See exhibits for June 3rd, 2025

IC-25-06-292

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Ravalli County Planning Dept.

WCFP-24-10

COUNTY OF RAVALLI
STATE OF MONTANA

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In the Matter of the Application of:

Vertical Bridge Holding LLC on behalf of T-Mobile

Wireless Communication Facility Permit Application (WCFP-24-10)

Premises: 302 Black Bear Lane
Hamilton, MT 59840

----------X

**MEMORANDUM IN OPPOSITION**

Respectfully submitted,

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Meg Battey
Linda Blain
Steven Blain
Betty Condon
Mike Condon
Pamela Condon
Sharon Connolly
Kari Dory
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Randy Stewart
Rene Whalen
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Glenda Wiles

Public Comment #41

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## Preliminary Statement

Vertical Bridge Holding LLC on behalf of T-Mobile (hereinafter collectively referred to as "T-Mobile") has filed a Wireless Communication Facility Permit Application (WCFP-24-10) proposing a new 180 foot, 18-story wireless communication tower at 302 Black Bear Lane, Hamilton. A prior application was denied by Ravalli County because it did not meet the requirements of the County Wireless Communication Facility Ordinance No. 13 (WCFO or Ordinance).

This current application again does not meet the requirements of the wireless facility ordinance, in particular part, Section 4C, inasmuch as the proposed tower is over 60 feet in height and is located less than 5280 feet from another communication facility. T-Mobile seeks exception to the requirements of Section 4C.

This memorandum is submitted by and on behalf of multiple homeowners, residents and other related, interested parties whose homes are situated adjacent to or in close proximity to the site of the proposed tower.

This community is not against all cell towers. It is against the irresponsible placement of cell towers, where T-Mobile has not proven a need for the proposed tower, where construction of such tower would have severe negative aesthetic consequences for the nearby residents, would cause a significant reduction of property values, would destroy the landscape and would forever change the character of the community.

This 18-story facility will dominate the skyline and loom over this community, forever changing its character. It is incompatible with the homes and surrounding community. It will "stick out like a sore thumb" rising well above all existing structures, trees and vegetation.

As discussed more fully below, granting T-Mobile a variance from the Wireless Communications Facility Ordinance and approving their application would be contrary to the spirit and the letter of the County's Ordinance and regulations, as well as applicable federal law.

T-Mobile's application should be denied because:

(a) as proposed, the 18-story monopole does not comply with applicable federal, and County statutes and regulations;

(b) granting the application would violate provisions of Ravalli County's Wireless Communication Facilities Ordinance as well as the legislative intent of the Ordinance;

(c) the applicant has failed to establish that the proposed facility:

(i) is *actually necessary* for the provision of personal wireless services within the County or

(ii) that it is necessary that the facility be built at the proposed site;

(d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Ordinance was enacted to prevent.

(e) the construction of the tower as proposed constitutes a fire and safety hazard

(f) T-Mobile has not established that the denial of its application would amount to an effective prohibition, nor unreasonable discrimination among providers under the Telecommunications Act of 1996.

As such, we respectfully submit that Vertical Bridge/T-Mobile's application be denied in a manner consistent with the provisions of the Telecommunications Act of 1996.

**POINT I**

Granting T-Mobile's Application to Construct a 180 Foot Cell Tower at the Proposed Location Would Violate Both the Requirements of the Wireless Communication Facilities Ordinance and the Legislative Intent Upon Which Those Requirements Were Enacted

A. Local Authority to Regulate Telecommunications Facilities

The proliferation of wireless communications facilities has resulted in the need for municipalities to pass legislation to regulate their siting and construction. Although many site developers and cellular service providers will argue that the Telecommunications Act of 1996 (TCA) prohibits local governments from regulating telecommunications facilities, this is simply untrue.

When the U.S. Congress enacted the TCA, it *explicitly preserved to state and local governments the power to control the number and placement of wireless facilities within their jurisdictions.* They did so by enacting 47 U.S.C. §332(c)(7)(A), entitled "General Authority" which provides as follows:

> (7) Preservation of local zoning authority
>
> (A) General authority
> Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

While subsection (B) forbids a municipality from "unreasonably discriminat[ing] among providers" and from "prohibiting the provision of personal wireless services" altogether, the fact remains that a County may restrict the placement, location, construction, and modification of cell towers in their community through zoning regulations. *See, T-Mobile South, LLC v. Roswell,* 135 S.Ct. 808 (2015); *Varsity Wireless, LLC v. Town of Boxford, et al,* 2018 WL 3970677 (D. Mass. 2018); *Petition of Cellco Partnership d/b/a Verizon Wireless,* 2022 WL 18825861 (N.H. 2022); *Cellco Partnership v. Town of Clifton Park, NY,* 365 F.Supp.3d 248 (N.D.N.Y. 2019). The "TCA preserves state and local authority over the siting and construction of wireless

communication facilities..." *Varsity Wireless, supra, quoting Second Generation Props, L.P., v. Town of Pelham,* 313 F.3d 620 (1st Cir. 2002).

Armed with the powers preserved to them by the United States Congress, local governments have adopted and maintained "*smart planning provisions*," which are land use regulations intended to promote and require the strategic placement of cell towers to achieve three simultaneous objectives:

(1) enabling wireless carriers to saturate the local municipality with personal wireless coverage so that its residents can enjoy the use of their cell phones while

(2) minimizing the number of wireless facilities necessary to provide that coverage, and thereby avoiding unnecessarily redundant wireless infrastructure, and

(3) avoiding, to the greatest extent practicable, any unnecessary adverse impacts upon residential properties and communities, due to the irresponsible placement of wireless facilities.

