



4 Sylvan Way, Parsippany, NJ 07054  
Telephone: (973) 292-8989  
Attn: Legal Department

July 8, 2014

City Council Chambers, 2<sup>nd</sup> Floor  
City Hall  
140 Main Street,  
Marlborough, MA 01752  
Attn: Town Attorney

**Re:** Pending Eligible Facilities Request to Modify Existing T-Mobile Personal Wireless Service Facility #4DE5149A (“Cell Site”) located at 460 Boston Post Road, Marlborough, MA (“Property”) - Existing Wireless Communication Facility #97-7201B (“Application”).

Dear City of Marlborough:

As you are aware, T-Mobile is seeking approval from the City of Marlborough (“City”) to modify its existing Cell Site pursuant to the above-referenced Application. The Application was submitted in accordance with Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (“TRA”), 47 U.S.C. § 1455(a) which requires that the City grant T-Mobile’s request to modify its existing Cell Site so long as the proposed modification does not substantially change the physical dimensions of the base station. T-Mobile’s proposed modifications include – replacing the three (3) existing antennas with three (3) new antennas, adding a fiber optic cable and replacing the existing stealth canister with a new stealth canister and modifying the ballast footing to accommodate the new antenna – and are the type of modifications contemplated by the TRA that a local jurisdiction is required to approve. To be clear, T-Mobile’s proposed modification in no way substantially changes the physical dimensions of the existing base station (please see enclosed T-Mobile Wireless Facility Modification Certification). Indeed, the City has acknowledged that the Application complies with all applicable codes.

Unfortunately, however, the City has withheld its approval of the Application in exchange for T-Mobile’s agreement to make annual contributions to the City of Marlborough Open Space Account as more particularly described in the attached proposed Decision On An Application To Modify Special Permit (“Decision”). We feel that the City is wrongfully attempting to condition its approval of the Application on T-Mobile’s agreement to pay ongoing ‘Open Space’ fees without any basis.

As an initial point, after reviewing the City’s codes relevant to the Application we are unable to identify a legitimate regulatory basis for such charges. Similarly we are not aware of any Massachusetts statute that grants the City the authority to collect such fees. In any event the TRA preempts any such requirements regarding modifications to existing base stations other than the application of the new federal standard (i.e. does the modification substantially change the physical dimensions of the existing base station) and the issuance of generally applicable administrative permits such as building or electrical permits.

Indeed, pursuant to guidance issued by the Federal Communications Commission Wireless Telecommunications Bureau on January 25, 2013 provides that “...local government must approve and may not deny a request to take a covered action [any eligible facilities request]” and “...in the Bureau’s

view...the relevant government entity may require the filing of an application for **administrative approval**" (emphasis added).

The City's requirement that T-Mobile must (i) obtain Site Plan Review approval prior to issuance of the building permit, and (ii) pay to the City of Marlborough Open Space Account an annual payment of \$1,500 with a late fee of \$500 goes well beyond the boundaries of the TRA. To be clear, the City is prohibited from requiring T-Mobile to submit information that is extraneous to the very limited review that the City is allowed to conduct under this new federal law.

Due to the relatively minor scope of the proposed modifications to its existing base station, T-Mobile seeks to have those burdensome conditions, referenced herein, removed from the proposed Decision and the Application approved. A proposed revised draft of the Decision is enclosed herewith for your review.

Finally, we note that the law requires the City to grant this approval promptly. Accordingly, T-Mobile respectfully requests approval of the Application and the Decision, as well as the issuance of all ancillary building or other permits. Please note that pursuant to the Shot Clock Order of the Federal Communications Commission, issued and codified on November 18, 2009 at 24 F.C.C.R. 13994 (the "FCC Order"), the City is required to grant approval for such modification requests within 90 days of the original submission.

Thank you for your consideration and we look forward to working with you to provide better wireless services to your community.

