
From: Murray, Emily <emurray@allenmatkins.com>
Sent: Thursday, August 20, 2020 11:22 AM
To: Dept - City Council; City Clerk's Office
Cc: Wooding, Lauren; Zdeba, Benjamin
Subject: August 25 City Council Meeting - AT&T Small Cell SLC0796 Appeal
Attachments: Applicant Letter re AT&T Small Cell SLC0796 Appeal.pdf

Categories: Jenn

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Dear Mayor and Councilmembers,

On behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, please see the attached response by the Applicant to the appeal filed on July 15, 2020 by Mark Pollock regarding the above-referenced site. This matter is scheduled to be heard by the City Council on August 25, 2020.

Thank you,

Emily Lane Murray Esq.

Co-Chair, Land Use, Environmental, and Natural Resources Group
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Via Electronic Mail

August 20, 2020

City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660
citycouncil@newportbeachca.gov
cityclerk@newportbeachca.gov

**Re: AT&T Small Cell SLC0796 Appeal
Minor Use Permit No. UP2019-030
Coastal Development Permit No. CD2020-052**

Dear Mayor and Councilmembers:

On behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"), this letter responds to the appeal filed on July 15, 2020 (the "Appeal") by Mark Pollock ("Appellant"). The Appeal is from the Planning Commission's decision on July 9, 2020 to Adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030. As set forth herein, each of the stated grounds for the Appeal are without merit. Indeed, the same arguments were raised in Appellant's prior appeal to the Planning Commission, addressed by the City Attorney, and rejected by the Planning Commission. AT&T respectfully requests that the City Council likewise dismiss this baseless Appeal.

A. The Appeal Has No Legal Merit

The stated grounds for the Appeal are: (1) the Licensee under the Master License Agreement is not the same as the Applicant for the Minor Use Permit; (2) no proof of insurance as required by the Master License Agreement has been provided; and (3) the Minor Use Permit was granted to an entity without a Master License Agreement, in violation of the City's Municipal Code Section 20.49.080. All of these arguments fail.

First, on February 12, 2019, the City of Newport Beach entered into a Master License Agreement with New Cingular Wireless PCS, LLC (the "MLA"). "New Cingular Wireless PCS, LLC, a Delaware limited liability company" is the "Licensee" in the MLA. The "Applicant" for the subject Minor Use Permit and Coastal Development Permit is identified in the planning permit

application as "New Cingular Wireless, LLC d/b/a AT&T Mobility c/o Ericsson, Inc." New Cingular Wireless PCS, LLC has recorded a Fictitious Business Name Statement with the Orange County Clerk that identifies "AT&T Mobility" as the fictitious business name of New Cingular Wireless PCS, LLC. A copy of the recorded Fictitious Business Name Statement is enclosed herewith. Accordingly, the Applicant for the subject permits (AT&T Mobility) and the Licensee under the MLA (New Cingular Wireless PCS, LLC) are the same. Appellant's claim to the contrary is wrong.

Second, Appellant argues that no proof of insurance as required by the MLA has been provided. The basis for this allegation is unclear. To the extent that the argument is based upon Appellant's confusion regarding AT&T Mobility and New Cingular Wireless PCS, LLC, the two are the same entity, and Appellant's claim is wrong. To the extent that Appellant is arguing, as he has in the past, that pollution coverage and in particular EMF coverage is not provided, Appellant is wrong again. AT&T self-insures for pollution coverage, including claims by third parties for bodily injury and property damage caused by hazardous waste materials released during a company's business operations, and has issued a certificate of insurance to the satisfaction of the City. Appellant's claim to the contrary is wrong.

Third and finally, Appellant's claim that the City has issued a permit to an entity that is not a party to a Master License Agreement, in violation of the City's Municipal Code Section 20.49.080, is based on the same false contention that AT&T Mobility and New Cingular Wireless PCS, LLC are not the same entity, and fails for the reasons set forth above. Accordingly, there is no legal basis for the Appeal, and it should be denied by the City Council.