B. County Wireless Communication Facilities Ordinance

(i) Purpose

Consistent with the intent of this federal law, local governments, such as Ravalli County have enacted regulations which are designed to protect and preserve the interests of its residents. The County's Wireless Communication Facilities Ordinance does just that.

The Purposes of the Ordinance include "Protecting the County's natural resources and visual environment from the potential adverse visual effects of communication facilities, through careful design and siting standards" and to "Limit the number of towers needed to serve the County, by requiring facilities to be placed on existing buildings and structures where possible, and requiring co-location of wireless communication providers on existing and new

towers."

To allow T-Mobile to build the proposed facility, would fly in the face of the stated purposes of the County's Ordinance.

(ii) Siting Preference

The proposed facility does not follow the siting preferences enumerated in the Ordinance.

The most preferred site would be a co-location on an existing tower. Second to that would be locating the tower on an existing commercial or industrial building. If not feasible, the next best would be concealed antennas, then microcell antennas. The least preferable would be a new cell tower. It is also preferred that a new facility be located on public lands or structures.

These are reasonable restrictions. The siting preferences keep wireless facilities out of residential areas to the extent possible, directing them to the least offensive locations where feasible. T-Mobile's proposed tower fails to abide by the Ordinance's siting preference. Their cell tower would be built in the least desirable location and on private land.

(iii) Spacing Requirements

The Ordinance specifically requires that any tower "over 60 feet in height shall be located at least 5,280 feet from any other communication facility over 60 feet in height." Where a proposed tower over 60 feet is closer than 5,280 feet from another tower over 60 feet, the new antennas must be co-located. An exception to this requirement will only be granted if it can be scientifically proven that co-location is not feasible and where it can be proven that a unique hardship exists which prevents compliance.

T-Mobile has not presented sufficient evidence that it cannot comply with these

requirements. First, as will be discussed below, T-Mobile has not demonstrated that there is a significant gap in its wireless service, that the proposed facility is the least intrusive means of remedying that gap, nor that there has been a meaningful inquiry as to why the proposed facility is the only feasible alternative. Aside from co-location, there hasn't been any probative evidence that there are no alternative locations. T-Mobile hasn't sufficiently described its efforts to find an alternative site, other than a vague reference to trying to contact other property owners but not receiving a response. Furthermore, there is no probative evidence regarding whether the tower could be shorter, whether the design could be changed, or what could be done to camouflage the tower.

Clearly, the County is aware of the negative impact of cell towers and is seeking to restrain unfettered and redundant construction of these facilities. While building wireless facilities *in appropriate locations,* and *where needed* is a reasonable goal, nothing in T-Mobile's application indicates that the tower is in fact necessary, that it is necessary to build it in that specific location or at the proposed height. The County is well within its authority to require proper evidence that it meets these standards.

It is difficult to determine whether the geographic area that T-Mobile claims it requires is accurate because T-Mobile has not provided "hard data" to document the parameters of a purported significant gap in service.

(iv) Variance Provisions

The Wireless Communication Facilities Ordinance does not contain any provision for variance from its regulations. The first thing that should be noted is that without a mechanism to vary from the specific requirements of the Ordinance, there should be no variance. There must

be strict compliance with the regulations.

The approach used by the Planning Department is to consider the unrelated variance provisions of the subdivision regulations to determine whether the T-Mobile proposed facility should be granted an exception to the Wireless Ordinance. This is more than inappropriate inasmuch as the considerations required for a wireless facility application are far different from those necessary for a subdivision variance. It is our position that no variance can be granted where there is no provision for any variance from the wireless Ordinance.

Assuming that the subdivision regulations did apply, the relevant purposes of these regulations are to provide for the protection of the rights of property owners (including the adjacent and nearby property owners) and to avoid "subdivisions that would involve...danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire...." The construction of the proposed tower would have severe adverse aesthetic impacts on the nearby properties and severely decrease the value of these properties. And while fire caused by cell tower failure is not a "natural" hazard, it should be remembered that the subdivision variance regulations do not align with the requirements of wireless facility construction. In this instance *any* type of fire is a significant threat.

(v) Fire Risk

There are four well-documented dangers of which the Board should be aware: (1) structural failures, (2) fire, (3) ice fall, and (4) debris fall. Additionally, fire may actually cause or contribute to structural failure and debris fall. Although structural failure (the tower toppling over potentially onto adjoining property), ice fall and debris fall are very serious concerns, perhaps the most serious concern for this proposed location is fire risk.

The proposed site is accessed by a single lane road which is not maintained by the County. Should a fire, tower failure, or other disaster occur, this road would have to accommodate fleeing residents as well as incoming rescue personnel. In an emergency it would be difficult, perhaps impossible, for emergency vehicles to reach the tower or residents. This area has already seen the Blodgett Fire, the Sawtooth Fire, the Downing Mountain Fire and the Roaring Lion Fire and residents are very aware of the fire risk and the serious consequences which can occur. The risks of fire only increase as the spring turns into summer. The entire area becomes dry and severely susceptible to fire. It would not be wise to add another potential source of fire to this already vulnerable area.

First Street is a non-profit which calculates property risks, including the risk of fire. They assign an 8 out of 10 fire risk for this property. A map with risk assessment for the subject property is attached as **Exhibit "A."** Attached as **Exhibit "B"** is a printout from Weather Bug with fire risk for Hamilton for the week beginning June 2, 2025. Fire risk is high for 3 of the 5 days listed and a fire is currently raging.