Regards,



Karen A. Crist  
Senior Corporate Counsel

Enclosures

cc: City Hall, 4th Floor  
140 Main Street  
Marlborough, MA 01752  
Donald V. Rider, Jr.  
City Solicitor

**DECISION ON AN APPLICATION TO MODIFY  
SPECIAL PERMIT**

**T-MOBILE NORTHEAST LLC (OMNIPOINT HOLDINGS, INC.)**

Re: 460 Boston Post Road

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit #97-7201B submitted by T-Mobile Northeast LLC, having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766 as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is T-Mobile Northeast LLC (Omnipoint Communications, Inc.), with its principal office located at 12920 SE 38<sup>th</sup> Street, Bellevue, WA 98006.
2. Previously, the City Council granted to Omnipoint Holdings, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., a special permit to locate and operate a wireless communications facility located at 460 BOSTON POST ROAD, Marlborough, MA (hereinafter, "the Original Special Permit"). In 2006, Omnipoint Holdings, Inc. converted into a limited liability company named T-Mobile Northeast LLC. The Original Special Permit is recorded at the Middlesex South District Registry of Deeds, Book 27967 Page 258.
3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter, "the Application"), the Applicant seeks permission to allow replacement of three (3) of the three (3) panel antennas currently located on the wireless communication facility with three newer models. Applicant also seeks to replace the existing stealth canister with a new canister 36" in diameter and to enlarge the ballast footing of the mount to 12' x 12' to accommodate the new antenna, and to add one (1) fiber optic cable (1 5/8" O.D.), and fiber jumpers to the wireless communication facility (hereinafter, "the Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Site Name: BO149/450 Boston Post Road, Marlborough, Site ID Number: 4DE5149A, Site Address: 460 Boston Post Rd., Marlborough, MA 01752," by AEG Advanced Engineering Group, PC, East Providence, RI 02914, dated 2/14/14, a copy of which was provided in Special Permit Application (hereinafter, "The Plans").
4. The Applicant is the Wireless Communication Facility owner and lessee of the Site's owner for purposes of the Application.

5. The Proposed WCF Project is located in the Business and A-1 Residence Zoning District. Wireless communication devices are allowed by grant of special permit in the Business and A-1 Residence Zoning District.
6. The modification of the Original Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector, on behalf of the City Planner, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on June 16, 2014, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Proposed WCF Project.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY  
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT  
AND TAKES THE FOLLOWING ACTIONS**

A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.

B) The Site is an appropriate location for the Proposed WCF Project and the Proposed WCF Project is in harmony with the general purpose and intent of the

Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval.

C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.

D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant a modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 10:**

- 1) The Proposed WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Modified Special Permit, as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Application, as amended, are herein incorporated and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Applicant agrees to all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Applicant's existing WCF.
- 4) ~~The issuance of this Modified Special Permit is further subject to Site Plan Review in accordance with the City of Marlborough's Ordinance, prior to the issuance of an actual building permit. Any additional changes, alterations, modifications or amendments, as required by Site Plan Review, shall be further approved by using a building permit application so long as the changes or modifications fall within the scope of section 6409 of the 2012 Federal Tax Relief Act, referenced stated above, and subject to Site Plan Review. An occupancy permit will shall be issued when Applicant's work is completed in compliance with the conditions described herein. until the Applicant complies with all such further conditions, if any.~~ acknowledges and agrees that the proposed modifications, as described herein

- 5) Applicant shall make every effort to minimize the visual impacts of the ~~Proposed~~ WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- ~~6) The Applicant agrees to pay to the City of Marlborough Open Space Account #100-2410-44515 an annual payment of One thousand five hundred dollars (\$1,500), the first payment to be due and payable at the time of the issuance of the Building Permit hereunder, and the subsequent payments to be due and payable on or immediately after January 2 of each calendar year in which the WCF referred to in this Special Permit is still in operation. Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.~~
- ~~7)6) \_\_\_\_\_ Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the ~~Proposed~~ WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the ~~Proposed~~ WCF Project only in cases of power outages to the ~~Proposed~~ WCF Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system.~~
- ~~8)7) \_\_\_\_\_ As soon as practicable but in any event within one (1) month after the date when a certificate of use and the occupancy permit has been issued to the Applicant by the City of Marlborough's Building Inspector for the ~~Proposed~~ WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the ~~Proposed~~ WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the ~~Proposed~~ WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall: (i) provide measurements as to the actual output of radio frequency energy emitted by the ~~Proposed~~ WCF Project; (ii) ~~shall include~~ a professional opinion by a qualified third party certifying that the ~~Proposed~~ WCF Project fully complies with all applicable health and safety standards; and (iii) ~~shall provide~~ measurements of the actual output of the total radio frequency energy being emitted by Applicant's all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) ~~then located at the Site~~. The Applicant~~

agrees to operate its Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall; ~~i) state what the changes or upgrades are; ii) shall (i) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore defined Wireless Communications Facilities then located at the Site; and iv) and (ii) shall include a professional opinion by a qualified third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.~~

~~9)8)~~ In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.

