

**TOWN OF JACKSON
ZONING BOARD OF ADJUSTMENT**

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility
Black Mountain Road Map R-17, Lot 31B

PETITION FOR WAIVER

New Cingular Wireless, PCS, LLC d/b/a AT&T Mobility (“AT&T”), with the assistance of its consultants Site Acquisitions, Inc. (“SAI”), submits this Petition for Waiver pursuant to Jackson Zoning Ordinance (the “Ordinance”) Section 14.7, and in support of this Petition states as follows:

1. AT&T has filed an Application for a Building Permit with the Jackson Board of Selectmen pursuant to Ordinance Sections 14.4 and 14.6.1, seeking approval to erect a communications facility at Black Mountain Road, Map R-17, Lot 31B.
2. Certain aspects of this project do not comply with the requirements set forth in Ordinance Section 14.5.3 (“Fall Zone”) and Section 14.5.5 (“Fencing”).
3. Ordinance Section 14.5.3 provides: “In order to ensure public safety, the minimum distance from the ground mount of a communications Tower or Support Structure to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 125% of the Height of the facility, including any Antennas or other appurtenances. This setback is considered the “Fall Zone.”
4. AT&T’s proposed facility complies with this provision to the extent that the monopole is located at least 56.25 feet (125% of the 45’ tall monopole) from any property line, road, habitable dwelling, business or institutional use, as demonstrated by the Zoning Drawings, attached as Exhibit D to the Building Permit Application.

5. However, since the underlying parcel is currently developed as a recreational/ ski area, AT&T's facility will not comply with the requirement that the monopole be located at least 56.25 feet from any public recreational area. Therefore, AT&T seeks a waiver from this provision.

6. Ordinance Section 14.5.5 provides: "Tower shall be enclosed by security fencing located inside the landscaped buffer. The fencing shall be at least 6 feet in height and equipped with appropriate anti-climbing devices. The Planning Board may waive the requirement for fencing if the Tower is designed in a way that makes climbing it impossible."

7. In this case, no fencing is proposed in connection with the Project, given that a fence would interfere with the ski/ recreational trails on the property.

8. However, the tower is designed to prevent climbing by unauthorized users. In particular, the bottom 15' of the monopole will have the climbing pegs removed so the tower can only be accessed by the use of a 15' ladder. *See* Zoning Drawings, attached as Exhibit D to the Building Permit Application.

9. Based on this design, AT&T has requested in its Building Permit Application that the Planning Board waive the fencing requirement.

10. To the extent the Planning Board declines to grant said waiver, AT&T requests that the Zoning Board of Adjustment grant a waiver pursuant to the standard outlined in Ordinance Section 14.7.

11. Ordinance Section 14.7.1 allows the Zoning Board of Adjustment to approve waivers to the regulations contained in Section 14.5 where it "finds that extraordinary hardships, or practical difficulties would result from strict compliance from the terms of Section 14.5, or that the purposes of these regulations may be served to a greater extent by an alternative

proposal.”

12. Pursuant to Ordinance Section 14.7.3, a “petition for any such waiver shall be submitted in writing by the applicant with the application for Zoning Board of Adjustment review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require automatic denial.”

13. Pursuant to these provisions, AT&T hereby submits its written request for waivers from Ordinance Sections 14.5.3 and 14.5.5.

14. Ordinance Section 14.7.1 provides that the Zoning Board of Adjustment may approve a waiver if a majority of those present and voting find that all of the following conditions apply:

(a) First, the granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.

(b) Second, the waiver will not, in any manner, be inconsistent with the provisions of the Jackson Zoning Ordinance or the Jackson Master Plan.

(c) Third, such waiver(s) will substantially secure the objectives, standards, and requirements of these regulations.

(d) Fourth, a particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver.

15. Granting waivers in this case will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest for the following reasons.

(a) First, the public will not be harmed by the location of a communications facility at the ski area because the facility will comply with the Federal Communications Commission

("FCC") radiofrequency emissions requirements, as shown in Exhibit I to the Building Permit Application. In addition, the monopole is designed to support the proposed antennas and withstand harsh environmental conditions. In the event of structural failure it is designed to collapse in on itself instead of toppling over like a tree, *see* Exhibit G to the Building Permit Application.

