
APPLICATION FOR WIRELESS COMMUNICATIONS FACILITY

Planning Office

**Blue Sky Towers III, LLC
352 Park Street, Suite 106
North Reading, MA 01864**

SEP 30 2020

Received

**New Cingular Wireless PCS, LLC d/b/a AT&T
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319**

**c/o Daniel D. Klasnick, Esquire
Duval & Klasnick LLC
210 Broadway, Suite 203
Lynnfield, MA 01940**

Property Location:

**George J. Mitchell Field
1410 Harpswell Neck Road
Harpswell, ME 04079**

Map 13, Lot 4

Prepared by:

**Daniel D. Klasnick, Esquire
Duval & Klasnick LLC
210 Broadway, Suite 203
Lynnfield, MA 01940
Telephone: 781-873-0021
Email: dklasnick@dkl-legal.com**

Dated: September 29, 2020

Daniel D. Klasnick
dklasnick@dkl-legal.com

Planning Office

SEP 30 2020

Received

September 29, 2020

Town of Harpswell
Planning Board
263 Mountain Road
Harpswell, Maine 04079

**Re: Application for Wireless Telecommunications Facility Approval
George J. Mitchell Field
1410 Harpswell Neck Road**

Dear Board Members:

Enclosed please 8 copies of the Application to the Planning Board for approval to install a wireless telecommunications facility submitted on behalf of Blue Sky Towers III, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T.

In accordance with the Application requirements, please find enclosed the following:

- Planning Board Application;
- Brief in Support of Application;
- Check for the application fee of \$200.00 payable to the Town of Harpswell;
- Check of \$1,500.00 to fund escrow for Town's engineer review;
- Board of Selectmen Resolution authorizing application submission;
- 1-full size and 8-11" x 17" Stamped Project Plans;
- Photo Simulations; and
- Supporting Documentation.

The Applicants would be happy to provide any additional information that you may require and would appreciate reasonable notice of any additional information you require in time to provide such information for the public hearing.



Town of Harpswell
Planning Board Application

Project # _____	Lot# _____
Map# _____	_____

Planning Office

Name of Applicant: Blue Sky Towers III, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T **SEP 30 2020**

Mailing Address: c/o Duval & Klasnick LLC, 210 Broadway, Suite 203 City or Town: Lynnfield **Received**

State: MA Zip: 01940 Telephone: (781) 873-0021

E-mail Address: dklasnick@dkt-legal.com

Name of Property Owner: Town of Harpswell

Mailing Address: 263 Mountain Road City or Town: Harpswell

State: ME Zip: 04079 Telephone: _____

E-mail Address: _____

Name of Representative: (If applicable) Daniel D. Klasnick

Mailing Address: 210 Broadway, Suite 203 City or Town: Lynnfield

State: MA Zip: 01940 Telephone: (781) 873-0021

E-mail Address: dklasnick@dkt-legal.com

The undersigned requests that the Planning Board consider the following:

Subject Property(s): Tax Map: 13 Lot: 4 (and) Tax Map: _____ Lot: _____

Physical Address(es) or Location: 1410 Harpswell Neck Road

Zoning District: (Circle all that apply) INT ▪ SR ▪ SB ▪ CF1 ▪ CF11 ▪ RP ▪ Other

1. **Site Plan Review** (see Site Plan Review Ordinance §14 for submission requirements) 2. **Subdivision Review** (see Subdivision Ordinance §8 for submission requirements)

- Pre-Application Review
- Plan Submission
- Amendment

- Pre-Application Review
- Preliminary Plan Submission
- Final Plan Submission
- Amendment

3. **Approval of Land Use in the Shoreland Zone** (see Table 1 in Shoreland Zoning Ordinance) (See attached checklist for submission requirements.)

4. **Reconstruction of Nonconforming Structure** (See Sec. 10.3.2 of Basic Land Use Ordinance) OR **Exemption for Nonconforming Foundation** (See Sec. 10.3.1.2 of Basic Land Use Ordinance) (See attached checklist for requirements)

5. **Wharf Approval** (Land Use Application, Deed and Sketch must accompany this request.)