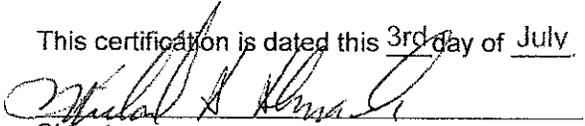
~~10)9)~~ All conditions set forth in the Original Special Permit shall apply to this Modified Special Permit.

**T-MOBILE WIRELESS FACILITY MODIFICATION:  
NON-SUBSTANTIAL CHANGE TO EXISTING WIRELESS TOWER  
CERTIFICATION**

- 1) Does the proposed modification increase the height of the existing support structure?  
 Yes  No [If No, proceed to Question 5]
- 2) What is the height above ground level of the existing support structure? NA
- 3) What is the height above ground level of the proposed modification of the existing support structure? NA
- 4) Will the proposed modification increase the height above ground level of the existing support structure by the greater of: (i) 10% of the height of the existing support structure; or (ii) twenty feet?  
 Yes  No NA
- 5) Will the proposed modification to the existing support structure involve adding any transmission equipment, antennas, cables, supports or other appurtenances ("Appurtenances") that would protrude horizontally from the edge of the existing support structure by three (3) feet or more than the distance that existing Appurtenances protrude from the edge of the existing support structure?  
 Yes  No
- 6) Will the proposed modification involve excavation or placement of new equipment outside the existing site or any access or utility easements currently related to the site?  
 Yes  No

**If the answer to Questions 1 or 4, and 5 and 6 is "NO", then the proposed modification does not substantially change the physical dimensions of the existing wireless tower or base station. If the answer to any question is "YES", then further evaluation is required to determine whether the proposed modification substantially changes the physical dimensions of the existing wireless tower or base station.**

This certification is dated this 3rd day of July, 2014.

  
 Signature

Michael Almada, TRM. R.E. Manager

Name & Title

**T-MOBILE WIRELESS FACILITY MODIFICATION:  
NON-SUBSTANTIAL CHANGE TO PHYSICAL DIMENSIONS OF AN EXISTING  
BASE STATION CERTIFICATION**

Definitions:

The term "base station" means the entire facility comprising all physical components of the cell site, including without limitation: all transmission equipment, antennas, microwave dishes, remote radio heads, remote electrical tilt actuators, Tower Mounted Amplifiers, cables, brackets, cabinets, regular and back-up power supplies and other utilities and backhaul, H-frames, meters, equipment enclosures, equipment pads and structures, fencing and stealthing materials as may be placed on a tower, building or other structure. See, e.g., FCC Fifteenth Competition Report, 26 F.C.C.R. 9664, 9841 at paragraph 308.

The term "transmission equipment" means equipment used in telecommunications, broadcast, satellite, commercial mobile service, or other communications systems that use radio spectrum, and includes equipment used for voice services, data services, and backhaul. See, e.g., Middle Class Tax Relief and Job Creation Act of 2012 ("TRA"), Section 6408(d).

The TRA applies to any modification of any T-Mobile facility that does not substantially change the physical dimensions of the existing base station, including facilities placed on rooftops or other structures. See TRA, Section 6409.

**Part One: Assessing Changes in the Physical Dimensions of a Base Station**

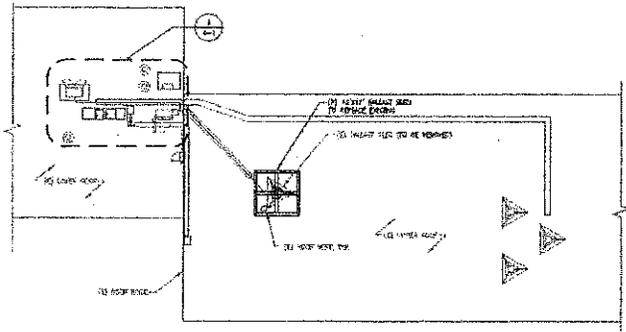
**A. Height of Base Station Equipment**

1. What is the height above ground level at the tallest point of the support structure?  
45.0 (feet)
2. What is the height above ground level at the tallest point on the *existing* base station equipment? 61 (feet)
3. What is the height above ground level at the tallest point on the *proposed* base station equipment? 61 (feet)

