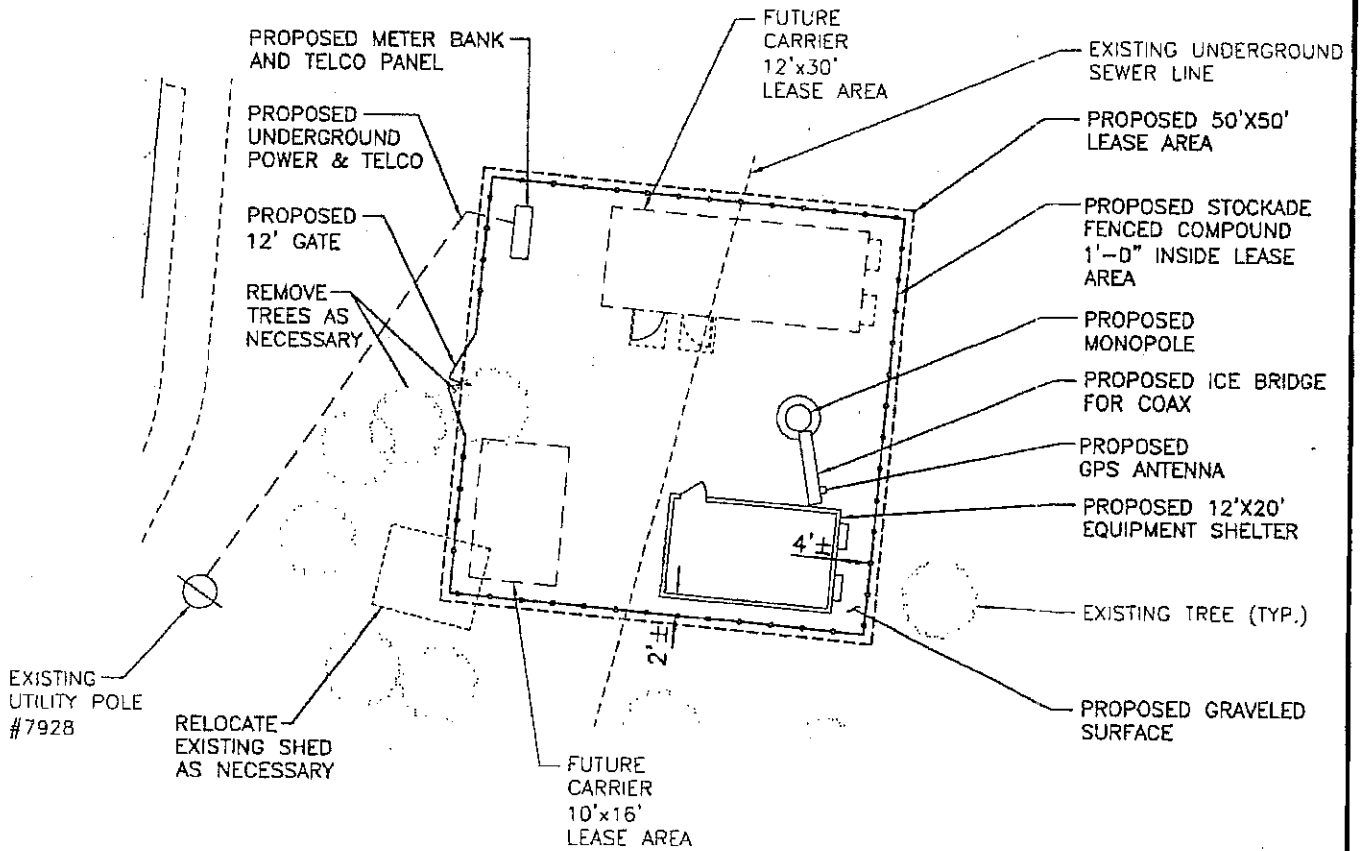
RF APPROVED: \_\_\_\_\_

REV.1 04/11/08 BR

SITE NO:	2013	 500 ENTERPRISE DRIVE ROCKY HILL, CT 06067	SITE TYPE: RAW LAND	DATE: 04/08/08
SITE NAME:	AVON ST. MATTHEW LUTHERAN CHURCH		DRAWN BY: PG	SCALE: NTS
ADDRESS:	224 LOVELY STREET AVON, CT 06001			

\*EQUIPMENT SPECIFICATIONS AND UTILITY EASEMENTS AS REQUIRED BY TELCO AND POWER COMPANY.

ALL EQUIPMENT LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO APPROVAL BY LESSEE/LICENSEE STRUCTURAL & RF ENGINEERS. LOCATIONS OF POWER & TELEPHONE FACILITIES ARE SUBJECT TO APPROVAL BY UTILITY COMPANIES.



COMPOUND LAYOUT APPROX. NORTH  
N.T.S.