6. **Other:** Wireless Telecommunications Facility Approval

Signature of Applicant:  Date: 9/29/2020

Office Use Only	Fee Paid: <input type="checkbox"/> Planning Board <input type="checkbox"/> Site Plan Review <input type="checkbox"/> Staff Review <input type="checkbox"/> Subdivision \$ _____
	Escrow Fee: \$ _____ Received by: _____

TOWN OF HARPSWELL

BRIEF IN SUPPORT OF APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY

APPLICANT: Blue Sky Towers III, LLC

CO-APPLICANT: New Cingular Wireless PCS, LLC d/b/a AT&T

SITE ADDRESS: 1410 Harpswell Neck Road, Harpswell, ME

ASSESSOR'S LOT I.D.: Map 13, Lot 4

ZONING DISTRICT: Interior (INT)

This brief in Support of the Application to approve the installation of a wireless telecommunications facility (“WTF”) with requested waivers and to the extent necessary, all rights reserved, all other required relief pursuant to the Town of Harpswell Zoning Ordinance and the federal Telecommunications Act of 1996 is respectfully submitted by Blue Sky Towers III, LLC (“Blue Sky”) with as its co-applicant New Cingular Wireless PCS, LLC (“AT&T”) to the Town of Harpswell, Planning Board (the “Board”).

PROJECT DESCRIPTION

Blue Sky proposes the following regarding its proposal to locate a telecommunications tower with AT&T tower equipment and ground equipment on the property located at 1410 Harpswell Neck Road, Harpswell, Maine.

See Exhibit 1, Stamped Plans.
See Exhibit 2, Photo Simulations.

a. The Proposed Free Standing Lattice Tower

Blue Sky proposes to construct a self-supporting one hundred ninety nine (199) foot Lattice Tower (“Tower”).

b. The Proposed Ground Space of the Facility

Within the 100’ x 100’ leased area, the proposed ground space for the WTF is an area of approximately four thousand nine hundred (4,900) square feet [70’ wide x 70’ long] that will be surrounded by a six (6) foot high chain link fence that will have a six (6) foot double wide locked entrance gate.

The proposed ground space for the WTF will accommodate the area necessary to house the telecommunications tower, equipment cabinet of AT&T's and the equipment for three (3) future collocators at the property with space for the Town ground equipment at the base of the tower.

c. Proposed Landscaping

The fenced ground space will be screened on two sides that face the entrance driveway to the George J. Mitchell Field and the existing gravel driveway by a row 5'-6' tall evergreen "Emerald Green Arborvitae." This will provide an effective screen of the fenced ground space area. The other two sides of the fenced area will remain screened by existing vegetation.

d. The Proposed Access to the Facility

Over existing driveway to a proposed 12' wide by 30' long gravel driveway extension from Harpswell Neck Road (RT 123) with locked double swing gate measuring 6' wide will be improved to access the WTF, as shown and described in the Plans.

After construction of the WTF is complete, the only traffic to the WTF will be for routine monthly service by AT&T and other carriers of the WTF to ensure that the telecommunications equipment remains in good working order.

AT&T and the future wireless service providers will not have any permanent employees or customers at the WTF.

e. The Proposed Electric and Telephone Utilities

Electric and telephone lines will run underground from the WTF and will be connected to an existing electric and telephone service.

Coaxial cabling will connect the antennas located on the lattice tower to the switching and power equipment located inside the AT&T equipment cabinet located at the base of the proposed lattice tower.

f. The Proposed AT&T Panel Antennas and Remote Radio Heads

AT&T proposes to install six (6) antennas at a mount height of one hundred ninety five (195) feet Antenna Center Line with twelve (12) remote radio heads. AT&T's panel antennas will be installed on the lattice tower to provide 360° of coverage. The antennas will be mounted in three separate arrays of two antennas per array. The cabling will run from the antennas down the lattice tower to a cable bridge to the proposed equipment cabinets.

See Exhibit 1, Sheet CA-1 Stamped Plans.

g. AT&T Proposed Equipment Cabinet

AT&T will install a ten (10'- 0") wide by ten (10'- 0") foot long concrete pad to house its 8' x 8' walk-in equipment cabinet inside of the fenced area. AT&T will mount two (2) covered safety lights on each side of its walk-in equipment cabinet for illumination during service visits. There will be no other exterior lights at the WTF.

See Exhibit 1, Sheet CA-1 Stamped Plans.

h. AT&T Proposed Emergency Power Source

A diesel powered back-up generator will be located on the 4' wide x 6' long concrete pad inside of the fenced area. The emergency generator will only be used for back-up power and in the event of an emergency. AT&T will maintain the emergency generator.