Three catastrophic wildfires in California have been started, at least in part, by telecommunications equipment failures – the 2020 Silverado Fire, the 2018 Woolsey Fire and the 2007 Malibu Canyon Fire. (*see Guest Commentary: Is 5G a potential fire hazard? The Aspen Times, June 13, 2021 https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/, Environmental Health Trust Fact Sheet: Federal Legislation on Wireless Communications, Wildfire Risks from Cell Tower Proliferation February 11, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ehtrust.org/wp-content/uploads/wildfire-*

*cell-tower-fact-sheet-EHT-2-11-24.pdf.* Copies attached as **Exhibit "C"**) Photos of cell tower fires are annexed as **Exhibit "D."**

As these and other articles and research point out, a cell tower fire is an electrical fire and cannot be controlled through conventional means. Susan Foster, a Utility & Fire Prevention Consultant, Medical Writer and Honorary Firefighter with the San Diego Fire Department, who has also testified before the California Assembly Committee on Communications and Conveyance, states that although cell tower fires are "infrequent," they are "devastating when they do occur.... electrical fires cannot be fought through conventional means until the power has been cut. Firefighters or anyone else trying to put water on an energized cell tower fire will be electrocuted. Imagine this scenario, Foster explains, a cell tower catches on fire with winds gusting at 50 miles an hour. This fire is going to spread until the utility cuts the power and that can take between 10 minutes and one hour." (*see The Aspen Times, Guest Commentary, supra*)

In this proposed location, as noted above, the road access to the tower is a single lane road, not maintained by the County. There is no other entry or exit for the houses on that street. Should a fire occur, evacuating residents would have a difficult time getting out and emergency personnel and vehicles would have an extremely difficult time getting to the fire. The results could be catastrophic.

(vi) The Concept of Public Welfare

"Welfare" is an expansive premise. "[T]he concept of the public welfare is broad and inclusive." *Voice Stream PCS v. City of Hillsboro*, 301 F.Supp.2d 1271 (D. Ore. 2004), (*quoting Berman v. Parker,* 348 U.S. 26, (1954). *Vertical Bridge Development, LLP v. Brawley City Council*, 2023 WL 3568069 (S.D. Calif. 2023). A municipality is within its authority to weigh

the benefit of merely improving the existing [cellular] coverage against the negative aesthetic impact the tower would cause. *Id.*

The values represented by the concept of the "public welfare" are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy .... *Voice Stream, supra.* Denial of T-Mobile's application is consistent with the wireless Ordinance and is the only way to protect the welfare of the nearby property owners.

(vii) Variance Review Criteria

"A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations." *See Chapter 14 Variances.* In this case, T-Mobile's proposed cell tower would do just that. Essentially, all land use regulation, particularly that which grants a deviation from the standard, is designed to preserve and protect residents' property and to promote orderly growth, while preventing incompatible uses. In this case, T-Mobile's project is incompatible with the surrounding residential properties and would have a severe negative effect on the community.

T-Mobile's application for a variance does not meet the requirements set forth in the Review Criteria, and it must be denied. The granting of the variance would in fact be "substantially detrimental to the public...general welfare" and would be "injurious to other adjoining properties" in contravention of the very first criterion.

Additionally, there isn't enough information to determine whether an alternate "design is equally effective [while] the objectives of the improvements are satisfied." (*Ch. 14(D)(1)(c)* On that basis alone, the application should be denied because the applicant has not provided

sufficient evidence to support a positive finding on each of the criteria. (*Ch. 14(D)(1)*)

T-Mobile claims that strict compliance would create an undue hardship because the owner of the property for the proposed site was the only owner interested in contracting with T-Mobile where the property did not require a setback variance. Notably, the efforts employed by T-Mobile to find other amenable property owners and their due diligence are suspect. There is only a vague mention of not getting any responses but we don't know how many property owners were contacted or how many responded to the inquiries. T-Mobile baldly states that properties were rejected because they would require setback variances, but we have no real information – how many properties, where are they located, what would the variances entail? Because T-Mobile did not provide sufficient information, the variance should be denied outright.

## POINT II

### Adverse Impacts on Surrounding Properties and Community

#### A. T-Mobile's Irresponsible Placement of Its Proposed Wireless Facility Will Inflict a Substantial Adverse Impact Upon the Aesthetics and Character of the Community

As defined in the Wireless Ordinance, "Unreasonable Adverse Impact" is defined as where the proposed project would produce an end result which is:

1. Out of character with the designated scenic, natural, historic, and cultural resources affected, including existing buildings, structures, and features with the designated resource area; and
2. Would diminish the scenic, natural, historic, and cultural value of the designated resource. (*Section 2. Definitions*)

It is beyond argument that the irresponsible placement of T-Mobile's proposed 180 foot wireless telecommunications tower at the proposed location would cause the facility to *stand out like a sore thumb*, dominate the skyline, and inflict substantial adverse aesthetic impacts upon the nearby homes. In a residential community made up of one and two story homes, where a variety of trees stand approximately 60 to 90 feet tall, the tower would rise far higher than any of the nearby homes or trees. The proposed tower is ***out of character*** and *not compatible* with the surrounding properties, and would diminish the scenic, natural, and cultural value of the community. Allowing construction of the tower would be the antithesis of safeguarding the character of the community and the County, and the property values of the nearby homes.

T-Mobile has not even bothered to present any meaningful data to demonstrate that its proposed facility is even necessary, let alone that the location is the best possible site to remedy any gap in coverage T-Mobile claims exists.

Federal courts around the country, including the United States Courts of Appeals for the Second and Ninth Circuits, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for constructing a wireless telecommunication facility. Several of these cases involve T-Mobile. *See, Omnipoint Communications Inc. v. The City of White Plains,* 430 F3d 529 (2nd Cir. 2005); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009); *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (E.D.N.Y. 2012); *Crown Castle NG E. Inc. v. Town of Greenburgh, N.Y.,* 552 F. App'x 47, 50 (2d Cir. 2014).

