



# RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC-4-03- 120

**TITLE:** Issuing an Order to Approve AT&T and Its Affiliates' Amendment to the Comprehensive Plans for Local Communication Facilities in the Pinelands

Commissioner Fucignia moves and Commissioner Tomassello seconds the motion that:

**WHEREAS**, the Pinelands Commission adopted amendments to the Comprehensive Management Plan in 1995 to permit local communications facilities to exceed the 35 foot height limitation set forth in N.J.A.C. 7:50-5.4, if providers of the same type of service prepare a comprehensive plan that is approved by the Pinelands Commission; and

**WHEREAS**, providers of cellular service and PCS service submitted comprehensive plans that were approved by the Pinelands Commission on September 11, 1998 and January 14, 2000, respectively; and

**WHEREAS**, AT&T Wireless PCS of Philadelphia, LLC and its Affiliates did not initially choose to participate in the preparation and submission of either of the adopted plans; and

**WHEREAS**, AT&T and its Affiliates have submitted an amendment to the previously adopted plans titled, *Amendment to the Comprehensive Plans for Cellular and Personal Communications Service to include AT&T Wireless PCS of Philadelphia, LLC and its Affiliates for Wireless Communications Facilities in the Pinelands* (hereinafter referred to as the Amendment) which the Executive Director deemed complete for purposes of review on August 13, 2003; and

**WHEREAS**, a public hearing on the Amendment was duly advertised, noticed and held on October 1, 2003 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 7:00 p.m.; and

**WHEREAS**, a revised version of the Amendment, dated October 28, 2003, was submitted by AT&T on October 30, 2003; and

**WHEREAS**, a public hearing on the October 28, 2003 Amendment was duly advertised, noticed and held on November 10, 2003 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 4:00 p.m.; and

**WHEREAS**, the Commission's technical consultant reviewed the Amendment and submitted a report of his findings to the Commission; and

**WHEREAS**, the Executive Director has reviewed the Amendment and the Commission's technical consultant's report; and

**WHEREAS**, the Executive Director has considered the oral and written comments received on the Amendment; and

**WHEREAS**, the Executive Director has submitted a November 21, 2003 report of his findings to the Commission; and

**WHEREAS**, the Executive Director has found that the Amendment is consistent with N.J.A.C. 7:50-5.4(c)6, the standard which requires that a plan identify approximate locations, if the recommended procedure described in Appendix D of his report is followed when final facility siting decisions are made; and

**WHEREAS**, the Executive Director has found that the Amendment is consistent with the other standards of N.J.A.C. 7:50-5.4; and

**WHEREAS**, the Executive Director has found that the Amendment incorporates to the extent technically feasible the facility locations identified in both the *Comprehensive Plan for Wireless Communications*

*Facilities in the Pinelands* (i.e., the cellular plan) and the *Comprehensive Plan for PCS Communications Facilities in the Pinelands* (i.e., the PCS plan) and, furthermore, that the Amendment effectively serves to amend and expand upon said cellular and PCS plans for the purpose of providing service at the frequencies used by each industry; and

**WHEREAS**, the Commission's CMP Policy and Implementation Committee has reviewed the Amendment and the Executive Director's report and has recommended that the Amendment be approved; and

**WHEREAS**, the Commission has reviewed the Amendment, the Executive Director's Report, the Commission technical consultant's report and the other appendices to the Executive Director's Report; and

**WHEREAS**, the Commission has duly considered all public comment on the Amendment; and

**WHEREAS**, the Commission finds that the Amendment is consistent with the standards of N.J.A.C. 7:50-5.4 insofar as those standards apply to the preparation and approval of an amendment to a comprehensive plan for local communications facilities; and

**WHEREAS**, the Commission expressly recognizes that approval of this Amendment establishes a framework for siting facilities but does not serve to approve any specific development application to construct a communications facility and the Commission further recognizes that some of the pending development applications may have to be modified to be consistent with this Amendment and to meet the site specific development requirements of N.J.A.C. 7:50-5.4; and

**WHEREAS**, the Commission also recognizes that this Amendment may be further amended pursuant to N.J.A.C. 7:50-5.4 and that the Executive Director shall advise the Commission of the need for amendments as specific conditions arise consistent with the advice of the Attorney General's office; and

**WHEREAS**, the Commission accepts the recommendation of the Executive Director to approve the Amendment and affirm the recommended procedures for final facility siting decisions; and

**WHEREAS**, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE, BE IT RESOLVED that:**

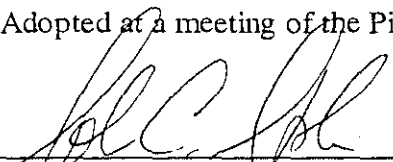
1. An order is hereby issued to approve the *Amendment to the Comprehensive Plans for Cellular and Personal Communications Service to include AT&T Wireless PCS of Philadelphia, LLC and its affiliates for Wireless Communication Facilities in the Pinelands*, dated October 28, 2003.
2. The Pinelands Commission expressly affirms that the review of the development applications for individual sites needs to be done in accordance with this report, including the appendices, in order to be consistent with CMP requirements.

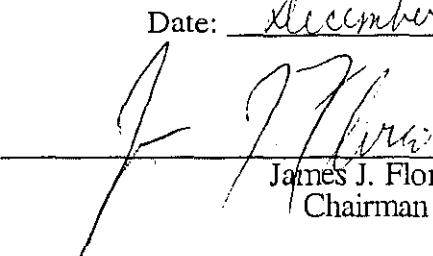
**Record of Commission Votes**

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun	✓				Hagaman	✓				Tomasello	✓			
Avery	✓				Kowalski	✓				Westergaard	✓			
Brown			✓		Lee	✓				Wilson	✓			
Campbell	✓				Lloyd	✓				Wuillermin	✓			
Ficcaglia	✓				McIntosh	✓				Florio	✓			

Adopted at a meeting of the Pinelands Commission

Date: December 12, 2003

  
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 John C. Stokes  
 Executive Director

  
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 James J. Florio  
 Chairman



State of New Jersey

THE PINELANDS COMMISSION

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JAMES E. MCGREEVEY  
Governor

JOHN C. STOKES  
Executive Director

**REPORT ON THE PROPOSED AT&T AMENDMENT TO THE COMPREHENSIVE  
PLAN FOR PCS COMMUNICATION FACILITIES IN THE PINELANDS**

November 21, 2003

Judith Ann Babinski, Esq., on behalf of AT&T Wireless PCS of Philadelphia, LLC  
Pitney, Hardin, Kipp & Szuch  
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and  
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9615 Ventnor Ave., Apt. #3  
Margate, NJ 08402-2295

**I. INTRODUCTION**

**a. Background**

Since 1981, when the Pinelands Comprehensive Management Plan (CMP) went into effect, the construction of tall structures has been discouraged throughout much of the Pinelands Area. These regulatory limitations, which incorporated a 35-foot height limit in N.J.A.C. 7:50-5.4, were intended to prevent the littering of the Pinelands skyline with structures that significantly detract from the scenic qualities which federal and state Pinelands legislation called upon the Pinelands Commission to protect. There were, of course, exceptions to this requirement: certain structures were allowed to exceed 35 feet in height; and no restrictions were placed on height within the two most development-oriented Pinelands land management areas - Regional Growth Areas and Pinelands Towns.

However, in 1994, as the Pinelands Commission was nearing the end of its second full review of the CMP, representatives of the cellular telephone industry requested that the Commission take note of the growing need for portable telephone communications and the associated need for the placement of antennas higher than 35 feet in all parts of the Pinelands Area. To accommodate what it felt was a legitimate need, the Pinelands Commission in 1995 amended N.J.A.C. 7:50-5.4 to permit local communications facilities to exceed the 35-foot height limit if a comprehensive plan for the entire



<http://www.state.nj.us/pinelands/>

E-mail: [Info@njpines.state.nj.gov](mailto:Info@njpines.state.nj.gov)

The Pinelands—Our Country's First National Reserve and a U.S. Biosphere Reserve

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Pinelands is first prepared and approved by the Pinelands Commission. The regulations recognized that: local communications systems rely on a network of facilities to receive and transmit radio signals; the location of each cell within this network has an effect on the location of other cells; and a well designed and integrated network can avoid the proliferation of towers throughout the entire Pinelands Area, and, most importantly, in its most conservation-oriented areas. Once a comprehensive plan is approved, the regulations anticipate that site specific siting decisions will be made and that individual development applications will be submitted and evaluated against a series of site specific development standards. Provision was also made for amendments to an approved plan when a need is demonstrated. These regulations were adopted by the Commission in June 1995 and went into effect on August 21, 1995.