See Exhibit 1, Sheet CA-1 Stamped Plans

i. Proposed Maintenance Schedule of the Facility

The site is unmanned and when operational, will not generate substantial amounts of traffic. Trips to and from the WTF will be limited to once or twice a month, on average, by maintenance personnel.

The Tower proposed for construction is a lattice.

The Equipment is maintenance free. However, in the event that maintenance of the Equipment becomes necessary, AT&T shall perform necessary maintenance to its Equipment.

Blue Sky agrees to maintain the ground space within the four thousand nine hundred (4,900) square foot area surrounded by a six (6) foot high chain link fence. Blue Sky agrees to maintain the chain link fence, landscaping and access driveway extension for the duration of the use of the Site for the WTF.

SATISFACTION OF PERMIT REVIEW STANDARDS

7.2.2 Application for Planning Board Approval. An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

7.2.2.1. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.

Pursuant to a Request for Proposal and Town Meeting approval, the Town of Harpswell is leasing a portion of subject property located at 140 Harpswell Neck Road, being shown on the Tax Map of the Town of Harpswell as Map 13, Lot 4 with access/utilities for the installation of the proposed telecommunications tower facility. The Board of

Selectmen have given Blue Sky full authority to file all applications for the necessary approvals for the installation of a wireless communications facility at this site.

See Exhibit 3, Board of Selectmen Resolution.

7.2.2.2 A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

The facility will be constructed and operated in compliance with all FCC Regulations.

See Exhibit 4, Statement of Compliance with FCC Regulations.

7.2.2.3 A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

See Exhibit 5, FCC Tower List Spreadsheet. – Waiver requested

7.2.2.4 A site plan:

7.2.2.4.1 prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;

See Exhibit 1, Stamped Plans. – Waiver requested

7.2.2.4.2 certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

The proposed WTF installation will not impact the health and safety of adjoining properties, the general neighborhood or the surrounding neighborhoods as outlined by the certifications and attestation of compliance with all Federal and State rules and regulations. The proposed equipment meets the requirements of all applicable federal and state regulations regarding radio frequency emissions.¹ As part of this application package, Blue Sky and AT&T have included herewith a RF compliance report prepared by Donald L. Haes, Jr., Ph.D., CHP.

See Exhibit 6, Radio Frequency Compliance Report.

¹ The Telecommunications Act prohibits local authorities from considering the effects of RF emissions for wireless facilities that comply with RF emission guidelines established by the FCC 47 USC § 332(c)(7)(B)(iv).

7.2.2.4.3 a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

Blue Sky has submitted detailed stamped Plans in support of its application prepared by Pro Terra Design Group, LLC. The Plans include information on all aspects of the proposed WTF installation including a Sheet C-1 stamped by a State of Maine Land Surveyor. Due to the size and scope of the proposed installation, Blue Sky believes that the Plans submitted meet the requirements of the Town of Harpswell Zoning Ordinance to the extent applicable to this proposal. To the extent the Board believes that the provided Plans do not comply with the requirements, Blue Sky believes that the additional detail will not tend to provide substantive assistance to the Board and therefore Blue Sky respectfully requests a waiver from any such requirements or, in the alternative, a determination of non-applicability for all standards and requirements that do not apply to the installation of the WTF.

See Exhibit 1, Stamped Plans. – Waiver Requested

7.2.2.5 A scenic assessment, consisting of the following:

7.2.2.5.1 Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

See Exhibit 1, Stamped Plans – Sheet A-3.

7.2.2.5.2 A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

See Exhibit 1, Stamped Plans – Sheets A-2, A-3 and D-2.

7.2.2.5.3 Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

In coordination with the Town of Harpswell Planning Office with locations selected for assessment of visibility, a balloon test was conducted on August 25, 2020 from 8:00 AM to 12:00 PM. During the balloon test, the likely visibility of the proposed tower was assessed and a set of photo simulations from 16 different locations was prepared in compliance with the Ordinance standards.

See Exhibit 2, Photo Simulations.

7.2.2.5.4 A narrative discussing:

7.2.2.5.4.1 the extent to which the proposed facility would be visible from or within a designated scenic resource,

7.2.2.5.4.2 the tree line elevation of vegetation within one hundred (100) feet of the facility, and

7.2.2.5.4.3 the distance to the proposed facility from the designated scenic resource's noted viewpoints.

As part of the conducted balloon test, Blue Sky has undertaken an exhaustive review of the surrounding area and documented that the installation of the facility will not be significantly visible outside of a limited area in the immediate proximity of the lattice tower. The documented photolog confirming that there will be no visibility and limited visibility from a majority of the locations. – Waiver requested

7.2.2.6 A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

See Exhibit 7, AT&T Radio Frequency Report.