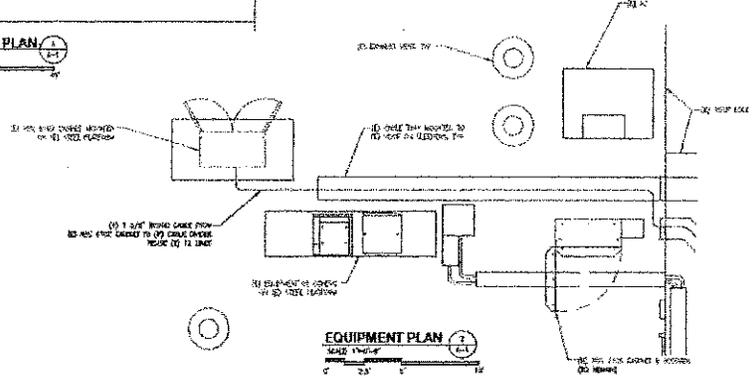
[insert diagram here]

**NOTES**

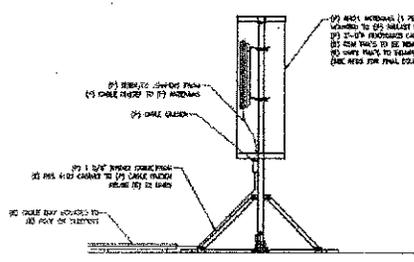
1. THIS DRAWING SHOWS THE RANGE FOR THE PROPOSED ANTENNA SCHEDULE. THE PROPOSED ANTENNA SCHEDULE IS SUBJECT TO APPROVAL BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC).
2. THE RANGE FOR THE PROPOSED ANTENNA SCHEDULE IS SUBJECT TO APPROVAL BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC).



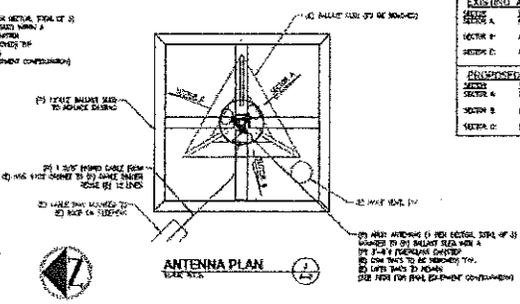
**PARTIAL ROOF PLAN**  
SCALE: 1"=20'-0"



**EQUIPMENT PLAN**  
SCALE: 1"=20'-0"



**ENLARGED ELEVATION**  
SCALE: 1"=4'-0"

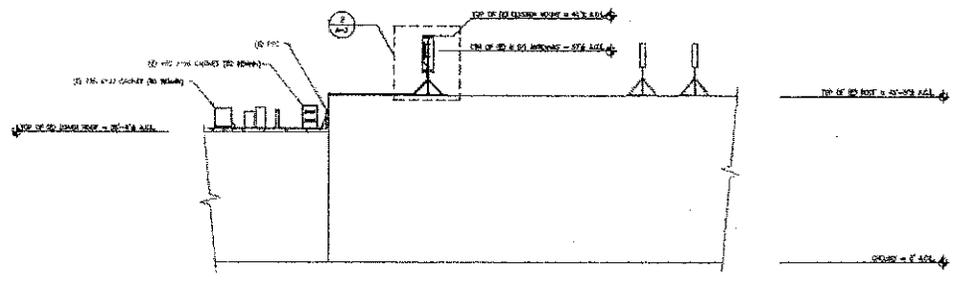


**ANTENNA PLAN**  
SCALE: 1"=4'-0"

EXISTING ANTENNA SCHEDULE			
SECTOR	TYPE	HEIGHT	MAX POWER
SECTOR A	YEA	100'-0"	100W
SECTOR B	YEA	100'-0"	100W
SECTOR C	YEA	100'-0"	100W

PROPOSED ANTENNA SCHEDULE			
SECTOR	TYPE	HEIGHT	MAX POWER
SECTOR A	YEA	100'-0"	100W
SECTOR B	YEA	100'-0"	100W
SECTOR C	YEA	100'-0"	100W



**ELEVATION**  
SCALE: 1"=20'-0"

4. Does the height above ground level of the proposed base station equipment exceed the height of the tallest point of the support structure or the existing base station equipment by more than 10 percent or five (5) feet, whichever is greater?