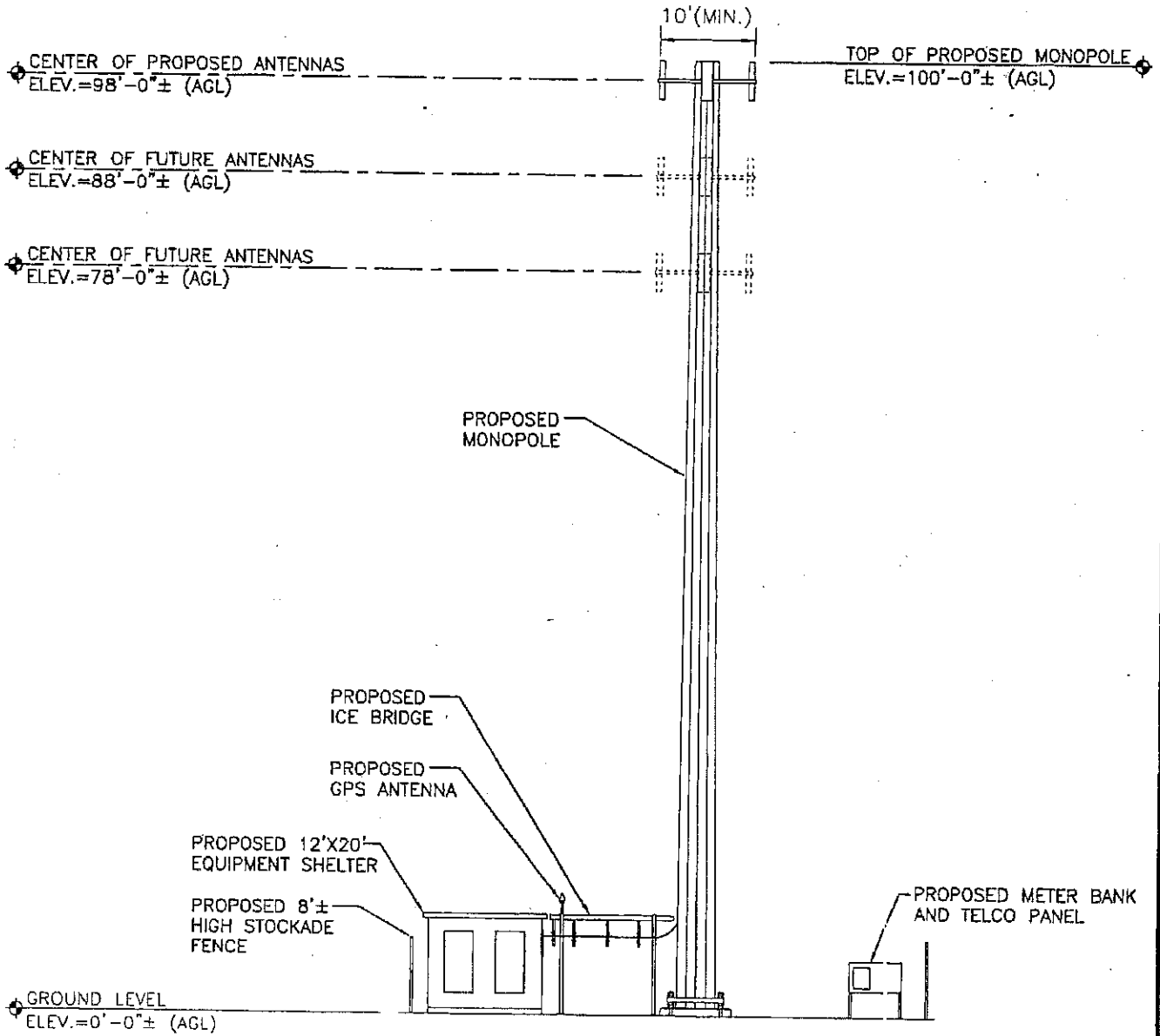
RF APPROVED: \_\_\_\_\_

REV.1 04/11/08 BR

SITE NO: 2013  
 SITE NAME: AVON  
 ST. MATTHEW LUTHERAN CHURCH  
 ADDRESS: 224 LOVELY STREET  
 AVON, CT 06001



SITE TYPE: RAW LAND	DATE: 04/08/08
DRAWN BY: PG	SCALE: NTS



**EAST ELEVATION**  
N.T.S.

RF APPROVED: \_\_\_\_\_

ALL EQUIPMENT LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO APPROVAL BY LESSEE/LICENSEE STRUCTURAL & RF ENGINEERS. LOCATIONS OF POWER & TELEPHONE FACILITIES ARE SUBJECT TO APPROVAL BY UTILITY COMPANIES.

REV.1 04/11/08 BR

<b>SITE NO:</b> 2013 <b>SITE NAME:</b> AVON ST. MATTHEW LUTHERAN CHURCH <b>ADDRESS:</b> 224 LOVELY STREET AVON, CT 06001	 500 ENTERPRISE DRIVE ROCKY HILL, CT 06067	<b>SITE TYPE:</b> RAW LAND	<b>DATE:</b> 04/08/08
		<b>DRAWN BY:</b> PG	<b>SCALE:</b> NTS