7.2.2.7 Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

7.2.2.7.1 Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

The wireless communications system being developed by AT&T has been designed utilizing sophisticated computer-engineering models which simultaneously evaluate topography, population patterns, and land use concerns to identify specific geographic regions to be serviced by the communications facility in the network. As a result, a limited search area is identified by the Radio Frequency Engineer as the necessary location for a transmission facility to ensure the most complete coverage to area residents, businesses and public safety officials. Once the search area has been selected, then AT&T's site selection consultant first seeks to identify existing structures. In this case, after a thorough review of the search area, AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its array with ground equipment at the location of the proposed tower.

7.2.2.7.2 Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its antenna array with ground equipment at the location of the proposed tower.

7.2.2.7.3 Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

7.2.2.7.3.1 Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its array with ground equipment at the location of the proposed tower.

7.2.2.7.3.2 The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its antenna array with ground equipment at the location of the proposed tower.

7.2.2.7.3.3 Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its antenna array with ground equipment at the location of the proposed tower.

7.2.2.7.4 For facilities existing prior to the effective date of this ordinance, evidence that the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its antenna array with ground equipment at the location of the proposed tower.

7.2.2.7.5 Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access;

Not Applicable. AT&T has determined that the proposed tower is the only feasible alternative for attachment purposes and therefore AT&T proposes to install its antenna array with ground equipment at the location of the proposed tower.

7.2.2.8 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

Not Applicable. There are no districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places within proximity of the proposed WTF. – *Waiver requested*

7.2.2.9 A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

7.2.2.9.1 respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

7.2.2.9.2 negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

7.2.2.9.3 allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;

7.2.2.9.4 require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

See Exhibit 8, Statement of Collocation.

7.2.2.10 A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

The Applicant agrees to provide a removal bond.

See Exhibit 9, Removal Cost Estimate

7.2.2.11 Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

Blue Sky will comply with this requirement.

7.3 Submission Waiver

The CEO or Planning Board, as appropriate, may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

8.2 Planning Board Approval Standards

An application for approval by the Planning Board under Section 6.1.2 must meet the following standards.

8.2.1 Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

8.2.1.1 Colocation on an existing wireless telecommunications facility or other existing structure on (a) the parcel on which the Harpswell television transmitting tower is located, or (b) the parcel on which the Town Office and the Recycling Center are located, or (c) Mitchell Field (Map 13 Lot 4) within 400 hundred feet of the Sentry Building near the entrance to Mitchell Field², or

There are no existing structures in the designated coverage area of sufficient height that would serve to address AT&T's network requirements in this area of the Town of Harpswell.

8.2.1.2 Within the area defined in 8.2.1.1 above but not collocated.

Through Annual Town Meeting Approval on July 14, 2020, a new tower location within 400 hundred feet of the Sentry Building near the entrance to Mitchell Field was specifically identified as a suitable location for a telecommunications tower less than 200' in height. By the issuance the Request for Proposals for the Lease of Land and Development of a Wireless Communication Tower at George J. Mitchell Field Town of Harpswell, Maine October 24, 2019, the Town has recognized both the need for a new free standing tower and a need to address wireless coverage requirements in this area of the Town.

² As amended by Annual Town Meeting on July 14, 2020

A gap in coverage is evidenced by the inability to adequately transmit or to receive a wireless signal, or by the interruption or disconnection of a wireless signal. AT&T currently has a significant gap in wireless capacity and coverage in the Town of Harpswell. The gap that exists in the Town prevents AT&T from providing uninterrupted wireless service to current and future public and private users of its wireless communications system.

The location of a facility on the proposed tower is an integral part of AT&T's network of telecommunications facilities necessary to provide adequate coverage to those persons living in the Town of Harpswell, as well as those persons commuting through the Harpswell area on the various roadways. Following a thorough analysis, AT&T submits that it can fulfill its significant wireless service gaps by locating its equipment on the proposed tower.

If AT&T is permitted to install the equipment detailed herein, this WTF will aid in reaching AT&T's goal to provide enhanced wireless service and communications in the Town of Harpswell, the State of Maine and the United States as a whole.

See Exhibit 7, AT&T Radio Frequency Report.