The adopted regulations required providers of “the same type of service” to jointly submit a comprehensive plan, primarily to ensure that the least number of facilities is built in the Pinelands overall. Members of the cellular industry (comprising Verizon [formerly Bell Atlantic Mobile], Cingular [formerly Comcast], and Nextel) responded by submitting a regional plan (generally referred to as the Cellular plan) that was approved by the Commission in September, 1998. Almost immediately thereafter, representatives of the PCS industry (including Sprint Spectrum and T-Mobile [formerly Omnipoint]) made inquiries of the Commission regarding the procedures and components involved in an acceptable plan for their service. The Commission staff described the process and the necessary information for a complete plan and indicated that the PCS plan would need to incorporate and expand upon the siting array presented in the approved cellular plan (i.e., the PCS plan would effectively serve to amend the cellular plan). The PCS plan was approved by the Commission in January, 2000.

AT&T contacted the Commission in 2001 concerning an amendment to the PCS plan and submitted an initial draft amendment late that year. With the advice of the Commission staff, the amendment was revised several times and a version was submitted on August 11, 2003 (dated August 5, 2003) that was then deemed complete by the staff. AT&T’s submission constitutes an amendment to both the cellular and the PCS plans because the company’s communications system functions at both the cellular and the PCS frequencies. Subsequent discussions among the staff, the Commission’s radiofrequency consultant and AT&T’s representatives produced the version currently under consideration; this version is dated October 28, 2003.

## **b. Appendices to this Report**

There are several appendices to this report. A list of them follows:

Appendix A - AT&T and its affiliates’ proposed plan amendment (hereinafter referred to as the amendment);

Appendix B - The Commission’s technical consultant’s (Bruce Eisenstein, Ph.D., P.E.) draft report (undated) reviewing the amendment;

Appendix C - A chart outlining the procedures used to examine the AT&T amendment;

Appendix D - Hierarchical policy for siting individual wireless communications facilities, as approved by the Commission on September 11, 1998;

Appendix E - Written comments on the amendment that were received during the public review process and the Commission staff's response to comments dated August 4, 2003 and September 3, 2003;

**c. Submission of the Amendment**

In November, 2001, AT&T Wireless PCS of Philadelphia, LLC and its affiliates submitted a draft comprehensive amendment to the approved cellular and PCS local communications facility siting plans. AT&T had been apprised several times by the Commission staff in 1999 of its opportunity to participate in the development of the PCS siting plan, but did not become involved at that time. The staff responded to AT&T's submission with detailed comments by letter dated February 13, 2002 and provided advice to AT&T over the following months regarding the composition of subsequent drafts and the method of complying with the joint submission requirement.

After review and discussion of several interim submissions, AT&T and its affiliates submitted a comprehensive amendment on August 11, 2003 entitled, *Amendment to the Comprehensive Plans for Cellular and PCS Communications Service to include AT&T Wireless of Philadelphia, LLC and its affiliates for Wireless Communications Facilities in the Pinelands* (dated August 5, 2003). This amendment was reviewed by the Commission staff for conformance with N.J.A.C. 7:50-5.4 according to specific procedures, which are appended to this report as Appendix C. The amendment satisfactorily responded to the Commission's request for minor additional information necessary to clarify two references in a June 24, 2003 draft submission. The amendment indicates that service is provided in both the cellular and PCS frequency ranges. As such, AT&T's submission serves to amend both of the prior plans.

On August 13, 2003, the AT&T amendment was deemed complete for purposes of Commission review. A completeness determination in no way implies that a well documented and approvable amendment has been submitted; rather, it is an acknowledgment that there is sufficient information upon which to begin the formal review process. It is also important to note that signaling information was submitted to the Commission's technical consultant to aid him in his review of the need for the proposed facilities.

The CMP Policy and Implementation Committee and attending members of the public were briefed on the proposed amendment at the Committee's September 26, 2003 meeting.

While the August 11, 2003 submission was judged to be complete, subsequent discussions with the applicant's representatives and with the Commission's radiofrequency consultants resulted in several revisions to the document, the most significant of which was the elimination of a number of proposed facilities and the conversion of one facility in Maurice River Township from a new tower site (referred to as "Raw Land" sites in the amendment) to a collocation at a site previously approved in the Cellular plan. The version of the amendment which is being presented to the Commission for its consideration is dated October 28, 2003.

A public hearing was duly advertised, noticed and held on October 1, 2003. A second public hearing was held on November 10, 2003 to allow the public an opportunity to comment on the revised October version of the amendment. Relevant information obtained through the public review process has contributed to the Executive Director's review of the proposed amendment (see Part III of this report for more details). A summary of the most recent version was presented to the Policy and Implementation Committee on November 21, 2003.

**d. Summary of the Amendment's Facility Siting Proposal**

The amendment proposes a total of 80 new facilities (a facility being a location where one or more antennas are suspended), which will complement the 17 AT&T facilities that are already in operation. Of the 80 new facilities, 32 are to be located at sites previously approved in the PCS plan (many of which are also in the cellular plan) and 14 at sites in the approved Cellular plan. AT&T will also be using 28 other existing structures as facility platforms. The remaining six new facilities will require the construction of towers. Four of these towers will be located in either a Regional Growth Area or a Pinelands Town where the local communications facilities siting provisions of the CMP do not apply.

Additionally, the amendment has identified one location in Pemberton Township where a facility is required for coverage, but for which there appears to be no site available that meets the standards of N.J.A.C. 7:50-5.4(c), and a site in Egg Harbor Township where AT&T's client commitments may cause a capacity issue (i.e., the sheer volume of wireless calls may overload the existing facilities in the vicinity, thereby necessitating placement of another) in the foreseeable future. The Pemberton site is also referenced, but not authorized, in the approved PCS plan and is identified in the text of AT&T's amendment as Facility #21 (although it does not appear on the siting map). The signatories to the prior plan, Sprint and Omnipoint (T-Mobile), indicated that they may possibly seek a waiver of strict compliance from the Commission, a rezoning from the Township, or an amendment to the CMP which would allow for placement of this facility. Resolution of the matter is still pending.

The PCS plan participants indicated, and the Commission's technical consultants confirmed, that, because of the frequency at which PCS facilities operate, a more restricted siting radius must be employed for the installation of new PCS towers than is the case for cellular towers. Consequently, because AT&T must be able to accommodate both cellular and PCS transmissions, the actual "search area" for the six proposed new towers will probably be confined to an approximately 1/2 mile radius.

**II. CONFORMANCE WITH THE COMPREHENSIVE MANAGEMENT PLAN**

**a. Introduction**

N.J.A.C. 7:50-5.4 contains the standards against which this amendment is to be judged. If these standards are met, the Commission must approve the amendment. If the standards are not met, the

Commission cannot approve the amendment, but may conditionally approve or disapprove it, depending on the extent and severity of the amendment's deficiencies.

The Commission interprets the regulations to require that this amendment, as well as any future plans and amendments subject to the provisions of N.J.A.C. 7:50-5.4, will and must incorporate, amend, and expand upon, to the extent technically feasible, the facility array and all other applicable provisions contained in the previously approved comprehensive local communications facility siting plans.

For purposes of review, the standards of N.J.A.C. 7:50-5.4 have been separated into ten criteria. A discussion of each criterion and the amendment's conformance with them follows. To aid in the staff's review of the amendment, Bruce Eisenstein, Ph.D., P.E., was retained for his expertise in communications technology. His review is appended to this report as Appendix B and is reflected, as appropriate, in the findings which follow. Furthermore, information which was elicited through the public review process is also reflected, as appropriate, in these findings.

