

# WILLIAMS MULLEN

Direct Dial: 434.951.5701  
plloyd@williamsmullen.com

January 14, 2014

VIA EMAIL TO TPADALINO@NELSONCOUNTY.ORG  
Mr. Tim Padalino, Director  
Nelson County Planning Department  
80 Front Street  
Lovingson, VA 22949

RE: Class III Communications Tower Permit Application  
By AT&T (the "Applicant") - NSB CV 422  
Located on property with an address of 678 Sunrise Drive, Afton, VA

Dear Tim:

You have requested additional documentation concerning the captioned application currently pending before the County, as follows:

1. Evidence that no public lands (i.e. federal, state or local), tower or structure are available to accommodate the proposed facility, as required by Nelson County Zoning Ordinance § 20-7-2b. The coverage objective for the proposed facility includes a portion of Rockfish Valley running north-south along Route 151, north of Route 709 (Pounding Branch Road) and south of Route 6 (Afton Mountain Road). Based on a search by AT&T's site acquisition agent, it has determined to its reasonable satisfaction that no public lands are available within the geographic area for construction of the proposed facility. The only co-location opportunity within the geographic area is a facility located at the intersection of Route 151 on property owned by the County Fire Department, which was constructed in connection with the County's broadband initiative. The Applicant also intends to co-locate another facility on this existing tower. CV 422 is proposed to be constructed approximately two miles to the south of the existing tower. As shown on the propagation map enclosed herewith as Exhibit 1, the coverage offered by the proposed CV 422 is as a supplement to the fire station tower. The attached is submitted as evidence that "no public lands, existing towers or structures are located within the geographic area required to meet applicant's engineering requirements" (§ 20-7-2b(1)) and as a "limiting factor that renders existing towers and structures unsuitable" (§20-7-2b(6)).

2. Evidence of Height Compliance, pursuant to Nelson County Zoning Ordinance § 20-7-2c. The Applicant proposes construction of a 130' monopole. Per § 20-4-11, "[a]ny communication tower that is ninety-five (95) feet but does not exceed one hundred (130) feet in height" is defined as a Class III Communication Tower. By reference, § 20-8-2 incorporates the standards for location of Class II Communication Towers, which includes standards for location of towers on any mountain ridge (§ 20-7-2c). The applicant concedes that the definition of Mountain Ridge applies to this facility. Therefore, pursuant to § 20-7-2c, the facility shall not have a tower height "greater than thirty (30) feet above the Existing Vegetative Canopy located on that site-specific location." The Code defines "Existing Vegetative Canopy" as "[t]he existing plants, trees, or shrubs at the site-specific location of the proposed Communications Tower site,

**that will provide** natural camouflage, concealment, or otherwise 'hide' the Communications Tower after its construction" (emphasis added). This language requires that any calculation of the height must be based on existing vegetation that will remain following construction of the facility, exclusive of vegetation proposed to be removed pursuant to § 20-7-5k(4). Because the Code does not provide guidance as to the means of calculating the canopy height, the Applicant used the height a reference tree within the immediate vicinity of the base of the tower. Tree numbered #21 and shown on Exhibit 2, enclosed herewith, is approximately 5 feet from the boundary of the lease area, 112 feet in height and will remain following the construction of the facility. We note that the foregoing interpretation is consistent with other County ordinances providing for the siting of wireless facilities, such as Albemarle County, which calculates the allowable height of a tower by reference to a single "Reference Tree" according to procedures set out in the Code.