8.2.2 Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

8.2.2.1 The proposed location complies with applicable municipal policies and ordinances.

The installation of the proposed WTF is in full compliance with the Town of Harpswell's municipal policies and ordinances. Through amendment of the Planning Board approval standards and awarding of the Request for Proposals to Blue Sky, the Town has specifically recognized the proposed WTF's compliance with municipal policies and ordinances. Unlike many other proposed uses, the proposed facility at Mitchell Field will not adversely impact the Town for unlike a new business or residence, telecommunications use is passive. There will be no additional burden on municipal services, such as sewers, police, or fire protection. No additional foot traffic will occur, and only one or two vehicular visits per month are expected. In short, this is a use that may be implemented without increasing demands upon municipal services.

8.2.2.2 The proposed facility will not interfere with the intended purpose of the property.

At the July 14, 2020 Annual Town Meeting approved, the "Updating a Community Vision for the Future of Mitchell Field – The Mitchell Field Master Plan" dated October 29, 2019. The update included the proposed siting of a free-standing tower

of less than 200 feet on Mitchell Field to provide enhanced emergency cell service to the southern end Harpswell Neck as well as Baily and Orrs Island.

By the issuance the Request for Proposals for the Lease of Land and Development of a Wireless Communication Tower at George J. Mitchell Field Town of Harpswell, Maine October 24, 2019, the Town has recognized that the need for a new free standing tower and a need to address wireless coverage requirements in this area of the Town would not interfere and is consistent with the intended purpose of the Mitchell Field.

8.2.2.3 The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

Following the Request for Proposals process specified document entitled the Wireless Communication Tower at George J. Mitchell Field Town of Harpswell, Maine October 24, 2019, Blue Sky was awarded the right to enter into a lease for the installation of a telecommunications tower. Blue Sky shall maintain the insurance coverages specified in the lease with the Town of Harpswell.

See Exhibit 10, Insurance Certificate.

8.2.3 Design for Colocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.

The proposed telecommunications tower is designed to accommodate the equipment of AT&T and multiple future wireless service providers including the specified equipment of the Town of Harpswell municipal and emergency services.

8.2.4 Height. A new wireless telecommunications facility must be no more than three hundred (300) feet in height.

The proposal is for the installation of 199 foot tall lattice telecommunications tower.

8.2.5 Setbacks. A new or expanded wireless telecommunications facility must comply with the setback requirements for the area or zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement; provided, however, that the Planning Board may reduce the setback upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property. This reduction may not reduce the setback below the requirements of any other applicable ordinance of the Town of Harpswell.

The proposed 199 foot tall lattice telecommunications tower will be setback a distance of 121 feet from the nearest property line, which is the location of the Harpswell fire station. The Harpswell Neck Fire Department has acknowledge and agreed that the lattice tower location is approved for installation at the designated location.

8.2.6 Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

The fenced ground space will be screened on two sides that face the entrance driveway to the George J. Mitchell Field and the existing gravel driveway by a row 5'-6' tall evergreen "Emerald Green Arborvitae." This will provide an effective screen of the fenced ground space area. The other two sides of the fenced area will remained screened by existing vegetation. All existing vegetation will be maintained to the maximum possible extent.

8.2.7 Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

Within the 100' x 100' leased area, the proposed ground space for the WTF is an area of approximately four thousand nine hundred (4,900) square feet [70' wide x 70' long] that will be surrounded by a six (6) foot high chain link fence that will have a six (6) foot double wide locked entrance gate.

8.2.8 Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Required lighting shall be up-shielded to minimize the visual impact to local residents; provided, however, that such shielding is permissible by FAA or other applicable state and federal requirements.

The night lighting of the lattice tower shall be limited as required by the Federal Aviation Administration.

8.2.8.1 Security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable; provided, however, that the proposed lighting does not exceed 20'.

AT&T will mount two (2) covered safety lights on each side of its walk-in equipment cabinet for illumination during service visits. There will be no other exterior lights at the WTF.

8.2.9 Color and Materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors,

earth tones, and subdued hues shall be used. No business identification or advertising is permitted on any such facility.

The proposed tower will be a lattice design with grey coloring that will allow for minimizing visual intrusion to the extent possible.

8.2.10 Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

The proposed 199 foot lattice tower will be constructed in compliance with all applicable structural standards.

See Exhibit 11, Engineer Stamped Structural Letter.

8.2.10.1. Guyed towers should use daytime visual markers (e.g., bird diverter devices) on the guy wires to prevent collisions by local and migratory bird species.

Not Applicable. The proposed lattice tower does not include the installation guyed wires.