"[The municipality] may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on

adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that these are legitimate concerns for a locality." *City of Anacortes, supra* at 994. *See also Cellular Tel. Co. v. Town of Oyster Bay,* 166 F.3d 490, 494 (2d Cir. 1999) (recognizing that "aesthetic concerns can be a valid basis for zoning decisions"); *Omnipoint Communications, Inc. v City of White Plains,* 430 F.3d 529 (2d Cir. 2005) (aesthetics is a permissible ground for denying a permit under the TCA); *see also Verizon v Town of Oyster Bay,* 2013 WL 4495183 (E.D.N.Y. 2013).

The Ninth Circuit has held that municipalities have a "default power" to "regulate aesthetics" under the California Constitution. *Sprint PCS Assets, LLC v. City of Palos Verde Estates, et al,* 583 F.3d 716, 722 (9th Cir. 2009). "Accordingly, when the evidence specifically focuses on the adverse visual impact of [a cell phone tower] at the particular location at issue more than a mere scintilla of evidence generally will exist." *Voice Stream,* supra at 1258; *GTE Mobilnet of California Ltd. P'ship v. City of Berkeley*, 2023 WL 2648197 (N.D. Cal. 2023)

In fact, courts have held that a negative aesthetic impact alone is sufficient to uphold a denial of an application without regard to whether there are existing alternatives or to the carrier's need for the facility. *T-Mobile v Town of Islip,* 893 F.Supp. 2d 338, (E.D.N.Y. 2012), *citing SiteTech Group Ltd. V Zoning Appeals of Town of Brookhaven,* 140 F. Supp. 2d 255, (E.D.N.Y. 2001).

B . Probative Evidence of the Actual Adverse Aesthetic Impacts Which the Facility Will Inflict Upon the Nearby Homes

As logic would dictate, and as federal courts have held, homeowners are best suited to accurately assess the nature and extent of the adverse aesthetic impacts upon their homes from an irresponsibly placed wireless telecommunication facility. This is especially true

of homeowners whose property is adjacent to or in close proximity to a proposed cell tower. The United States Court of Appeals for the Second Circuit in *Omnipoint, supra,* recognized that when a local government is considering an application for a wireless facility, it should accept statements and letters from the actual homeowners as direct evidence of the adverse aesthetic impacts that a facility would inflict upon nearby homes. This is because they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See also, Clifton Park, supra.*

As already noted above, federal courts have consistently held that adverse aesthetic impacts are a valid basis for denying wireless facilities applications. Annexed collectively hereto as **Exhibit "E"** are letters from homeowners whose homes are adjacent to or are situated in close proximity to the proposed facility.

Within each of those letters, the homeowners and residents personally detail the specific adverse aesthetic impacts that the proposed facility would inflict upon their respective homes and lives. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed, particularly the eyesore that would loom above their homes. They describe the reasons why they moved to their neighborhood and how they love their beautiful, rural surroundings, particularly the scenic views. The construction of T-Mobile's cell tower would abrogate those reasons and destroy what's special about their homes, the character of their community, and their quality of life.

The specific and detailed impacts described by the adjacent and nearby property owners and residents constitute "substantial evidence" of the adverse aesthetic impacts they stand to

suffer because they are *not* limited to "generalized concerns" but instead contain detailed descriptions of how the proposed facility would dominate the views from their yards, decks and porches where they enjoy their morning coffee and entertain family and friends, and how the tower would be visible even from inside their homes. *See, Omnipoint, supra.* The destruction of their beautiful views is an adverse effect the applicable zoning and communications tower regulations are meant to guard against.

As detailed in the letters attached as **Exhibit "E"** the substantial adverse aesthetic impacts the proposed wireless facility's irresponsible placement would inflict upon the nearby homes are the precise type of negative impacts that the County's Ordinance was specifically enacted to prevent.

Of special note is the letter from Monte Koppes who details the historical value of his property. His land was previously owned by Henry Grant, "Mr. Bitterroot," whose family founded the Grantsdale area. Mr. Grant developed an airstrip which was used as part of the fur trade from the 1950s through the 1970s and which has become a local historical site. The airstrip is still in use -- by Mr. Koppes as well as other pilots. A 180 foot cell tower would spoil the historic feelings associated with this property. Rising well above the trees the sight would be unavoidable. Not only would it be visible from the airstrip, it would be visible from the Koppes home, from the north and the west. Furthermore, the proposed tower would interfere with the use of the airstrip and would pose a hazard to pilots, especially during emergency situations where they might have to abort a takeoff or landing.

C. <u>The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties</u>

In addition to the adverse impacts upon the aesthetics of the character of the neighborhood, such an irresponsibly placed wireless telecommunications tower would inflict a severe adverse impact on the actual value of those residential properties, especially because it would be so highly visible.

As established by the evidence submitted herewith, if T-Mobile is permitted to install its proposed 180 foot tower – which is likely to be increased to a height of 200 feet (*see* Point III, *infra*) – it would inflict upon the nearby homes dramatic losses in property value.

It has been recognized by federal courts that it is perfectly proper for a local zoning authority to consider the professional opinions of licensed real estate brokers who provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed wireless facility *See Omnipoint, supra.* This is especially true when they possess years of real estate sales experience within the specific community and geographic area at issue.

Across the country, both real estate appraisers[1] and real estate brokers have rendered professional opinions that simply support what common sense dictates. When wireless facilities are installed unnecessarily close to homes, these homes suffer material losses in value, typically

1 *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Wireless Facility in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

ranging up to 20% [2] or more. In the worst cases, facilities built near existing homes have caused the homes to be rendered wholly unsaleable.[3]

As evidence of the adverse impact that the proposed facility would have upon the property values of the homes that would be adjacent and/or in close proximity to it, annexed hereto as **Exhibit "F"** are letters setting forth the professional opinion of licensed real estate professionals, who are familiar with the specific real estate market at issue, and who submit their professional opinions that the installation of the proposed facility would cause property values of nearby homes to be reduced by as much as 20% and would make those homes more difficult to

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2 *See, e.g.,* a report published in "The Empirical Economics Letters," 18(8): August 2019 ISSN 1681 8997 by Joseph Hale and Jason Beck concluded that the proximity of cell towers does have a negative effect on the sale prices of nearby homes.

