ANDERSON & KREIGER LLP

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March 25, 2014

By Electronic Mail (pdawson@mirickoconnell.com)
and First Class Mail
Peter J. Dawon, Esq.
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477

Applicant:	New Cingular Wireless PCS, LLC (AT&T")
Property Owner:	William R. and Phyllis A. O'Hearn
Property:	196 West Street, Paxton, MA (Assessors' Map 12, Lot 54)
Proposed Use:	Personal Wireless Service Facility

Dear Attorney Dawson:

I am in receipt of your letter dated March 11, 2014 addressed to Elizabeth Mason. Attorney Mason is no longer with Anderson & Kreiger, LLP and I will be responsible for this matter going forward. Accordingly, please forward any future correspondence in connection with the above-referenced matter to my attention.

Your letter states "AT&T first raised the issued of the FCC 'Shot Clock' deadline in your letter, more than four months after filing the application." The FCC's Declaratory Ruling, issued in November of 2009, has always applied to the application, and the Board had an independent duty to be aware of and comply with the deadlines it establishes. *See FCC WT Docket No. 08-165* (Nov. 18, 2009). AT&T raised the Shot Clock deadline in Attorney Mason's February 25, 2014 letter as a courtesy, because the deadline was on the horizon and AT&T was attempting to work with the Board to extend the deadline and establish a schedule that would meet the proposed extended deadline.

Your letter asserts that "AT&T's application has been incomplete since November 16, 2013, when AT&T failed to arrange for a crane test..." Under the Shot Clock, the Board had thirty (30) days from the date the application was filed (October 17, 2013) to identify any alleged deficiencies and to notify AT&T that the Board considered the application incomplete. The Board never did so and the deadline for the Board to do so expired on November 16, 2013.

Your statement that "AT&T will finally comply" with the visual demonstration requirement is disingenuous given the application's procedural history. Because a number of site-specific considerations made a crane test impractical, AT&T stated in its application that AT&T proposed to float a balloon (commonly referred to as a "balloon test") as an alternative to the crane test to satisfy the Bylaw's requirement for a visual simulation. AT&T's representatives specifically discussed the balloon test with the Board at the November 21, 2013 public hearing. The Board did not raise any issue with the balloon test at that time. However, the Board refused to discuss the actual scheduling the balloon test until the next hearing. The Board then compounded its delay by refusing to continue the hearing to a date and time certain.

Ultimately, the Board chose not to schedule the second hearing on the application until January 23, 2014, over two full months after the first hearing. It was only at this meeting, over ninety days after the application was filed, that the Board addressed the visual demonstration and informed AT&T that its request to perform a balloon test instead of a crane test was unacceptable.

You correctly note that AT&T received Mr. Graiff's report on January 17, 2014 (only 6 days before the January 23rd hearing). However, you fail to note that Mr. Graiff's report recommended that AT&T perform a drive test from the Property. Both the drive test and the visual demonstration require a crane. Therefore, to comply with both the crane test requirement and Mr. Graiff's recommendation, AT&T needed to work with the Property-owner to obtain permission to improve the access and cut trees to allow the crane to be set up in the proposed tower location. The crane test was further delayed due to the notice requirements under the Bylaw and the winter conditions. As a result, AT&T cannot respond to Mr. Graiff's report and recommendations until *after* the drive test which is dependent on the crane. AT&T acted as promptly as possible once advised of the Board's decision and Mr. Graiff's report.

Your letter also states that "[t]he Town has not yet determined whether Mr. Graiff will be available on April 3, 2014." On February 3, 2014, by electronic mail, Sheryl Lombardi on behalf of the Board, proposed the April 3, 2014 date for the continued hearing. If the Board failed to confirm Mr. Graiff's availability before suggesting that date or in the month and a half since that time, any issues arising from Mr. Graiff's availability are entirely of the Board's own making. AT&T will not agree to delay the April 3, 2014 hearing and the Board should ensure that Mr. Graiff is available at that time.

AT&T is content to extend the Shot Clock by agreement to April 17, 2014, but is unable to agree to a further extension of the Shot Clock beyond April 17, 2014. If the Board considers it necessary to hold an additional public hearing session after April 3, 2014, AT&T will make its team available on April 10, April 17, and/or any other mutually convenient date between April 3 and April 17 for another session of the public hearing.

Attorney Mason previously provided a completed and signed copy of the Board's standard extension form along with her February 25, 2014 letter. AT&T reiterates its offer as set forth in that letter to continue the public hearing to April 3, 2014 and to extend the FCC Shot Clock

deadline from March 14, 2014 to and including April 17, 2014, subject to the conditions stated therein. Your letter states that you "will recommend that the Board accept your proposed extension to April 17, 2014."

Without the extension, the Shot Clock deadline has now passed. Accordingly, please confirm that the Board has agreed to the Shot Clock extension as soon as possible. Otherwise, AT&T will be forced to take the appropriate steps to protect its rights.

Thank you for your consideration in this matter.

Sincerely,

Brian S. Grossman

cc: Sheryl Lombardi (by mail and email)
Susan Stone, Town Clerk (by mail)
Brian Allen (by email)
Kenneth Kozyra (by email))
Stephen D. Anderson (by email)