8.2.11 Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the Harpswell Comprehensive Plan, or by a State or federal agency.

8.2.11.1 In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

8.2.11.1.1 The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;

8.2.11.1.2 the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

8.2.11.1.3 the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);

8.2.11.1.4 the amount of vegetative screening;

8.2.11.1.5 the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and

8.2.11.1.6 the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

Blue Sky is committed to working with local communities in siting and construction of its wireless communication facilities. Because of Blue Sky's desire to be a good neighbor and establish long-term relationships, Blue Sky makes every effort to identify potential community concerns and incorporate all appropriate mitigation measures in the site selection process. By focusing on the installation of a facility on a municipal property pursuant to the issuance of Request for Proposal and specifically approved by Town Meeting to accommodate AT&T's network requirements to address coverage and capacity demands, Blue Sky is minimizing the visual and environmental impacts of the facility's presence, operation and maintenance. The proposed installation will be substantially screened from view and located in a manner to minimize the visual impact.

8.2.12 Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

Any generator testing will occur between 8:00 a.m. and 9:00 p.m.

8.2.13 Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

The installation of the proposed lattice tower will not impact any historic buildings or districts.

8.3 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

8.3.1 The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

8.3.1.1 respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

8.3.1.2 negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

8.3.1.3 allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation.

8.3.1.4 require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

See Exhibit 8, Statement of Collocation.

8.3.2 Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

The proposed WTF installation will not impact the health and safety of adjoining properties, the general neighborhood or the surrounding neighborhoods as outlined by the certifications and attestation of compliance with all Federal and State rules and regulations. The proposed equipment meets the requirements of all applicable federal and state regulations regarding radio frequency emissions.³ As part of this application package, Blue Sky and AT&T have included herewith a RF compliance report prepared by Donald L. Haes, Jr., Ph.D., CHP.

See Exhibit 6, Radio Frequency Compliance Report.

Section 9 Amendment to an Approved Application

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 6.

To the extent not otherwise preempted by federal law or regulation, Blue Sky will comply with this requirement.

³ The Telecommunications Act prohibits local authorities from considering the effects of RF emissions for wireless facilities that comply with RF emission guidelines established by the FCC 47 USC § 332(c)(7)(B)(iv).

Section 10 Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

Blue Sky agrees to provide a removal bond.

See Exhibit 9, Removal Cost Estimate

COMPLIANCE WITH TELECOMMUNICATIONS ACT OF 1996

Because Blue Sky and AT&T are applying for zoning approval for the installation of equipment that provides wireless services, the application is subject to §704 of the federal Telecommunications Act of 1996 (“TCA”), codified at 47 U.S.C. §332(c)(7)(B). By way of background, the TCA is a federal law enacted in 1996 whose purpose is “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”⁴ To further this purpose, the TCA established national standards that apply to zoning applications for wireless facilities. These standards preempt inconsistent state and local laws, so they must be considered by zoning boards in making decisions on applications for wireless facilities.

Without the relief requested, AT&T would be unable to provide adequate coverage by filling existing significant gap in coverage, thereby creating a hardship recognized by federal and state courts interpreting the TCA. The Site is located within the limited geographic area whereby AT&T’s radio frequency engineers determined that a wireless facility is required. Federal courts interpreting the TCA have held that where an applicant for the installation of wireless communications facilities to provide communications services seeks zoning relief as required by the municipal zoning ordinance, federal law imposes substantial restrictions affecting the standard for granting the requested relief. The TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the

⁴ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the FCC’s Declaratory Ruling commonly referred to as the “shot clock”.

CONCLUSION

The availability of wireless communications service enhances community safety, and is increasingly relied upon by civil defense and other safety officers as well as the general public in times of crisis, natural disaster, bad storms or similar circumstances. Wireless communications service also provides a convenience to residents, and is an attractive feature and service to businesses. The proposed installation, by providing these services, will promote the health, safety, convenience and general welfare of the inhabitants of the Town of Harpswell.

The proposed installation meets all of the standards for Planning Board approval pursuant to the Town’s Zoning Ordinance or otherwise satisfies the standards for the grant of a waiver with consideration of the standards of the federal Telecommunications Act of 1996. The subject parcel is located within the Interior zoning district and the installation is a proposed lattice telecommunications tower structure for the installation of AT&T’s equipment. The installation will have minimal impact on the community and will comply with all applicable laws and regulations.