*See also,* "Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis," by Ermanno Affuso, J. Reid Cumings and Huubin Le, published in February of 2017. This study used a hedonic spatial autoregressive model to assess the impact of wireless communication towers on the value of residential properties. This report also concluded that the proximity of a cell tower has a negative impact on the sale process of nearby homes.

In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Wireless Facility in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Wireless Facility reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Wireless Facility reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Wireless Facility would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

3 Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a Wireless Facility. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a Wireless Facility was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.,* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-home--172366931.html.

sell, even at reduced purchase prices. Under current home sale market conditions, even a small percentage reduction in value can cost a homeowner hundreds of thousands of dollars.

Given the significant reductions in property values that the proposed installation would inflict upon the nearby homes, the granting of T-Mobile's application would inflict the very type of injurious impacts that the Wireless Communication Facilities Ordinance was specifically intended to prevent. Therefore, T-Mobile's application should be denied.

Finally, even the courts have recognized that cell towers are inherently ugly. *See USCOC of Greater Iowa, Inc.* 465 F.3d 817 at 823 (8th Cir. 2006), wherein the Circuit Court stated:

> Further...cellular towers are not ordinarily considered aesthetically pleasing.... Having an unobstructed view of a tower from one's home every day would diminish most property owners' enjoyment of their property. And common sense again dictates that having such a tower in the sight line from and so close to one's home reduces the value of that home, especially when the property owner is not the one receiving the income from the lease.

*See also Clifton Park, supra.*

**POINT III**

§6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow the Height of the Facility To Be Increased Without Further Municipal Approval

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed cell tower were constructed at the 180 foot height currently proposed by T-Mobile, if such tower were built, T-Mobile could unilaterally choose to increase the height of the tower to as much as 200 feet, and the County would be legally *prohibited* from stopping them from doing so, due to the constraints of the Middle-Class Tax Relief and Job Creation

Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding section §704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and *shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower. The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent of the height of the tower, *plus* the height of an additional antenna, *plus* a distance of ten (10) feet to separate a new antenna from the pre-existing top antenna, up to a maximum height increase of twenty (20) feet, potentially resulting in a 200 foot tower.

Considering the compounded substantial adverse impacts that an increase in the height of the cell tower would inflict upon the homes and community nearby, T-Mobile's application must be denied.

Once again, this is especially true since, as set forth in Point IV subsection A below, T-Mobile has not even established that the proposed 180 foot tower is actually needed in order to provide wireless coverage within the County, let alone one that is 200 feet high.

## POINT IV

T-Mobile Has Failed to Proffer Probative Evidence Sufficient to Establish a Need For the Proposed Tower at the Location and Height Proposed, or That the Granting of Its Application Would Be Consistent With the "Smart Planning" Requirements of the Wireless Ordinance

The obvious intent behind the provisions of the County's Ordinance is to promote the "smart planning" of wireless infrastructure within the County. Smart planning involves the adoption and enforcement of zoning provisions which require that cell towers be *strategically placed* so that they minimize the number of towers needed, while they saturate the County with complete wireless coverage (*i.e.*, they leave no gaps in wireless service), while contemporaneously avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated close to such towers.

Entirely consistent with that intent, the County's Wireless Communication Facilities Ordinance was adopted as a "smart planning" provision, specifically enacted to regulate the "placement" of cell towers to minimize their potential negative impacts.

To enable them to determine if a proposed cell tower would be consistent with smart planning requirements, sophisticated zoning and planning boards require carriers and site developers to provide direct evidentiary proof of:

(a) the precise locations, size, and extent of any geographic gaps in personal wireless services that are being provided by a specifically identified wireless carrier, which offers personal wireless services within the respective jurisdiction

and

(b) the precise locations, size, and extent of any geographic areas within which that identified wireless carrier suffers from a capacity

deficiency in its coverage.

The reason that local zoning and planning boards invariably require such information is because without it, they are incapable of knowing:

(a) if, and to what extent a proposed tower will remedy any *actual gaps* or deficiencies which may exist,

(b) if the proposed height for a tower is the minimum height needed to remedy such gaps, and

(c) if the proposed placement is in such a poor location that it would all but guarantee that more towers would be built because the proposed tower did not actually cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in cell towers within the County.

In the present case, T-Mobile has failed to provide adequate hard data to establish that the proposed placement of its facility would, in any way, be consistent with such smart planning provisions. Therefore, it has failed to provide actual probative evidence to establish:

(a) the *actual location* of gaps (or deficient capacity locations) in personal wireless services within the County and

(b) why or how their proposed massive cell tower would be the least intrusive means of remedying those gaps.

A. T-Mobile Has Failed to Submit Sufficient Probative Evidence in Support of Its Alleged Need for The Proposed Tower at The Height and Location Proposed

(i) The Applicable Evidentiary Standard

Within the context of wireless facility applications such as the current one filed by T-Mobile, an applicant is required to prove that there are ***significant*** gaps[4] in its wireless

[4] It should be noted that establishing a gap in wireless services is *not* enough to prove the need for a wireless facility; rather, the applicant must prove that "a significant gap" in wireless service coverage exists at the proposed location. *See, e.g., Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38, 50 (1st Cir. 2009); *MetroPCS, Inc. v.*

service, that the location of the proposed facility will *remedy* those gaps, and that the facility is the *least intrusive means* of remedying that gap.