3. Evidence of Notification of Blue Ridge Parkway (BRP), pursuant to Nelson County Zoning Ordinance § 20-7-2d. The proposed location of the facility is located approximately 2.61 miles from outermost boundary of the BRP, to the east of Humpback Rock , which distance is in excess of an 1 mile definition of "viewshed" provided by § 20-4-21. On January 14, 2014, the Applicant flew a balloon at the proposed height and location of the facility. Attempts to view the balloon from the Blue Ridge Parkway and its overlooks did not establish any visibility. Although the Applicant does not concede that the facility is within the viewshed of the BRP, on December 18, 2013, the Applicant transmitted notice to the Blue Ridge Parkway pursuant to the notice provisions of County Code § 20-7-2c. On January 9, 2014, the undersigned spoke via phone with the BRP resident landscape architect, David Anderson, who confirmed that the documents had not been received. Immediately thereafter, the site plan and additional documentation were electronically submitted to Mr. Anderson, receipt of which was confirmed. No comments have been received from the BRP as of the date hereof, but assurances have been received that BRP review is underway and comments as to the visibility impacts of the proposed facility on the BRP will be forthcoming. The Applicant offers this as evidence of good faith compliance with the code provisions pertaining to BRP notice and review, without conceding that the facility is located within the BRP viewshed and that such requirements apply to the current Application.

4. Evidence of Service Area Standards, pursuant to Nelson County Zoning Ordinance § 20-7-3. As shown on Exhibit 1, the proposed facility will provide service for Nelson County in the area depicted.

Please contact the undersigned with any questions or additional information concerning the matters described above.