(b) Second, the public will not be harmed by the lack of a fence around the facility because the facility will be located sufficiently far away from the nearby trails to prevent a recreational user from wandering into the site, signs will be posted to prevent trespassing and, as noted above, the tower is being designed to prevent climbing.

16. Granting waivers from the requirements of Sections 14.5.3 and 14.5.5 will not be inconsistent with the provisions of the Ordinance or the Jackson Master Plan for the following reasons.

(a) The Ordinance provides that new tower construction may be allowed, as long as it is done in a way that avoids or minimizes adverse effects on the surroundings or the public. Allowing AT&T to site the tower at the ski area will minimize effects on the surroundings because the tower will be minimally visible from surrounding locations as shown by the Photo Simulations provided as Exhibit E to the Building Permit application. Also, the facility will comply with FCC radiofrequency emission requirements. Moreover, the facility will be located in the same general vicinity as the existing communications facility and will make use of the equipment shelter. Finally, the facility does not require any lighting or signage as demonstrated by the Towair Report attached as Exhibit F to the Building Permit Application.

(b) The Jackson Master Plan evinces a desire to maintain and enhance the economic health of the town while at the same time protecting and conserving Jackson's natural resources.

The addition of a communications facility at a site that is already developed as a ski area will provide 3G coverage to the Black Mountain Ski Resort and surrounding areas and will thereby further the goal of enhancing the town's economic health while minimizing or avoiding any impacts on natural resources. *See also* the National Environmental Policy Act ("NEPA") Screening Report, attached as Exhibit P to the Building Permit Application.

(c) A waiver of the fencing requirement will not be inconsistent with the requirements of the Ordinance or Master Plan because it will allow a tower to be sited in an area that will have minimal effects on the surroundings. In addition, the safety of the public will be protected by the anti-climbing features of the tower design.

17. Waivers from the requirements of Sections 14.5.3 and 14.5.5 will substantially secure the objectives, standards and requirements of these regulations. As already noted, allowing AT&T to build a tower at this location will allow AT&T to remedy a gap in 3G coverage in Jackson while at the same time utilizing existing infrastructure, avoiding the need for clearing and new construction, and minimizing impacts on the surroundings. The safety of the public will be ensured by the tower's design, such that fencing surrounding the compound will not be necessary.

18. Finally, a particular and identifiable hardship exists or specific circumstances warrant the granting of waivers in this case. Specifically, siting a facility at this location is the only feasible way for AT&T to provide the 3G coverage to the same "footprint" that it currently has with the temporary facility. Black Mountain's Engineer indicated that AT&T's proposal to extend the existing communications facility on Lift Tower 14 would not be feasible, as shown by the Email Correspondence attached to the Building Permit Application as Exhibit K. AT&T cannot remedy its gap in 3G coverage without installing additional equipment. Since the ski lift

extension project cannot proceed and because there are no other structures at an adequate height and location to allow AT&T to provide coverage to this area, AT&T must construct the proposed 45' tower at this site.

19. For the reasons articulated above, therefore, AT&T requests that the Zoning Board of Adjustment grant waivers from the requirements of Ordinance Sections 14.5.3 and 14.5.3, as authorized by Section 14.7.

20. AT&T also requests that the Zoning Board of Adjustment grant these waiver requests without a hearing; however, to the extent the Zoning Board of Adjustment believes a hearing is necessary, AT&T reiterates its request that a joint hearing be held with the Board of Selectmen and, if necessary, the Planning Board.

Respectfully Submitted,

DOWNS RACHLIN MARTIN PLLC

Dated: 6/14/11

By: _____

William J. Dodge

Lisa A. Fearon

Attorneys for New Cingular Wireless PCS,
LLC d/b/a AT&T Mobility

199 Main Street

P.O. Box 190

Burlington, VT 05402-0190

Phone: (802) 863-2375

Fax: (802) 862-7512

4453847