The Ninth Circuit has set forth the following requirements, which all applicants seeking to install wireless facilities must prove. The test articulated by the Ninth Circuit requires T-Mobile to demonstrate that:

> (1) the proposed facility is required in order to close a significant gap in service coverage;
> (2) that the proposed facility is the least intrusive means of remedying the significant gap in service coverage, and
> (3) a meaningful inquiry has been made as to why the proposed facility is the only feasible alternative.

*See Am. Tower Corp. v. City of San Diego*, 763 F.3d 1035 (9th Cir. 2014); *GTE Mobilenet, supra*; *T-Mobile USA, Inc. v. City of Anacortes, supra.*

"The TCA does not assure every wireless carrier a right to seamless coverage in every area it serves, and the relevant service gap must be truly 'significant' and 'not merely individual 'dead spots' within a greater service area." *Los Angeles SMSA Limited Partnership v. City of Los Angeles* 2021 WL 4706999 (C.D. Calif. 2021) *quoting MetroPCS, Inc. v. City and County of San Francisco,* 400 F.3d 715 (9th Cir. 2005). With respect to a "gap in service," "where the holes in coverage are very limited in number or size... the lack of coverage likely will be *de minimis* so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service." *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir.

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*City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir.2005). Here, T-Mobile failed to proffer substantial evidence that a gap in wireless services exists—let alone that this purported gap is "significant" within the meaning of the TCA and established federal jurisprudence.

1999): *T-Mobile v Town of Islip, supra.*

Neighboring residents may even testify that they do not experience the type of coverage issues that the Applicant claims are present in the area. *See, GTE Mobilenet, supra.*

Further, the *T-Mobile* Court, *citing Willoth,* held that "the fact that T-Mobile may have a need for the Proposed Facility does not 'trump all other important considerations, including the preservation of the autonomy of states and municipalities.'"

More specifically, the United States Court of Appeals for the Ninth Circuit stated in *Am. Tower Corp. v. City of San Diego*, "[w]hen determining whether a locality has effectively prevented a wireless services provider from closing a significant gap in service coverage, as would violate the federal Telecommunications Act (TCA), some inquiry is required regarding the feasibility of alternative facilities or site locations, and a least intrusive means standard is applied, which requires that the provider show that the manner in which it proposes to fill the significant gap in services is the least intrusive on the values that the denial sought to serve." *Id. See also, City of Anacortes, supra.* That is, is the proposed tower the least intrusive means in light of the municipality's zoning regulations and the legislative intent behind them?

T-Mobile's investigation into alternative sites was not conducted in good faith and with due diligence. An applicant is required to conduct a meaningful investigation into alternative sites. *Up State Tower Co. v Town of Southport, NY* 412 F.Supp.3d 270 (W.D.N.Y. 2019). Interestingly, the *Omnipoint* Court found that where "other cell companies serve the area…the Board could infer that other towers erected by other companies are in the vicinity, and that Omnipoint had the burden of showing either that those towers lacked capacity for an Omnipoint facility or that (for some other reason) those towers were unavailable to bridge Omnipoint's

coverage gap."

Moreover, a local government may reject an application for construction of a wireless service facility in an under-served area without thereby prohibiting wireless services if the service gap can be closed by less intrusive means. *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999) *citing Town of Amherst v Omnipoint Communications,* 173 F.3d 9 (1st Cir 2 1999). And a denial is merited where the applicant has identified other potential sites but stated in conclusory fashion that they were unfeasible and stated...that it was unable to build a less intrusive structure.... *Omnipoint, supra.*

An inquiry into antennas and towers located in the vicinity of the proposed facility reveals that there are several dozen towers of different types within one mile or just beyond one mile at 1.1 miles. Whether any of these towers were investigated as alternative sites is unknown as the focus was solely on the tower at Grubstake Road. Annexed as **Exhibit "G"** is a map and list of towers near the proposed site.

(ii) T-Mobile Has Failed To Meet Its Burden of Proof

T-Mobile has failed to meet its burdens of proving: (1) that a *significant* gap in service exists; (2) its facility would remedy that gap; (3) that the proposed tower is the least intrusive means to remedy that gap; (4) or that denial of its application would constitute a "prohibition of personal wireless services" within the meaning of the TCA 47 U.S.C.A. §332(7)(B)(i)(II).

As an initial evidentiary matter, glaringly absent from T-Mobile's application is any "*hard data,*" which could easily be submitted as *probative evidence* to support its application. T-Mobile has failed to prove that the proposed location is the best possible location to remedy a significant gap in personal wireless service because no significant gap in service even exists.

Without any meaningful data whatsoever, it is impossible for the County to comply with the "smart planning" requirements set forth in its own Ordinance. Furthermore, without any data, the County cannot ascertain whether the proposed location is the least intrusive means of providing personal wireless service to the community because they have no idea where any possible significant gaps may or may not exist and who, if anyone, would benefit from the proposed facility. It would be entirely irresponsible and illogical for the County to grant an application for the installation of a wireless telecommunications facility without even knowing where such facilities are actually needed.

(iii) FCC and California Public Utilities Commission

Recently, both the FCC and the California Public Utilities Commission have recognized the ***absolute need*** for hard data rather than the commonly submitted propagation maps, which can easily be manipulated to exaggerate need and significant gaps.