## **b. Standards**

- 1. The amendment must be agreed to and submitted by all providers of the same type of service, where feasible. N.J.A.C. 7:50-5.4(c)6.** This requirement is intended to ensure that the greatest possible degree of coordinated planning occurs to minimize the number of new structures in the Pinelands Area. If fewer than all providers of the same type of service submit a plan or amendment, there must be evidence that participation and endorsement was sought from the other providers, along with a clear and reasonable explanation why full participation was not obtained. Furthermore, any plan or amendment submitted in order to comply with this requirement must be based upon any and all previous plans that have been approved by the Commission, i.e., it must incorporate the prior approved siting array and only build elsewhere as technical/propagation needs dictate. The Commission staff made all the PCS providers expressly aware of this requirement, which effectively rendered the PCS plan an amendment to the cellular plan. AT&T's proposed amendment serves as an amendment to both the cellular and the PCS plans.

The Commission staff notified the five participants in the approved Cellular and PCS plans on February 20, 2002, and again on February 5, 2003, when AT&T submitted earlier drafts of its proposed amendment. On August 13, 2003 the staff notified the participants that AT&T had submitted an amendment that was complete pursuant to the requirements of N.J.A.C. 7:50-5.4(c) and included a copy of the amendment for their review. Mr. Alan Zubblatt, Esq., representing Sprint Spectrum (a signatory to the PCS siting plan), submitted written comments on the amendment on August 14, 2003 (Sprint had been provided a copy of the essentially complete amendment by AT&T in June). Sprint expressed reservations to the amendment on the following grounds:

- ! The language in the introduction does not adequately describe the relationship of the amendment to the prior plans, specifically that any conflicts between the amendment and the adopted plans should be resolved in favor of the plans;
- ! The legends employed on the amendment siting map are not consistent with the adopted plans;
- ! Facility #61 in the amendment is improperly described as being within an “unrestricted” area;
- ! The numbering employed on the amendment siting map is not consistent with the adopted plans;
- ! The use of the terms “Typically” and “Generally” are unacceptable qualifiers as used on p. 26 of the amendment, wherein provisions that describe access to collocation sites and installation of utilities are addressed;
- ! The ability of other wireless providers to prepare applications for regulatory approval is hampered by the process described by AT&T on p. 27 of the amendment.

In further correspondence dated September 3, 2003, Sprint indicated that AT&T’s final proposed amendment, which the Commission staff had determined to be complete, did not satisfy its objections and that the company would not join in its submission.

By letter dated September 22, 2002, the Commission staff acknowledged Sprint’s objections, but indicated that they were not felt to be of sufficient weight as to prevent consideration of the amendment by the Commission. Moreover, the staff does not believe that concurrence on the AT&T amendment by the other providers is necessary for it to be determined complete. The objections submitted on behalf of Sprint were addressed individually in the staff response. Sprint’s comments and the staff response are appended to this Report as Appendix E. Subsequent to this exchange of correspondence, several of Sprint’s objections were rendered moot by AT&T’s agreement to delete the use of the terms “typically” and “generally” on p. 25 of the amendment and to amend the process for submitting applications for local approval to allow each provider to do so.

The Commission notified all the wireless providers who are signatories to an approved siting plan on August 13, 2003 and this notification included a copy of the amendment. Based on the fact that Sprint’s concerns have been noted in the record and the fact that none of the other wireless providers expressed an interest in the amendment, **the Executive Director concludes that this standard has been met.**

2. **The plan must review alternative technologies that may become available for use in the near future. N.J.A.C. 7:50-5.4(c)6.** The purpose of this standard is to identify those other technologies which should at the very least be considered as the pending plan is reviewed.

During the course of the review of several successive drafts of the AT&T amendment, the Commission staff became aware of the existence of a specific technology that may prove useful in reducing the need for intrusive new towers in select areas of visual sensitivity. The



staff was contacted by representatives of a company engaged in this technology, referred to as Distributed Antenna Systems (DAS), and obtained some materials describing its potential applicability. The system employs a series of low-mounted antennas, generally attached to telephone poles and connected by fiber-optic cable, in lieu of a single tall tower. While still uncertain as to the technical and economic feasibility of this technology, the staff felt it held out some promise of mitigating the impact of facilities upon such areas as the Pine Plains and requested that AT&T address DAS specifically in the text of its amendment.

AT&T responded by alluding in a general way to its own "third generation wireless" and then only briefly taking up the question of the usefulness of DAS. The feasibility analysis dismisses the use of DAS with a short, summary argument. AT&T has, however, included a statement agreeing to evaluate stealth technology as a solution on a case-by-case basis and affirming its willingness to work with the Commission toward remedies.

AT&T argues that DAS requires multiple antennas having a limited signal distance that really would only cover the roadway near the antennas (presuming they are mounted on existing poles in the road ROW). AT&T claims that it would therefore be inadequate for local residences, off-road vehicle users and emergency services. While there is some merit to this argument, this system (or some other stealth technology) is only being contemplated by the Commission for use in very limited circumstances, such as in nearly undeveloped, pristine, and visually sensitive areas where there may be a through-road, but few, if any, homes. The need for emergency services beyond the roadway is consequently minimal and it is likely that emergency vehicles could continue to use whatever radio system they already have. Since the staff has been focusing in particular on the Rte. 72 site in the Pine Plains area (Facility #62 in the PCS plan and the AT&T amendment) for the possible application of DAS, the question seems to be whether the limited extra coverage of a more conventional facility (several thousand yards north and south of Rte. 72, at a maximum, rather than perhaps several hundred yards) into an almost entirely uninhabited, wooded area justifies construction of a tower visible for miles in any direction. Furthermore, because AT&T and the other plan participants have shown very little interest in extending coverage to other sparsely populated, remote areas (most of Wharton and Belleplain State Forests, for instance, where the incidence of off-road vehicles and emergency service needs should be at least comparable), this argument appears to be being applied selectively.

Facility #62 also raises an issue with regard to the use of alternative technologies for conformance with the provisions of the CMP. A 200' tall tower in the midst of the Pine Plains does not, by any reasonable interpretation, meet the visual impact minimization standards of N.J.A.C. 7:50-5.4(c)4.iii. While it is questionable whether any alternative communications device would entirely meet these standards, there is also another regulatory impediment to the use of a tall tower. Because there is no available site in the vicinity that satisfies the siting requirements of N.J.A.C. 7:50-5.4(c)4.vi, the location that is eventually chosen to fill the service gap here will require issuance of a waiver of strict compliance in accordance with N.J.A.C. 7:50-4.61 *et seq.* The waiver will have to determine that a compelling public need

has been established (N.J.A.C. 7:50-4.62(a), which in turn requires that only the minimum relief necessary be granted to address the need (N.J.A.C. 7:50-4.62(d) and that no better alternative exists (N.J.A.C. 7:50-4.64(a)1.iv). These provisions leave the Commission, as well as the parties to the siting plans, no choice but to consider alternatives to a single tall tower, including, but not limited to, DAS. Given the industry's oft-stated aversion to DAS, they may seek to present some other, more palatable alternative. However, the company representing DAS maintains that the system has been used by the industry on other occasions and that it appears to be suitable for use in the Pinelands. The feasibility of DAS, or perhaps some other emerging technology of which the staff is not aware at this time, should be a topic of discussion when development applications in visually sensitive areas are received.

AT&T has addressed the use of alternative technologies in its submission. While the discussion may not necessarily be particularly thorough or to the Commission's liking, it appears that the criterion requiring an examination of emerging technology has been at least minimally addressed. The Commission acknowledges AT&T's position, but asserts its right to condition approvals in certain cases on the use of less obtrusive facilities wherever preservation of a viewshed is paramount.

**The Executive Director concludes that this standard has been met.**

3. **The plan must show the approximate location of all proposed facilities. N.J.A.C. 7:50-5.4(c)6.** In order to evaluate how well the plan meets other standards (such as those presented in subsections 5, 6 and 7 below), which are intended to minimize the number of new structures (e.g., towers) in the Pinelands Area, it is essential that there be a clear and unambiguous identification of all proposed facilities, including those which will utilize existing structures and those which will require new ones.

The amendment graphically presents the approximate location of all facilities on a map titled, "AT&T Wireless Final Pinelands Plan Site Classifications 2003-10-28," and provides geographic coordinates (latitude/longitude) for each of them. The amendment also describes each proposed facility in narrative form (indicating those already existing; those previously authorized in the cellular and PCS plans; existing structures on which AT&T proposes to locate; and new tower sites), the municipality in which it is to be located, and whether it will be located within what the companies refer to as "unrestricted," "height restricted," or "height and least number of structures restricted" areas.