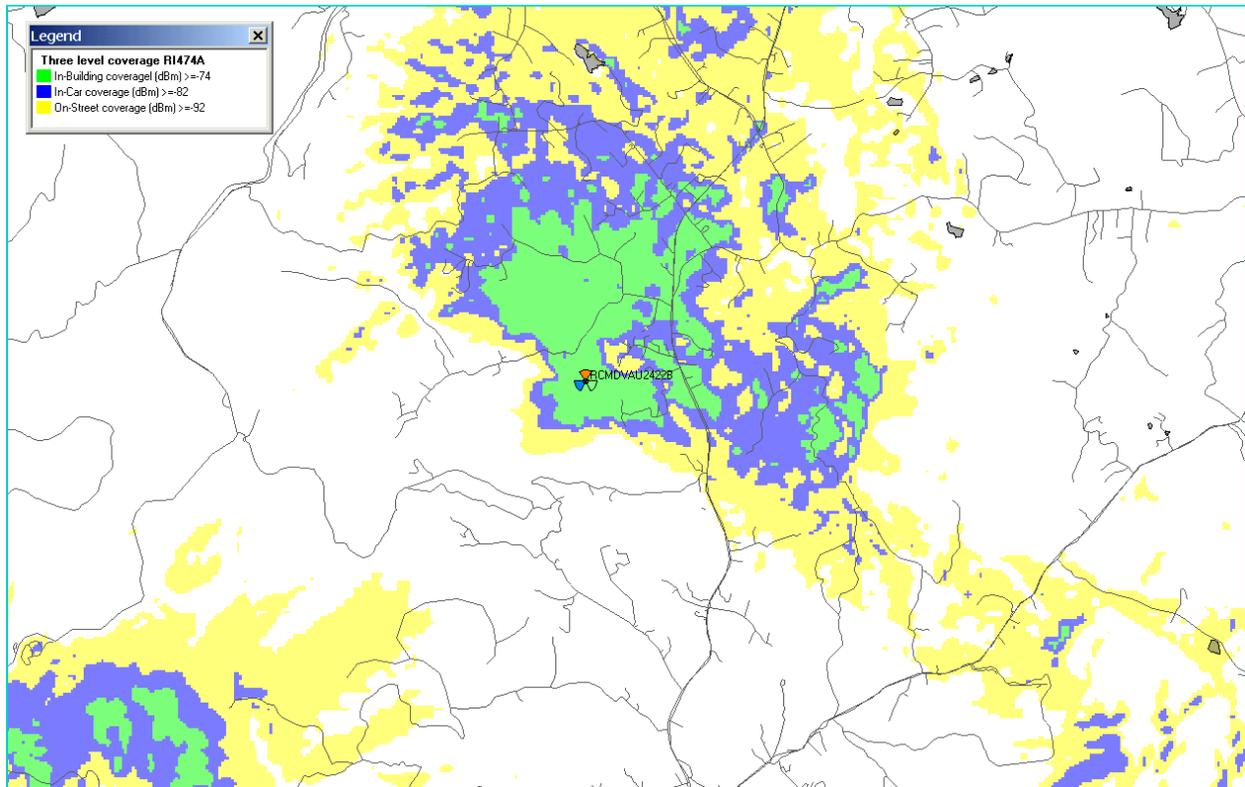
Very truly yours,

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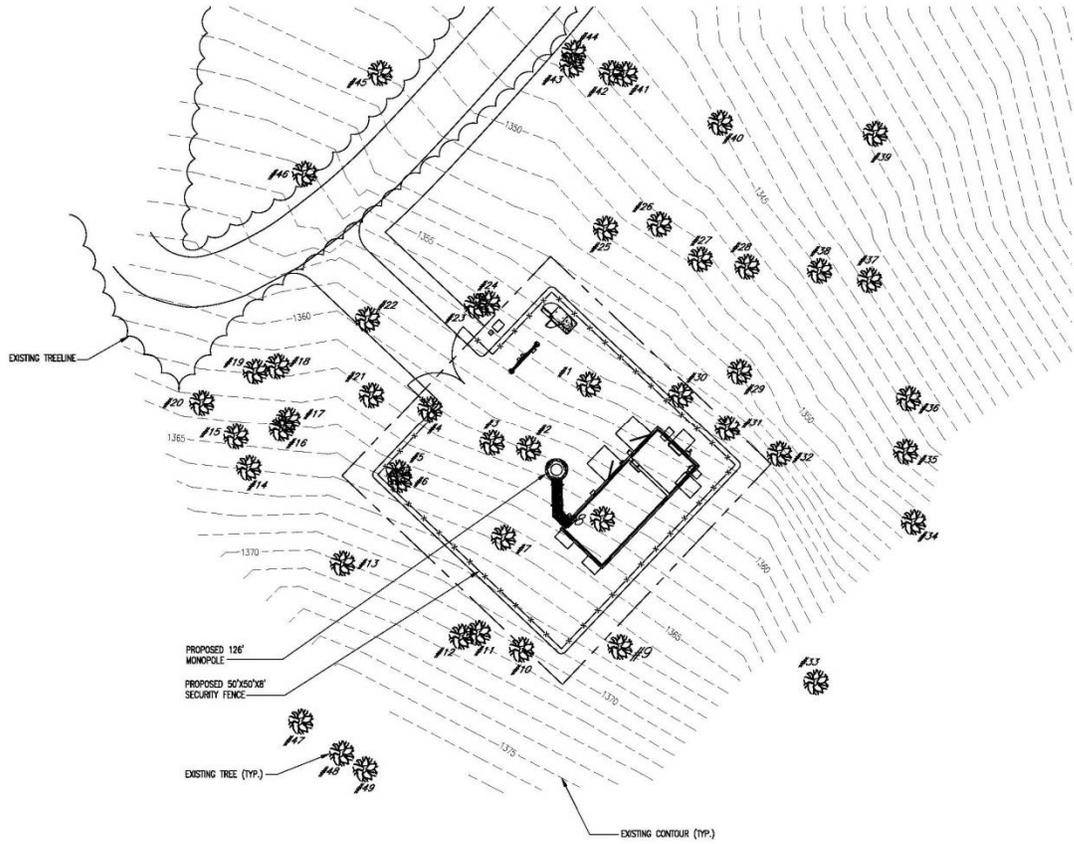
T. Preston Lloyd, Jr.

cc. Cheryl Lynn Taylor, Velocitel (via email)  
Valerie W. Long, Esq., Williams Mullen (via email)

**EXHIBIT 1 – Propagation Map**  
**Signal Propagation Based on Construction of Proposed CV 422**



**EXHIBIT 2 – Height Calculation**  
**Diagram Showing Adjacent Trees**



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(Trees to be removed: 1, 2, 3, 4, 5, 6, 7, 8, 22)