As is discussed within the FCC's July 17, 2020, proposed order, FCC-20-94, "[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify mobile providers' coverage maps."[5] The FCC defines drive tests as "tests analyzing network coverage for mobile services in a given area, i.e., measurements taken from vehicles traveling on roads in the area."[6] Further within the FCC's proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) "City of New York, California PUC, and Connected Nation have asserted that on-the-ground

[5] *See* page 44 paragraph 104 of proposed order FCC-20-94.
[6] *See* page 44 fn. 298 of proposed order FCC-20-94.

data, such as drive-test data, are critical to verifying services providers' coverage data...;"[7] (ii) California PUC asserted that 'drive tests [are] the most effective measure of actual mobile broadband service speeds';"[8] and (iii) "CTIA, which opposed the mandatory submission of on-the-ground data, nonetheless acknowledged that their data 'may be a useful resource to help validate propagation data...'"[9]

California PUC has additionally stated that "the data and mapping outputs of propagation-based models will not result in accurate representation of actual wireless coverage" and that based on its experience, "drive tests are required to capture fully accurate data for mobile wireless service areas."[10]

Moreover, proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data. Specifically, the FCC states:

> *"The Mobility Fund Phase II Investigation Staff Report*, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The *Mobility Fund Phase II Investigation Staff Report* recommended that the Commission require providers to "submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. *Actual speed test data is critical to validating the models used to generate the maps.*"

(Emphasis added)

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help

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[7] *See* page 45 fn. 306 of proposed order FCC-20-94.
[8] *Id.*
[9] *Id.*
[10] https://arstechnica.com/tech-policy/2020/08/att-t-mobile-fight-fcc-plan-to-test-whether-they-lie-about-cell-coverage/

the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires "[a]ffirmation that the coverage model has been validated and calibrated at least one time using on-the-ground testing and/or other real-world measurements completed by the provider or its vendor."

The mandate requiring more accurate coverage maps has been set forth by Congress. "As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps."[11] "The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to 'establish a process to verify the accuracy of such data, and more.'"[12]

However, despite Congress's clear intent to "improve the quality of the data,"[13] several wireless carriers, have opposed the drive test/real-world data requirement as too costly.

"The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC's current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate."[14]

If the FCC requires further validation and more accurate coverage models, there is no reason Ravalli County should not do the same. For the foregoing reasons, dropped call records and drive test data are both relevant *and* necessary.

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[11] https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/
[12] *Id.*
[13] *Id.*
[14] https://www.lightreading.com/test-and-measurement/verizon-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329

(iv) The Lack of Hard Data

The most accurate and least expensive evidence that can be used to establish the location, size, and extent of both *gaps* in personal wireless services, and areas suffering from *capacity deficiencies* are two specific forms of *hard data:* dropped call records and actual drive test data.

Unlike "expert reports," RF modeling, and propagation maps, all of which can easily be manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy.

At best, propagation maps are only as good as the data entered to generate them. A propagation map is only a predictive model of signal strength and coverage. The programs used to create such studies use thousands of calculations and the results are completely dependent on the program used and the parameters defined by the person running that program.

Additionally, *as here*, the coverage maps and reports usually do not represent all frequencies available to the carrier. Lack of one frequency does not mean there is a lack of service in one or more other frequencies. T-Mobile has presented ***only*** information on the 700 MHz frequency. T-Mobile has twelve (12) possible frequencies available. (*See* **Exhibit "H"** which lists T-Mobile's frequencies)

Dropped call records are generated by a carrier's computer systems. They are typically extremely accurate because they are generated by a computer which already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls suffered by a wireless carrier at any geographic location, and for any chronological period. With the ease of a few keystrokes, each carrier's system can print out a precise record of all

dropped calls for any period of time, at any geographic location. It is highly unlikely someone would be able to enter false data into a carrier's computer system to alter that information.

In a similar vein, actual drive test data is typically free from the type of manipulation that is almost uniformly found in "computer modeling," the creation of hypothetical propagation maps, or "expert interpretations" of actual data, all of which are easily manipulated, such that they are essentially worthless as a form of probative evidence.

Actual raw drive test data consists of actual records of the actual recorded strengths of a carrier's wireless signal at precise geographic locations. Though easy to obtain and report, T-Mobile has failed to provide the simple data upon which the Board could make an *informed* decision.

T-Mobile has failed to provide any credible evidence to establish the cause of any dropped calls. Nor have they provided the hard data which would show the precise cause of each and every dropped call.

As reflected in the records, T-Mobile has not provided any type of *hard data* as probative evidence, nor has it presented any form of data whatsoever, despite being in possession of such data. For example, T-Mobile could – and should – provide documentation regarding the number of residents who would benefit from the proposed tower, or information regarding the number and kinds of customer service complaints. "The substantial evidence analysis requires the Court to look for 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion' that a significant gap in service exists." *New Cingular Wireless PCS v. City of West Covina*, 2023 WL 4422835 (C.D. Calif. 2023) *quoting* Metro PCS, *supra.* Clearly, the actual number of people who would benefit from the proposed

tower as well as information regarding actual service complaints and/or dropped calls, would be the best indicators of a significant gap in service. It must be remembered that only T-Mobile customers would benefit from the proposed tower. Area residents do not complain about cellular service. In fact, residents adjacent to the proposed site report good service.

B. T-Mobile's Analysis Regarding Its Wireless Coverage Is Contradicted By Their Own Actual Coverage Data

As is a matter of public record, T-Mobile maintains an internet website at https://www.t-mobile.com. In conjunction with its ownership and operation of that website, T-Mobile maintains a database that contains geographic data points that cumulatively form a geographic inventory of their actual *current* coverage for wireless services.

As maintained and operated by T-Mobile, that database is linked to their website, and is the data source for an interactive function, which enables users to access T-Mobile's own data to ascertain both the existence of T-Mobile's wireless coverage at any specific geographic location, and the level, or quality of such coverage.