**The Executive Director concludes that this standard has been met.**

4. **The plan must include five and ten year horizons. N.J.A.C. 7:50-5.4(c)6.** This standard is important insofar as the Commission, local governments, and the public can rely on the plan as a blueprint of industry needs beyond the immediate future. This is not to imply that the plan cannot be amended if needs change - the CMP expressly recognizes this - but the network of facilities should be planned to meet anticipated needs over a ten year period.

AT&T intends to build out all its sites as quickly as possible, with the majority anticipated to be constructed within five years. However, in correspondence only received by the Commission on October 3, 2003, AT&T indicated that Facility #324 (Folsom Borough) and #374 (Monroe Township) may only be needed within a ten year horizon.

**The Executive Director concludes that this standard has been met.**

- 5. The plan must demonstrate that every facility proposed in the Pinelands Area is needed to provide adequate service. N.J.A.C. 7:50-5.4(c)1.** There are two important elements to this standard - the first is the purpose for the plan, which is to provide “adequate” service, and the second is that every proposed facility must be judged against that test.

a. Adequate Service

The term “adequate service” is used in N.J.A.C. 7:50-5.4(c) three times. The simple reason was to leave no doubt that the goal for wireless service in the Pinelands Area was to provide “adequate” service, not necessarily to offer optimal service to all current and potential customers. Specifically at N.J.A.C. 7:50-5.4(c)1, adequate service is described as that which “serves the local communication needs of the Pinelands, including those related to public health and safety.” It was recognized at the outset that this distinction could play an important role in determining both the number and location of wireless facilities in the Pinelands Area because the height and proximity of the antennas exert a tremendous influence on the quality of service.

To judge, as is required by this CMP standard, whether every facility proposed in the Pinelands is needed, an objective definition of adequate service is necessary. Without it, one cannot impartially evaluate need and justify a decision to include or exclude a proposed facility.

AT&T addresses this issue in its amendment in a manner essentially identical to that in the cellular and PCS plans. They describe what are called “three widely recognized parameters” that are used in the industry to define service levels. These three parameters are (1) signal to interference ratio at audio, (2) dropped call rate and (3) blocked call rate. In presenting this information, the providers describe, but do not quantify, these parameters and note their belief that the technical need for service is dictated by the federal Telecommunications Act of 1996.

Although this lack of quantification does not in itself yield an objective measure for defining service levels, the Executive Director does not consider this to be a fatal flaw in the amendment for two reasons. First, the Commission’s technical consultant quantified service levels in previous plans (see Appendix B) and reviewed the proposed facilities on that basis. Second, AT&T acknowledges that it must again demonstrate need if further amendments are proposed in the future.

b. Need for every facility in the Pinelands Area

The amendment indicates that all 80 proposed facilities are necessary for coverage. Need is demonstrated primarily in two ways: by documentation of ANET radiofrequency plots, which show where signal strength drops; and by expert determination of the legitimacy of the amendment's assertions, as provided by the Commission's consultant. The consultant, Dr. Eisenstein, and the Commission staff also took account of AT&T's existing array of 17 facilities in the Pinelands in order to identify areas with likely coverage gaps. For instance, given the limited broadcast range of PCS phones, the approximately nine mile section of Rte. 72 where there are no facilities appeared to be a fairly obvious gap.

Dr. Eisenstein evaluated the need for every proposed facility identified in the August, 2003 amendment. In a draft summary report submitted to the Commission staff on September 26, 2003, Dr. Eisenstein questioned the need for one new tower (#317, to be located in a Military and Federal Area in Egg Harbor Township) and for five facilities to be attached to existing structures (#304 in Egg Harbor Township; #319 in Hammonton; #324 and #373 in Folsom; and #374 in Monroe). In all cases, he indicated that adequate coverage may already exist based on existing and/or proposed facilities in the vicinity.

AT&T responded to Dr. Eisenstein's concerns in a letter faxed to the Commission on October 3, 2003 and at a meeting held at the Commission offices on October 20, 2003, which was attended by Dr. Eisenstein, Dr. Barry Brady of the Commission staff and two AT&T representatives. As a result of the meeting, AT&T agreed to eliminate proposed Facilities #317 (Egg Harbor Township) and #319 (Hammonton). With the deletion of these facilities, Dr. Eisenstein determined that the need for other facilities nearby (including #304, which was to be in the vicinity of #317, and #324 and #373, which were close to #319) was justified. However, AT&T noted, and Dr. Eisenstein agreed, that, given the volume of wireless traffic (both federal and private) in the eastern portion of Egg Harbor Township, the need for a facility in the vicinity of the former Facility #317 may have to be reassessed in the future. Facility #318 was also deleted when it was determined that PCS Facility #7, as built, would satisfy AT&T's needs in that area. Also as a result of the meeting, Dr. Eisenstein concluded that Facility #374 was in fact necessary for coverage.

With the changes to the facility array cited above, Dr. Eisenstein has decided that each of the remaining proposed facilities is justified on the basis of service levels as AT&T has quantified them. In response to several questions about this data, it was offered for public review after the public hearing. At least one member of the public, a representative of the Pinelands Preservation Alliance, questioned whether need has indeed been demonstrated. However, in no case did any member of the public provide any technical evidence that a specific facility was not necessary. Without a demonstration to the contrary, the Commission staff relied upon its impartial consulting telecommunications expert - whose prior experience and opinions regarding propagation plots as they relate to adequate service and the limitations of

the current technology carried weight with the staff - and the prima facie evidence of coverage gaps in the current array.

Since the Commission's consultant has determined that all of the facilities proposed in the Pinelands are needed to provide adequate service, **the Executive Director concludes that this standard has been met.**

**6. The plan must demonstrate that the facilities to be located in the Preservation Area District, the Forest Area, the Special Agricultural Production Area and 17 specific Pinelands Villages are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands. N.J.A.C. 7:50-5.4(c)6.**

One of the key CMP provisions, the purpose of this standard is to very closely scrutinize new facilities proposed in these conservation-oriented land management areas of the Pinelands and to do so considering the location of facilities outside of these areas. Since the AT&T system represents a network of facilities, each of which affects the location of other facilities in the system, the location of facilities outside these conservation-oriented land management areas is important in evaluating the need for new facilities within the areas.

The amendment refers to these conservation oriented management areas as the "height and least number of structures restricted" area. The Commission staff and the Commission's technical consultants not only reviewed the need generally for the proposed facilities within these areas, they also evaluated the possibility of relocating those that are needed to other, less sensitive parts of the Pinelands. In the end, the proposed network of 80 new facilities within the Pinelands includes 28 in these most conservation oriented land management areas. Nine of these represent antennas which will be located on existing structures and 18 are at proposed locations approved in the PCS and/or Cellular plans. This leaves one proposed facility which will be in the most conservation-oriented areas and will require the construction of a new tower (#358 in Berkeley Township). The Commission staff and the Commission's consultant are now convinced that, when taking the need for each facility into account, there is effectively no opportunity for eliminating this tower. Facility #358 will be located in an industrial zone in the Forest Area near the Miller Airpark; AT&T has indicated that the tower will be approximately 60' tall so as not to pose a hazard to air traffic.

**The Executive Director concludes that this standard has been met.**

**7. The plan must demonstrate that the antenna utilizes an existing communications or other structure, to the extent practicable. N.J.A.C. 7:50-5.4(c)3.** One of the key CMP provisions, this standard is intended to ensure that the fewest possible number of new towers are constructed throughout the Pinelands Area.

Because siting plan amendments must incorporate and utilize previously approved sites to the extent possible, the AT&T amendment relies in part upon the inventory information compiled by the cellular industry in 1998. The cellular industry assembled and analyzed new

information on existing structures (including inventories from the three electric utility companies which service the Pinelands and the Federal Aviation Administration [FAA]), described the results of visual surveys of potential sites in the most conservation oriented parts of the Pinelands, and cited the results of the Pinelands Commission staff visual surveys of potential sites in the remainder of the Pinelands. Additional mapping and windshield surveys were completed for this plan. The amendment also specifically states that AT&T “has utilized existing structures or sought to site at locations approved under the PCS and CP Plans where CPs (ed. note - “cellular providers”) and PCS carriers will likely be constructing structures in the future.” Unlike the cellular and PCS plans, however, AT&T did not categorize sites according to the degree of likelihood that a structure will be used, choosing instead simply to list “existing structures on which AT&T proposes to locate.”