Yes  No (If the answer to #4 is yes, then further analysis is necessary. If the answer to #4 is no, then granting the eligible facilities request does not substantially change the physical dimensions of the base station insofar as there is little or no impact caused by changes in transmission equipment on the height of the support structure or the base station.)

**B. Area of Base Station Equipment** - NO CHANGE

5. What is the area of the *existing* base station? Calculate length NA x width \_\_\_\_\_ of entire existing base station area compound or equipment room = \_\_\_\_\_ (square feet).

6. What is the area of the *proposed* base station? Calculate length NA x width \_\_\_\_\_ of entire proposed base station area compound = NA (square feet).

[insert diagram here]

7. Does the size of the proposed base station area exceed the size of the existing base station area by more than 10 percent or thirty (30) square feet, whichever is greater?

Yes  No (If the answer to #7 is yes, then further analysis is necessary. If the answer to #7 is no, then granting the eligible facilities request does not substantially change the physical dimensions of the base station insofar as there is little or no impact caused by changes in transmission equipment on the area of the base station.)

**C. Area of Base Station Antenna Sectors**

8. What is the height of each *existing* antenna sector, including without limitation, antennas, TMAs, brackets and supports, as measured from the bottom of the array to the top of the array?

Alpha Sector: 4.5 (feet)

Beta Sector: 4.5 (feet)

Gamma Sector: 4.5 (feet)

Delta Sector: — (feet)

[additional sector, where applicable ](feet)

9. What is the width of each *existing* antenna sector, including without limitation, antennas, TMAs, brackets and supports?

Alpha Sector: 1.25 (feet)

Beta Sector: 1.25 (feet)

Gamma Sector: 1.25 (feet)

Delta Sector: — (feet)

[additional sector, where applicable ](feet)

10. Determine the area of each antenna sector [Answer for #8 multiplied by the Answer for #9] for each sector of existing antennas.

Alpha Sector: 5.62 (square feet)

Beta Sector: 5.62 (square feet)

Gamma Sector: 5.62 (square feet)

Delta Sector: — (square feet)

[additional sector, where applicable ](feet)

**[insert diagram here]**

11. Will granting the eligible facilities request result in increasing the area of any sector of antennas by more than 10% or 20 square feet, whichever is greater?

Yes  No (If the answer to #11 is yes, then further analysis is necessary. If the answer to #11 is no, then granting the eligible facilities request does not substantially change the physical dimensions of the area of the base station antenna sectors.)

**Part Two: Assessing Changes in the Physical Dimensions of Ground Mounted Equipment**

12. Will the proposed modification involve excavation or placement of new equipment outside the existing site or any access or utility easements currently related to the site?

Yes  No (If the answer to #12 is yes, then further analysis is necessary. If the answer to #12 is no, then granting the eligible facilities request does not substantially change the physical dimension of ground mounted equipment.)

This certification is dated this 3rd day of July, 2014.

  
\_\_\_\_\_  
Signature

MICHAEL A. ALMODA, RE MAN-TRM  
\_\_\_\_\_  
Name & Title

# Work Sheet

*(if necessary)*

If further analysis is necessary as directed above, please complete the following questions:

1. Explain why changes in the base station do not substantially change the physical dimensions of the existing base station. Include in the analysis the relative dimensions of the base station equipment in relationship to the dimensions of the support structure itself, the presence of other wireless equipment on the support structure, and any other evidence demonstrating that changes in the transmission equipment do not constitute a substantial change in the physical dimensions of the base station.

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2. Explain why changes in the ground mounted equipment do not substantially change the physical dimensions of the ground mounted base station. Include in the analysis the relative dimensions of the existing ground mounted base station in relationship to the dimensions of the leased area, the presence of ground mounted equipment, and any other evidence demonstrating that changes in the ground mounted transmission equipment do not constitute a substantial change in the physical dimensions of the ground mounted base station.)

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