B. The City Attorney and Planning Commission Have Rejected Appellant's Claims

As reflected in the minutes from the July 9, 2020 Planning Commission meeting, Appellant presented the same erroneous arguments in support of his previous appeal to the Planning Commission. Deputy City Attorney Armeen Komeili advised the Planning Commission that the MLA and insurance requirements have been met and certified by the correct entity. The Planning Commission accordingly denied Appellant's previous appeal. Appellant's legal arguments have not changed, and remain meritless.

C. Conclusion

For the reasons set forth herein, AT&T requests that the City Council deny the Appeal.

Very truly yours,

/s/ Emily L. Murray

Emily L. Murray

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Enclosures

cc: Lauren Wooding Whitlinger, Real Property Administrator, lwooding@newportbeachca.gov
Benjamin Zdeba, AICP, Senior Planner, bzdeba@newportbeachca.gov



HUGH NGUYEN
CLERK-RECORDER
12 CIVIC CENTER PLAZA, ROOM 106
POST OFFICE BOX 238
SANTA ANA, CA 92702-0238

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
20166459312 23.00
11/21/2016 08:58:00
323 11 F01
23.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

FICTITIOUS BUSINESS NAME STATEMENT

THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS:

1.	Fictitious Business Name(s) AT&T MOBILITY		(optional) Business Phone No.	
1A	<input type="checkbox"/> New Statement	<input checked="" type="checkbox"/> Refile - list previous No.	20116286350	<input type="checkbox"/> Change
2.	Street Address, City & State of Principal place of Business (Do not use P.O. box or P.M.B.) 4678 CAMPUS DR., SUITE C NEWPORT BEACH, CA 92660 ORANGE		City	State Zip Code County
3.	Full name of Registered Owner (If Corporation, enter corporation name) NEW CINGULAR WIRELESS PCS, LLC		If Corporation / LLC State of Incorporation or organization DE	
	Res. / Corp. Address (Do NOT use a P.O. Box or P.M.B.) 1025 LENOX PARK BLVD NE		City ATLANTA	State Zip Code GA 30319
4.	(CHECK ONE ONLY) This business is conducted by: <input type="checkbox"/> an individual <input type="checkbox"/> a general partnership <input type="checkbox"/> a limited partnership <input type="checkbox"/> an unincorporated association other than a partnership <input type="checkbox"/> a corporation <input type="checkbox"/> a Limited Liability Partnership <input type="checkbox"/> co-partners <input type="checkbox"/> a married couple <input type="checkbox"/> a joint venture <input checked="" type="checkbox"/> Limited Liability Co.			
5.	Have you started doing business yet? <input checked="" type="checkbox"/> Yes Insert Date: 01/30/2007 <input type="checkbox"/> No		Notice: This Fictitious Business Name Statement expires five years from the date it was filed in the Office of the County Clerk-Recorder. The statement expires 40 days after any change in the facts is made other than a change in the residence address of the registered owner. A new Fictitious Business Name Statement must be filed before either expiration. When ceasing to transact business under an active Fictitious Business Name Statement, Abandonment shall be filed. The filing of this statement does not of itself authorize the use in this state of a Fictitious Business Name in violation of the rights of another under federal, state or common law (see section 14411 et seq., Business and Professions Code).	
6.	If the registered owner is NOT a corporation, sign below: (See Instructions on the reverse side of this form) Signature: _____ _____ (Type or Print Name) I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)		If the registered owner is: a corporation, an officer of the corporation signs below. any type of partnership, the general partner signs below. a limited liability company, a manager or an officer signs below. New Cingular Wireless PCS, LLC _____ Limited Liability Company/Corporation/Partnership Name _____ Jackie Begue, Assistant Secretary of Mgr _____ Signature and Title of Officer/Manager or General Partner I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).) AT&T Mobility Corporation, Manager _____ Print Name of Officer/Manager or General Partner	

These fees apply at time of filing (Please provide a self-addressed, stamped, return envelope if mailed):

Filing fee \$23.00 for one business name

\$7.00 for each additional business name

\$7.00 for each additional partner after first two