Two cautionary notes are in order. First, it is possible that some of the existing structures which AT&T indicates are suitable for its facilities may be ultimately found to be unsuitable due to technical or other considerations. Second, it is possible that disputes may periodically arise when one or another provider who intends to collocate at a site argues that the structure selected, although suitable from an availability and construction standpoint, is not situated so as to service its need. In such instances, it is unrealistic to expect that detailed technical analyses of all potentially usable structures be completed as part of this amendment for facilities at which the companies may not attempt to locate for several years and that lease agreements for them be executed prior to the Commission’s approval of this amendment, particularly when one considers that the CMP regulations themselves contemplate that individual development applications must still be evaluated against this standard. That said, the existence of at least one suitable structure in the vicinity was an important consideration in the review of the amendment.

While AT&T plans to use a total of 28 existing structures as facility platforms, a majority of these will be located in either a Regional Growth Area or a Pinelands Town, where the siting requirements of N.J.A.C. 7:50-5.4(c)4 do not apply. Twelve of the sites, however, are in management areas where the siting requirements are in effect. The Commission staff examined all of these sites to determine whether there appeared to be a qualifying structure available within the prescribed search area. Although such structures were apparent at most of the sites visited, the staff could not initially verify the existence of an appropriate structure at two locations:

- ! Facility #311: This facility appears to be centered along the White Horse Pike in Mullica Township east of Elwood; there appeared to be only modest, 1-2 story residential and commercial structures in the area. AT&T responded to the staff’s inquiry about this location by indicating that there is a qualifying Conectiv electrical pole in the vicinity; and
- ! Facility #375: This facility is proposed in a remote, wooded area of central Lacey Township; access was very difficult and there may be qualifying structures at resource extraction sites in this area. AT&T subsequently stated that there was a mining operation with qualifying structures within the search area for this facility.

Additionally, AT&T indicated its intention to collocate with other cellular and PCS providers on an existing fire tower at Mizpah in Hamilton Township (PCS and AT&T Facility #11; cellular Facility #34). After the plan amendment was submitted, however, the Commission concluded an agreement with Sprint Spectrum permitting the reconstruction of a nearby, privately owned radio tower in place of the fire tower, which had not become available. Assuming that the radio tower site proves viable, AT&T will be required to seek to collocate its Facility #11 on the reconstructed tower.

The staff has been provided information by AT&T of the existence of appropriate structures in the few instances where such a structure was not otherwise identified. **Therefore, the Executive Director concludes that this standard, insofar as it applies to this amendment, has been met.**

8. **The plan must demonstrate or note the need to demonstrate when the actual siting of facilities is proposed that, if a new supporting structure (tower) with antennae is to be constructed, it can *probably* be sited according to the six criteria in N.J.A.C. 7:50-5.4(c)4. These criteria deal with satisfying technical operating requirements; minimizing visual impacts from public areas, wild and scenic rivers and special scenic corridors, the Pine Plains, the Forked River Mountains and residential areas; and, if proposed in the Preservation Area District, Forest Area, Special Agricultural Area, or Rural Development Area, locating the facility in non-residential zones, non-conservation public lands, mines, first aid or fire stations, and landfills.** It is the Executive Director's opinion that, while it is acceptable for a plan amendment to note the need to demonstrate adherence to these siting criteria when individual facilities are proposed, there must also be a reasonable expectation when the amendment is approved that the proposed facilities can, in fact, be sited. Without this expectation, the amendment is meaningless because there can be no confidence that the proposed facility network is realistic. This does not require the same type of comprehensive analysis required at the time a specific development application is filed; rather, it is a planning review to ensure that there is a reasonable probability that qualifying sites exist.

This standard applies most directly to the two towers which will be built in the more conservation oriented areas of the Pinelands. These are Facilities #358 (Forest Area - Berkeley Township), which is discussed above, and #322 (Rural Development Area - Hamilton). The Commission staff, after carefully reviewing both sites, has concluded that they should be able to be sited in conformance with the criteria of N.J.A.C. 7:50-5.4(c)4.vi.

Since a reasonable expectation now exists that the proposed facilities can be sited in accordance with CMP standards, **the Executive Director finds that this standard has been met.**

9. **The plan must demonstrate or note the need to demonstrate when the actual siting of facilities is proposed that supporting structures (towers) are designed to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area. N.J.A.C. 7:50-5.4(c)2. A closely related CMP standard also requires that the plan must demonstrate or note the need to demonstrate when the actual siting of facilities is proposed that the supporting structure, if initially constructed at a height less than 200 feet, can be increased to 200 feet to accommodate other local communications facilities in the future. N.J.A.C. 7:50-5.4(c)5. Another closely related standard in N.J.A.C. 7:50-5.4(c)6. requires that the plan must provide for joint construction and use of the supporting structures (towers).** For purposes of this report, these three standards, which are intended to facilitate collocation of cellular and PCS local communications facilities, will be reviewed together.

The amendment addresses these collocation requirements in several ways. First, it identifies joint use of proposed facilities by the other providers that are parties to an approved plan. Second, it commits the companies to design and construct all new structures such that they can be increased in height to 200 feet if necessary to accommodate other communications providers. And third, it includes a policy describing how collocation arrangements will be handled for all licensed wireless providers in the Pinelands.

AT&T has made a reasonable effort to propose facilities in locations where more than one company can utilize them. Thirty-two of the 80 new facilities in the amendment will be at locations previously identified in the PCS plan and 14 others will be at sites in the Cellular plan. To ensure that these facility sharing opportunities are not adversely affected by virtue of inappropriate site selection, the Commission's staff will ensure that each plan participant, who is a signatory to either the PCS or the Cellular plan and is shown as a collocator, agrees with the site selected and proposed in a formal development application.

AT&T has also made a serious attempt to affirmatively address collocation issues affecting other wireless providers. The collocation policy included in the amendment duplicates that in the approved plans. The amendment sets forth a five-part approach, addressing equal access, market value pricing, design of the towers, access and utilities, and the procedures for making co-location arrangements. The Commission's technical consultant reviewed the policy as presented in the prior plans and concluded that it will provide an effective framework to facilitate collocation, thereby reducing the need for additional tower construction in the Pinelands to satisfy other providers. However, the consultant also stressed that this is a policy; it is not intended to describe detailed arrangements that are appropriate to include in specific contracts and agreements between wireless companies. Moreover, the Executive Director notes several CMP related provisions and technical limitations that affect collocation opportunities:

- a. The collocation policy does not allow companies who are not parties to this amendment or the earlier plans to construct new towers in the restricted areas of the



Pinelands unless they are authorized to act as the agent of the appropriate wireless service company or have incorporated the site into their own approved local communications facilities plan.

b. At sites identified in either this amendment or the earlier plans where collocation is proposed, any of the plan participants can take the lead (presuming the needs of all the collocators are served). In other words, being designated as the “lead” participant in either of the plans does not guarantee to a company the exclusive rights to build a tower according to its own schedule (although, if in fact a “lead” is making progress, the co-locators have indicated their willingness to defer to that provider).

c. To the extent that the search radiuses of the PCS participants are much smaller than those of the cellular plan participants, the latter will have to site fairly close to their approximate locations or the new structures might not technically meet PCS needs.

d. As this is an amendment of the earlier cellular and PCS plans and proposes to use many of the yet-to-be-built structures, access by all six of the plan participants to each structure is required. A site will only be approved if it meets all needs of each provider identified in either plan or this amendment as utilizing that site unless it is demonstrated that a single site is not feasible. To ensure that this position is understood, there is an agreement (Appendix G, which appears as an attachment to the approved PCS plan and which has been ratified by AT&T) among all six to site new facilities in accordance with the technical requirements of each carrier proposing to utilize a site. Development of a joint site will be done in accordance with Appendix G of the PCS plan.

The above provisions are clearly necessary for the plans to meet the letter and intent of the CMP regarding collocation.