T-Mobile's interactive website translates their *actual coverage data* to provide imagery whereby areas that are covered by T-Mobile's service are depicted in various shades of red, and areas where they have a lack of (or gap in) coverage, are depicted in white. The website further translates the data from T-Mobile's database to specify the actual *service level* at any specific geographic location.

A copy of T-Mobile's coverage map for the area around 302 Black Bear Lane can be viewed on T-Mobile's website and is also attached as **Exhibit "I."** This Exhibit was obtained and printed on June 1, 2025 from T-Mobile's website.

On its website, the coverage map shows, based on T-Mobile's *own* data, that there is no

significant coverage gap in their service at 302 Black Bear Lane, or anywhere around or in close proximity to it. The coverage map indicates solid levels of service.

This is in stark contrast to the claims made by T-Mobile and Vertical Bridge in their Application. This obvious contrast between the claims made on T-Mobile's website in order to sell its services to the public and the claims made by T-Mobile and Vertical Bridge in order to sell its proposed tower to this Board is striking. If nothing else, these differences demonstrate the ease with which data can be manipulated to suit a particular purpose.

In addition, annexed as **Exhibit "J"** are maps maintained by the FCC, accessible on their website and based on data required to be provided directly by T-Mobile. This Exhibit was obtained and printed on June 1, 2025, and shows that there are no coverage gaps at or near 302 Black Bear Lane. The first is from an FCC web page that shows coverage status – full coverage – through May 15, 2021. New FCC maps also show full coverage for mobile broadband.

Both **Exhibits "I"** and **"J"** are based on T-Mobile's own data and as such, at the very least should be considered in light of the purposes for which they were prepared.

C. *ExteNet Systems, Inc. v. Village of Flower Hill and Flower Hill Board of Trustees*

On July 29, 2022, the Federal District Court for the Eastern District of New York issued an informative and instructive decision that reiterates the holding in *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999). While noting that "improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones, … they are not protected by the [TCA]." *ExteNet Systems, Inc. v. Village of Flower Hill*, 617 F.Supp. 3d 125 (E.D.N.Y.

July 29, 2022). In the *Flower Hill* case, the Board found significant adverse aesthetic and property values impact and, most importantly, no gap in wireless coverage and, therefore, no need even to justify the significant adverse impacts. Quoting *Omnipoint, supra,* the Court found that the lack of "public necessity" can justify a denial under New York law. "In the context of wireless facilities, public necessity requires the provider 'to demonstrate that there was a gap in cell service, and that building the proposed [facility] was more feasible than other options.'" *Id.* Further, the Judge held that "as with the effective prohibition issue, the lack of a gap in coverage is relevant here and can constitute *substantial evidence* justifying denial...And, since one reason given by the Board for its decision was supported by substantial evidence, the Court need not evaluate its other reasons." *Id., (emphasis supplied).*

The applicant bears the burden of proof and must show that there is a significant gap in service – not just a lack of 5G or 4G. A cell phone is able to "downshift" – that is, from 5G to 4G or from 4G to 3G, etc. – if necessary to maintain a call throughout coverage areas. Unless there is an *actual* gap, the call will continue uninterrupted. Therefore, there's only a significant gap when there is ***no service at all***. *Id.*

Similarly, in this instance, in addition to the clear adverse impact to the neighboring properties, T-Mobile has failed to produce any evidence of a truly *significant gap* in wireless service. Showing a gap in a particular frequency is not sufficient. ***All*** frequencies must be absent for a significant gap to exist. T-Mobile has failed to meet this burden, and thus their application should be denied.

## POINT V

To Comply With the TCA, T-Mobile's Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herein

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715 (2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The most authoritative and widely quoted explanation of the TCA's "substantial evidence" requirement comes from *Cellular Tel. Co. v. Town of Oyster Bay*: "substantial evidence implies 'less than a preponderance, but more than a scintilla of evidence'." 166 F.3d 490 (2d Cir. 1999). *See also, GTE Mobilenet, supra.* Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id., quoting MetroPCS, Inc. v. City and Cty. of San Francisco,* 400 F.3d 715 (9th Cir. 2005). Thus, these

interested residents and homeowners have met their burden of proving that T-Mobile failed to offer sufficient evidence to warrant granting their application and it should be denied.

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny T-Mobile's application in a written decision wherein the Board cites the substantial evidence upon which it based its determination.

C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers seek to intimidate local zoning officials with either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow. This is because, even if the applicant were to file a federal action against the County and win, the TCA does not allow them to recover compensatory damages or attorneys' fees, even when they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.[15]

This means that if they sue the County and are successful, the County is not required to pay them anything in damages or attorneys' fees under the TCA. Typically, the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only a short time, not years. As a result of the brevity and relative simplicity of such cases, attorneys' fees incurred by a local government are typically quite small compared to virtually any other type of federal litigation.

[15] *See City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), Kay *v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

## Conclusion

T-Mobile has not proven that a need even exists in the area where they propose to install their cell tower. No significant gap has been demonstrated. Nor has T-Mobile proven that the proposed facility is the least intrusive means of remedying the purported significant gap in service coverage. They have not even shown that a meaningful, good faith inquiry was made into alternative sites or designs to prove whether the proposed facility is the least intrusive alternative.

Moreover, it is particularly concerning that the site proposed for this facility can only be accessed by a single lane roadway that's not maintained by the County. Should the tower cause a fire – as has happened in other states – the result could be truly disastrous.

These facts together with the clear adverse impacts – both aesthetic and financial – which will befall the nearby residents, and which will affect the character of the entire community, can result in only one thoughtful, well-reasoned decision. It is respectfully submitted that the decision must be a denial of T-Mobile's application.

For the foregoing reasons, we respectfully request that T-Mobile's application be denied in its entirety.

Dated: Hamilton, Montana
June 2, 2025

Respectfully submitted,

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