Blue Sky and AT&T therefore respectfully requests that the Board grant its application and all necessary waiver relief from the Town’s Zoning Ordinance.

APPLICATION FOR WIRELESS COMMUNICATIONS FACILITY

REQUEST FOR WAIVERS STATEMENT

APPLICANT: Blue Sky Towers III, LLC
CO-APPLICANT: New Cingular Wireless PCS, LLC d/b/a AT&T
SITE ADDRESS: 1410 Harpswell Neck Road, Harpswell, ME
ASSESSOR’S LOT I.D.: Map 13, Lot 4
ZONING DISTRICT: Interior (INT)

I. OVERVIEW

The applicants, Blue Sky Towers III, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T, requests that the Planning Board of the Town of Harpswell approve the application pursuant to the Wireless Telecommunications Facilities Siting Ordinance.

The Applicant requests waivers pursuant Section 7.3 of the Ordinance because of the proposed wireless communications facility and the existing site conditions at the property satisfies the standards for the Planning Board to review and approve the application for a wireless installation pursuant to the Wireless Telecommunications Facilities Siting Ordinance.

The zoning drawing which are titled, “SITE NAME: HARPSWELL, SITE NUMBER: ME-5029” prepared by Proterra Design Group, LLC, Project Brief and Exhibits provides sufficient project details to allow the Planning Board to review and approve the application.

II. WAIVERS REQUESTED AND BRIEF EXPLANATION

As pertains to the application for the Wireless Communications Facility, Section 7.3 of the Ordinance states that the Planning Board may as appropriate, waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

- **Section 7.2.2.3: A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made**

available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

As Exhibit 5 to the application, the Applicant has provided a list of telecommunications tower within a 5 mile radius of the proposed facility. The information provided complies in all material respects with the Section 7.2.2.3 standards. To the extent the Board believes that the provided information does not comply with the requirements, Blue Sky believes that the additional detail will not tend to provide substantive assistance to the Board and therefore Blue Sky respectfully requests a waiver from any such requirements as the information is not required to determine compliance with the standards of this Ordinance.

- **Section 7.2.2.4.1: A site plan prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes.**

The Applicant has provided detailed stamped plans. With consideration of the limited nature of the site development, the Plan sheets provide a sufficiently detailed view of the area surrounding the site. To the extent the detail does not strictly comply with this provision of the Ordinance, the Applicant respectfully requests a waiver as the information is not required to determine compliance with the standards of this Ordinance.

- **Section 7.2.2.4.3 a boundary survey for the project performed by a land surveyor licensed by the State of Maine.**

The Applicant has submitted detailed stamped Plans in support of its application prepared by Pro Terra Design Group, LLC. The Plans include information on all aspects of the proposed WTF installation including a Sheet C-1 stamped by a State of Maine Land Surveyor. Due to the size and scope of the proposed installation, Blue Sky believes that the Plans submitted meet the requirements of the Town of Harpswell Zoning Ordinance to the extent applicable to this proposal. To the extent the Board believes that the provided Plans do not comply with the requirements, Blue Sky believes that the additional detail will not tend to provide substantive assistance to the Board and therefore Blue Sky respectfully requests a waiver from any such requirements as the information is not required to determine compliance with the standards of this Ordinance.

□ **Section 7.2.2.5.4 A narrative discussing:**

7.2.2.5.4.1 the extent to which the proposed facility would be visible from or within a designated scenic resource,

7.2.2.5.4.2 the tree line elevation of vegetation within one hundred (100) feet of the facility, and

7.2.2.5.4.3 the distance to the proposed facility from the designated scenic resource's noted viewpoints.

As part of the conducted balloon test, Blue Sky has undertaken an exhaustive review of the surrounding area and documented that the installation of the facility will not be significantly visible outside of a limited area in the immediate proximity of the lattice tower. The documented photolog confirming that there will be no visibility and limited visibility from a majority of the locations. Applicant requests a waiver of the listed requirement as the information is not required to determine compliance with the standards of this Ordinance.

□ **Section 7.2.2.8 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).**

As part of the conducted balloon test, Blue Sky has undertaken an exhaustive review of the surrounding area and documented that the installation of the facility will not be significantly visible outside of a limited area in the immediate proximity of the lattice tower. The documented photolog confirming that there will be no visibility and limited visibility from a majority of the locations. Applicant requests a waiver of the listed requirement as the information is not required to determine compliance with the standards of this Ordinance.