Undoubtedly, the collocation policy will not resolve all potential issues or disagreements among the wireless companies. Indeed, it would be naive to think there will not be periodic disputes about the meaning of one of the policies or about a company’s actions in honoring the policy. In fact, there may be occasions where the Commission gets drawn into a dispute because the outcome could determine if an additional tower is or is not permitted in the Pinelands. In those instances, the Commission’s decision on allowing or not allowing a new tower will be based, in large part, on whether joint use of the existing structure is feasible.

Collocation for providers who are signatories to either of the approved plans is also an important issue. The Commission will require notification to all plan participants in either the PCS or the Cellular plan to ensure that joint use sites are appropriately planned. The Commission has no obligation to notify non-participants of such siting opportunities. The collocation policy requires that non-plan participants be accommodated at new sites, provided that the needs of the plan participants have been met. The non-plan participants should contact the “leads” for any new structure being built to register their desire to collocate

directly. In accordance with the provisions of N.J.A.C. 7:50-5.4(c)6.v., non-participants also have the right to seek an amendment to an approved plan to accommodate their needs.

The collocation policy proposed by the companies represents a workable framework to facilitate joint use of communication towers. **Therefore, the Executive Director concludes that these standards have been met.**

10. **If it reduces the number of facilities to be developed, shared service shall be part of the plan unless precluded by federal law. N.J.A.C. 7:50-5.4(c)6.** This standard was intended to encourage companies to consider single server coverage.

The cellular and PCS providers had previously stated their belief to Commission staff that federal regulations are intended to create competition among the providers and, therefore, do not, and should not, provide for the sharing of service. In its amendment, AT&T is moot on the regulatory issue but indicates that it “does not currently plan to have the Pinelands covered by another carrier’s frequency.” AT&T further states that it will revisit the question if there is a change in its policy.

At a meeting held in 1997, FCC staff verbally indicated to Commission staff that shared service may be inconsistent with FCC rules but that a petition could be made for such service on an individual site if it would make a critical difference in the total number of towers. A review of the amendment indicates that shared service would seem to make no difference in the number of proposed new towers, only perhaps in the number of antennas. It may make a difference in the future if a tower cannot accommodate any additional antennas. Thus, it is possible that this issue may be of concern to the Commission in the future, particularly as other providers seek to locate on the same structures. **Although shared service may become an issue in the future, the Executive Director concludes that this standard has been met.**

### **III. PUBLIC HEARING AND REVIEW PROCESS**

The public review period formally began on September 16, 2003 when the proposed amendment was distributed to the mayors of all Pinelands municipalities and the other plan participants and notice of the public hearing was sent to the clerks of all Pinelands municipalities and to interested parties. Shortly thereafter, the amendment was publicized on the Commission’s WEB page. Written comments from interested parties and the general public continued to be accepted by the Commission until November 10, 2003 (NOTE: the comment period was extended from an October 3, 2003 deadline after the staff determined that a second public hearing was warranted because of several changes to the amendment).

A public hearing on the proposed amendment was duly advertised, noticed, and held on Wednesday, October 3, 2003, beginning at 7:00 PM., in the Richard J. Sullivan Center (Pinelands Commission

offices), 15 Springfield Rd., New Lisbon, New Jersey. It was attended by approximately 15 people. Following is a summary of testimony aired at the hearing. Sprint produced a transcript of the proceedings which was submitted to the Commission on October 28, 2003.

Executive Director John C. Stokes called the hearing to order at 7:00 PM. Larry Liggett and Barry Brady of the Commission staff were also present. Mr. Stokes began by summarizing the public notice that had previously been circulated and then presented the tentative schedule for Commission consideration of the amendment. He indicated that, unless AT&T requested a delay, the public comment period would close on October 3, 2003; the Policy and Implementation Committee would review the staff recommendation on the amendment on October 24; and the full Commission would take up the matter at its meeting of November 7. After Mr. Liggett presented a brief, initial explanation of the major points of the amendment, Mr. Stokes invited the public to comment on the amendment. He allowed AT&T's representatives to address the matter first.

Ms. Judith Babinski, attorney for AT&T, stated that she would be submitting two minor changes to wording in the text in response to concerns expressed by Sprint. The changes involved the collocation agreement and would clarify that access to facilities for utility placement and maintenance would be unrestricted and that carriers would be able to submit applications for collocation at AT&T facilities to local permitting agencies themselves, rather than AT&T submitting the applications on their behalf.

Ms. Diane Constantine, attorney for Sprint, asked when Dr. Eisenstein's report would be made available to the public and whether the Commission would be extending the public comment period to allow for submission of comments on the report. Mr. Stokes responded that the report would be made public as soon as possible, but that, since it is a part of the staff's internal review documentation and not part of AT&T's application, the comment period would not be extended to allow for public reaction to it.

Ms. Victoria Famon, attorney for Nextel, requested a copy of the Executive Director's Report on the amendment when it is available and indicated that Nextel has no objection to AT&T's submission.

Mr. Theodore Korth, representing the Pinelands Preservation Alliance, expressed concerns about the length of time that AT&T foresees its proposed facility array will be current and, more generally, about the long-term impact on the Pinelands of successive approvals of siting plans for existing and future wireless services. He also inquired as to whether the proposed array has been determined by radiofrequency data to be necessary for coverage or if it also includes facilities for projected increases in capacity. Ms. Babinski responded that AT&T's plan covers a ten-year build-out program and that all facilities are needed for adequate signal coverage in the Pinelands.

There being no other public comment, Mr. Stokes adjourned the hearing at 7:17 PM.

A second public hearing was duly advertised, noticed and held at 4:00 PM on Monday, November 10, 2003 in order to accept comments on the revised version of the amendment which was submitted

on October 28, 2003. The revisions included a reduction in the number of proposed facilities from 83 to 80 and a change in the status of one facility in Maurice River Township from a “new tower” site to a collocation at a previously approved cellular site. The revised amendment was distributed to the mayors of all Pinelands municipalities and the other plan participants and notice of the public hearing was sent to the clerks of all Pinelands municipalities and to interested parties. Shortly thereafter, the amendment was publicized on the Commission’s WEB page. Written comments from interested parties and the general public continued to be accepted by the Commission until November 10, 2003. The hearing was again held in the Terrence D. Moore Room of the Richard J. Sullivan Center. Following is a summary of what transpired.

Dr. Barry J. Brady of the Commission staff called the hearing to order at 4:00 PM and summarized the notice procedure followed for the hearing and the schedule for Commission consideration of the amendment. Ms. Judith Babinski, Esq., representing AT&T, indicated that her client had no additional comment beyond that submitted in the earlier hearing. Mayor Robert DePetris of Woodland Township stated that his municipality had an interest in building the wireless facility corresponding to Facility #62 in the PCS plan and the AT&T amendment. He said that the Township’s main concern in promoting this facility was the safety and security of residents and visitors, given the spotty reception that wireless users there currently endure, but that the revenues that such a facility would provide was also an important consideration. There being no other comments, Dr. Brady adjourned the hearing at 4:10 PM.

In addition to the correspondence submitted by Alan Zublatt, Esq., on behalf of Sprint Spectrum, which is discussed in Section II.B.1. of this report, a total of five written comments was received from the public via mail, email and fax prior to the closing date for public comment. These comments are appended to this report as Appendix E.

Mr. Jay Perez, counsel for AT&T, proffered an email saying simply that every site counts.

Mr. Zublatt (in subsequent correspondence) and Mr. R. Drew Patterson, representing Cingular Wireless, both expressed an objection to the possible use of Distributed Antenna Systems (DAS) as an alternative to a conventional tower in visually sensitive areas of the Pinelands. Mr. Patterson stated that DAS is an untested system and that it is intended entirely for use in the interior of buildings. Both Mr. Zublatt and Mr. Patterson indicated that the signal range of DAS is very limited and therefore would leave areas uncovered, which would violate the companies’ FCC mandate to provide reasonable service to their license area. Mr Zublatt further states in his correspondence that the Commission intended to require the use of DAS in certain areas as a condition of the plan amendment. He felt that this requirement constitutes agency rulemaking in violation of the notice and adoption procedures in the Administrative Procedure Act (N.J.S.A. 52:14B-1 *et seq.*). He also felt that the alleged Commission requirement to use DAS exclusively in certain areas violates the federal Telecommunications Act, which, he maintains, reserves selection of applicable technologies solely to the FCC.

*EXECUTIVE DIRECTOR'S RESPONSE:* There is no intent on the part of the Commission whatsoever to make the use of DAS or any other particular technology a prerequisite for adoption of the AT&T amendment. AT&T and its affiliates clearly understand this to be the case. Thus, there is no rulemaking issue.

The Commission staff has been made aware of DAS as a possible alternative to tall monopoles and lattice towers in certain, very specific areas (e.g., the Pine Plains, the Forked River Mountains, special scenic corridors, wild and scenic rivers) and is required by the CMP to explore its potential where individual tower applications may not meet Pinelands regulations. This is discussed in Section II.b.2 of this report. The staff has not been presented with any dispositive evidence one way or the other as to its applicability in outdoor settings in the Pinelands and is merely seeking to research and establish whether it is feasible. While Mr. Patterson maintains that DAS can only be used indoors, the purveyor of the system has represented it to be entirely operational outdoors as well. The staff intends to discuss the matter, not only of DAS but also of other emerging stealth technologies and will, at an appropriate time (either in future rulemaking or during consideration of a required alternatives analysis as part of a waiver application), accept opinions, evidentiary data, and documentation from interested parties as to the most effective and least intrusive means to introduce wireless service into select areas of the Pinelands. For purposes of the review and consideration of AT&T's proposed amendment to the adopted siting plans, however, the point is moot. A plan or a plan amendment is basically required only to present a facility array that provides adequate service; to demonstrate that the array proposes to use as few facilities as possible and that they are mounted on existing structures whenever possible; and to ensure that the array meets the siting requirements specific to certain Management Areas. There is no requirement to commit to a particular signal propagation or facility mounting system as part of a certifiable plan or amendment.

In addition to the written comments from industry attorneys, Mr. Theodore Korth, representing the Pinelands Preservation Alliance, expressed a number of concerns about the adequacy of the AT&T amendment. He felt that the amendment failed to present a ten-year horizon for future facilities and that the unavailability of the Commission consultant's radiofrequency report during the public review period hampered submission of informed commentary. Related to this absence of the radiofrequency data is Mr. Korth's contention that the need for a number of facilities has not been demonstrated through proof of a service gap, specifically Facility #322, #358, and #372. He further felt that, because the need for Facility #358 has not been demonstrated, it cannot be said to avoid to the maximum extent practicable any direct line of sight to the Crossly Preserve, a low intensity recreational area.

*COMMISSION RESPONSE:* The public hearing affords interested parties an opportunity to critique the proposed plan and offer questions and recommendations that the staff can consider during its review. Dr. Eisenstein's analysis is a part of the staff review of the plan and, as such, would be inappropriate to complete before the public hearing. In fact, three facilities were eliminated as a result of the report and the staff's follow-up actions. Dr. Eisenstein looked at Facility #322 and #358 and found the need to be justified. Facility #372 has been deleted in favor of AT&T's use of the previously approved cellular Facility #21.

In discussions with AT&T's representatives, the staff understood that AT&T planned the build-out of its system within five years, if possible. While this may or may not occur, it was the company's intent. As referenced in Section II.b.4 above, however, AT&T qualified its estimate and indicated that Facility #324 and #374 were more likely to be built within a ten-year period.

#### **IV. CONCLUSION**

The amendment draws its approach and many of its specific provisions directly from the approved Cellular and PCS plans. It proposes a total of 80 new facilities and anticipates the construction of six additional towers in the Pinelands, of which four will be in the Regional Growth Area or a Pinelands Town.

As the foregoing analyses indicates, the amendment meets the standards of the CMP and can be recommended for Commission approval. However, such a recommendation does not mean that the AT&T amendment is perfect. New towers will be built in sensitive areas of the Pinelands. More visual clutter will detract from the vistas that characterize the Pinelands. Disagreements between the PCS and cellular providers, municipalities and the Commission regarding the final location of new towers are possible. Disagreements among wireless providers about the co-location policy are possible. Disagreements between the wireless providers and the Commission regarding the need for plan amendments are also possible. Finally, the amendment does not cover all theoretical wireless needs in the Pinelands. Yet, even considering these shortcomings, the amendment does establish a blueprint which, if successfully implemented, will provide for adequate communications service in the Pinelands and will result in less visual pollution than is likely in other parts of the State and the nation.

Even with approval of this amendment, individual facilities will have to be approved by the Commission in accordance with the provisions of N.J.A.C. 7:50-5.4 and other applicable CMP standards. In the review of such applications, the Commission will be guided by the hierarchical policy for siting individual wireless communications facilities, which is appended to this report as Appendix D.

**Therefore, the Executive Director recommends that the Pinelands Commission approve the "Amendment to the Comprehensive Plans for Cellular and PCS Communications Service to Include AT&T Wireless of Philadelphia, LLC and its affiliates for Wireless Communications Facilities in the Pinelands." The Executive Director also recommends that the Commission expressly affirm that the review of the development applications for individual sites needs to be done in accordance with this Report, including the appendices, in order to be consistent with CMP requirements.**

In the Matter of the



**Amendment to the Comprehensive Plans for Cellular and Personal  
Communications Service to include AT&T Wireless  
PCS of Philadelphia, LLC and its affiliates for Wireless  
Communications Facilities in the Pinelands**

**[In Conformance with N.J.A.C. 7:50-5.4]**

Submitted by: AT&T Wireless PCS of Philadelphia, LLC  
And its Affiliates; Prepared by Judith A. Babinski, Esq.

Dated: 10/28/03

**In the Matter of the**

**Amendment to the Comprehensive Plans for Cellular and Personal  
Communications Service to include AT&T Wireless  
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**[In Conformance with N.J.A.C. 7:50-5.4]**

Submitted by: AT&T Wireless PCS of Philadelphia, LLC  
And its Affiliates; Prepared by Judith A. Babinski, Esq.

Dated: 10/28/03



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## I. PLAN INTRODUCTION

In 1995, the Pinelands Commission amended N.J.A.C. 7:50-5.4 to permit local communications facilities to exceed the 35 foot height limit if a Comprehensive Plan for the entire Pinelands was prepared and approved by the Pinelands Commission. The regulations recognized that : (i) local communications systems rely on a network of facilities to receive and transmit radio signals; and (ii) the location of each cell within this network has an effect on the other locations of other cells; and (iii) a well designed and integrated network can avoid the proliferation of towers throughout the entire Pinelands Area. Comprehensive Plans for both cellular and personal communications services (PCS) for wireless communications facilities were adopted by the Pinelands Commission. At the time of submissions and adoption of the Comprehensive Plans, AT&T Wireless PCS of Philadelphia and its affiliates (“AT&T Wireless”) were not actively developing their wireless communications system in the Pinelands and did not participate in the adoption of the Comprehensive Plans. AT&T Wireless is now building out its wireless communications system in the Pinelands and submits the within amendment to the Cellular and PCS Comprehensive Plans (“Amended Plan”). This Amended Plan is not proposed to supercede the Comprehensive Plans but is in addition to and incorporates all documents that have been approved by the Pinelands Commission in regard to the Comprehensive Plans.

AT&T Wireless has attempted to design its network utilizing existing and approved structures as requested by the Pinelands Commission with a minimum number of proposed new structures. It is a concise and accurate representation of the facilities necessary for the provision of adequate reliable wireless service by AT&T Wireless throughout the planned build-out area in the Pinelands during the next five (5) to ten (10) years.

The Amended Plan, as prepared and submitted, includes:

- ?? Description of the joint use of facilities by AT&T Wireless.
- ?? Map showing the locations of Pineland Commission approved facilities to be utilized by AT&T Wireless and AT&T Wireless' proposed new sites. (Attached Map)
- ?? Spreadsheet identifying AT&T Wireless Proposed Use of Pineland Facilities. (Attached Schedule A)

AT&T Wireless presents this Amended Plan as part of the required process to allow for the provision and expansion of AT&T Wireless' service within the Pinelands. Such service is required pursuant to AT&T Wireless' FCC license and by its customers. Currently, a significant number of wireless customers reside in the Pinelands and additional customers travel through the region each day. The customers use wireless service for both convenience and out of necessity. As the price of wireless communication service continues to decline, more and more people use wireless services for accessibility. More importantly, safety and security are the top reasons listed by customers for purchasing a phone. If service does not exist, calls whether for convenience or necessity, do not go through. The New Jersey Pinelands Commission has

jurisdiction over one million (1,000,000) acres of property. Currently, much of this area is not covered by AT&T Wireless thereby compromising the safety and security of those customers of AT&T Wireless living in or traveling through the Pinelands area. AT&T Wireless believes the Amended Plan strikes a balance between the growing demand for AT&T Wireless services and the continued protection and public enjoyment of one of New Jersey's greatest treasures.