□ **Stormwater Management Plan**

Due to the size and scope of the proposed wireless telecommunications facility, Applicant requests a waiver of the listed requirement as the information is not required to determine compliance with the standards of this Ordinance. Applicant believes that the drawings and materials submitted meet the requirements to the extent applicable to this proposal.

□ **Septic Plan.**

Applicant requests a waiver of the listed requirement or determination of inapplicability as applied to the proposed unmanned wireless communications Facility as the information is not required to determine compliance with the standards of this Ordinance.

❑ **Copy of applications or permits from other agencies.**

Applicant requests a waiver of the listed requirement or determination of inapplicability as applied to the proposed unmanned Wireless Communications Facility as the information is not required to determine compliance with the standards of this Ordinance.

❑ **Letter of financial and technical capacity.**

Applicant requests a waiver of the listed requirement or determination of inapplicability as applied to the proposed unmanned Wireless Telecommunications Facility that will be installed following an intensive Request for Proposals and pursuant to a lease with the Town of Harpswell as the information is not required to determine compliance with the standards of this Ordinance.

❑ **Copy of letter to Maine Historic Preservation Commission.**

Applicant requests a waiver of the listed requirement or determination of inapplicability as applied to the proposed unmanned Wireless Communications Facility that will include compliance with the Federal Communications Commission's standards under the National Environmental Policy Act (NEPA) as the information is not required to determine compliance with the standards of this Ordinance.

Pursuant to Ordinance, the Planning Board may waive any of the foregoing provisions when in the opinion of the Planning Board due to special circumstances of the application, the information is not required to determine compliance with the standards of the Ordinance.

Blue Sky is committed to working with local communities in siting and construction of its antenna facilities. Because of Blue Sky's desire to be a good neighbor and establish long-term relationships, Blue Sky makes every effort to identify potential community concerns and incorporate all appropriate mitigation measures in the site selection process.

The wireless communications network being developed by AT&T has been designed utilizing sophisticated computer engineering models which simultaneously evaluate topography, population patterns, and land use concerns to identify specific geographic regions to be serviced by the communications facility in the network. As a result, a limited search area is identified by the Radio Frequency Engineer ("RF Engineer") as the necessary location for a transmission facility to ensure the most complete coverage to area residents, businesses and public safety officials. The RF Engineer has confirmed the need for an additional site in this area of Harpswell by reviewing call attempts, ineffective call attempts and dropped calls for the existing cell sites in the area. Once the search area has been selected, then AT&T's site selection consultants first seeks to identify existing structures, which have sufficient radio frequency characteristics to allow the attachment of antenna arrays. In this case, after a thorough review of the search area, AT&T has determined that there are no existing structures sufficient for attachment purposes and therefore AT&T proposes to install its

antennas on the proposed lattice tower and its ground equipment within the screened fenced equipment area.

A gap in coverage is evidenced by the inability to adequately transmit or to receive wireless signals, or by the interruption or disconnection of wireless signals. AT&T currently has insufficient signal coverage or a "coverage gap" in the Town of Harpswell. The gap in coverage that exists in the Town prevents AT&T from providing uninterrupted wireless service to current and future public and private users of its wireless communications system.

The location of lattice tower installation is an integral part of AT&T's network of telecommunications facilities necessary to provide adequate coverage to those persons living in Harpswell, as well as those persons commuting through the Harpswell area on the various roadways. If AT&T is permitted to install the equipment detailed herein, this will aid in reaching AT&T's goal to provide enhanced service and communications in the Town of Harpswell, the State of Maine and the United States as a whole.

Based on the analysis of the application, project brief, exhibits and supplemental materials, Applicant's requested waiver should be allowed as required by the Telecommunications Act of 1996, ("TCA") codified at 47 USC§332(c)(7) requires that zoning decisions do not prohibit the provision of wireless services.

The Applicant has prepared plans, photo simulations and supporting materials which accurately depict the property and location of the Applicant's telecommunications tower on property. Due to the size and scope of the proposed wireless telecommunications facility, Applicant believes that the Plans, Project Brief, and other documents submitted meet the requirements to the extent applicable to this proposal. To the extent the Board believes that the provided Plans, photo simulations and supporting materials do not comply with the requirements, the additional detail will not tend to provide substantive assistance to the Board and therefore the Applicant requests a waiver from any such requirements.

III. SUMMARY

The Applicant's plans and supporting documentation, as submitted, are sufficient for review by the Planning Board to determine whether to grant the approval and all waivers requested should be granted by the Planning Board.