The Amended Plan is presented in a form that will facilitate ease of use by the Pinelands Commission staff, emergency service providers, and any future and/or alternate wireless service providers.

## **II. COMPREHENSIVE MAP SUMMARY**

### **A. AT&T WIRELESS MAP SUMMARY**

The Pinelands Comprehensive Management Plan (CMP) requires any communication company that proposes a communication facility outside of the “unrestricted” area of the Pinelands to prepare a Comprehensive Plan for all of the existing and proposed facilities within the Pinelands in accordance with Section 7:50-5.4(c)6 of the Pinelands CMP. Therefore, AT&T Wireless is submitting this Amendment to the Comprehensive Plan, in accordance with Section 7:50-5.4(c)6 of the Pinelands CMP. This Amended Plan outlines AT&T Wireless' development plan for communication facilities within the Pinelands.

The Pinelands CMP effectively divides the New Jersey Pinelands into three regions governing the development of communication facilities. The first region, covering the Regional Growth and Pinelands Town Areas, is, effectively “unrestricted.” This region allows other carriers and AT&T Wireless to build facilities with associated structures to any height necessary to meet radio frequency design requirements, with no defined height limit or no limit on the number of structures in the region.

The second region, covering the Agricultural Production Area, Regional Development Area, and Select Villages, is defined as “height restricted.” This region requires the carriers and AT&T Wireless to meet certain siting criteria for proposed facilities, verify that no existing suitable structure exists within the immediate vicinity of the proposed facility, as well as submit a “Comprehensive Plan” of all existing and proposed facilities within the Pinelands, for approval by the Commission.

The third region, covering the Preservation Area, Forest Area, Special Agricultural Production Area, and Select Villages, is defined as “height and least number of structures restricted.” This region requires that the above mentioned siting criteria be met, that the other carriers and AT&T Wireless demonstrate that the least number of structures in this region is proposed, and that a “Comprehensive Plan of all existing and proposed facilities within the Pinelands be submitted for approval by the Commission.

The facilities shown on the AT&T Wireless Site Classification Map have been divided into four (4) groups having the following designations:

Group 1 denoted by red circles on the map, representing existing approved cellular communication facilities.

Group 2 denoted by blue circles on the map, represents existing approved PCS communication facilities.

Group 3 denoted by green squares on the map, represents existing structures.

Group 4 denoted by brown diamonds on the map, represents raw land sites.

**B. EXISTING PCS FACILITIES IN WHICH AT&T WIRELESS PROPOSES TO LOCATE:**

PCS Plan

**Facility 007:**

This facility is located in Atlantic County (Hamilton Township). This facility matches Facility 17 in the comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 010:**

This facility is located in Atlantic County (Hammonton Township). Facility 13 in the Comprehensive Cellular Plan is in the vicinity of this facility. It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 011:**

This facility is located in Atlantic County (Hamilton Township). This facility matches Facility 34 in the Comprehensive Cellular Plan. It is in the “height and least number of structure restricted” area and is required for coverage. The original proposal by both Comprehensive Plans contemplated the use of an existing lattice tower. That tower is not approved by the Pinelands Commission. Therefore, AT&T Wireless proposes the use of a fire observation tower which would require a rebuild or replacement of the fire tower due to structural issues. The use of the fire tower is contingent upon the State of New Jersey (“State”) releasing a bid, AT&T Wireless being the successful bidder and the State entering into an agreement with AT&T Wireless. If all of the above does not occur, then a new tower will be proposed at the site of an existing municipal fire company.

PCS Plan

**Facility 013**

This facility is located in Atlantic County (Folsom Borough). It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 014:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height and least number of structure restricted” area and is required for coverage.

This facility is proposed in the area of the Great Egg Harbor River, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

PCS Plan

**Facility 015:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height and least number of structure restricted” area and is required for coverage.

This facility is proposed in the area of the Great Egg Harbor River, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

PCS Plan

**Facility 018:**

This facility is located in Burlington County (Pemberton Township). This facility matches with facility 39 in the Comprehensive Plan. It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 019:**

This facility is located in Burlington County (Southampton Township). It is in the “height and least number of structure restricted” area and is required for coverage.

PCS Plan

**Facility 022:**

This facility is located in Burlington County (Woodland Township). The facility matches Facility 41 in the comprehensive Cellular Plan. Notwithstanding the above, there is a County owned lattice tower also in the vicinity which may be used for coverage in lieu of the above. Both sites are located in the “height and least number of structures restricted” area and one of the above is required for coverage.

PCS Plan

**Facility 023:**

This facility is located in Burlington County (Shamong Township). This facility matches Facility 11 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

PCS Plan

**Facility 024:**

This facility is located in Atlantic County (Mullica Township). It is in the “height and least number of structures restricted” area is required for coverage.

PCS Plan

**Facility 027:**

This facility is located in Burlington County (Medford Township). This facility matches with Facility 8 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 028:**

This facility is located in Burlington County (Evesham Township). This facility matches with Facility 9 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 029:**

This facility is located in Burlington County (Washington Township). This facility matches with Facility 25 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

PCS Plan

**Facility 031:**

This facility is located in Atlantic County (Mullica Township). This facility matches with Facility 16 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

This facility is proposed in the area of the Mullica River, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

PCS Plan

**Facility 032:**

This facility is located in Atlantic County (Weymouth Township). This facility matches with Facility 35 in the Comprehensive Cellular Plan. It is in the “heights and least number of structures restricted” area and is required for coverage.

PCS Plan

**Facility 033:**

This facility is located in Ocean County (Manchester Township). This facility matches with Facility 3 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 034:**

This facility is located in Ocean County (Barnegat Township). This facility matches with Facility 4 in the Comprehensive Cellular Plan. It is in “unrestricted” area and is required for coverage.

PCS Plan

**Facility 038:**

This facility is located in Burlington County (Pemberton Township). This facility matches with Facility 2 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

PCS Plan

**Facility 040:**

This facility is located in Atlantic County (Estell Manor Township). It is in the “height and least number of structures restricted” area and is required for coverage.

This facility is proposed in the area of the Jackson Creek, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

PCS Plan

**Facility 041:**

This facility is located in Burlington County (Tabernacle Township). This facility matches with Facility 6 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

PCS Plan

**Facility 042:**

This facility is located in Burlington County (Bass River Township). It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 043:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 047:**

This facility is located in Camden County (Waterford Township). It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 050:**

This facility is located in Camden County (Winslow Township). It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 052:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height restricted” area and is required for coverage.



PCS Plan

**Facility 053:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height restricted” area and is required for coverage.

PCS Plan

**Facility 055:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 058:**

This facility is located in Ocean County (Barnegat Township). It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 061:**

This facility is located in Ocean County (Barnegat Township). It is in the “unrestricted” area and is required for coverage.

PCS Plan

**Facility 062:**

This facility is located in Burlington County (Woodland Township). It is in the “height and least number of structures restricted” area and is required for coverage.

This facility is proposed in the area of the Pine Plains, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

PCS Plan

**Facility 065:**

This facility is located in Ocean County (Little Egg Harbor Township). It is in the “height and least number structures restricted” area and is required for coverage.

**C. EXISTING APPROVED CELLULAR FACILITIES ON WHICH  
AT&T WIRELESS PROPOSES TO LOCATE**

Cell Plan

**Facility 301:**

This facility is located in Atlantic County (Buena Vista Township). This facility matches with Facility 20 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

Cell Plan

**Facility 310:**

This facility is located in Atlantic County (Buena Vista Township). This facility matches with Facility 14 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

This facility is proposed in the area of the Great Egg Harbor River, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

Cell Plan

**Facility 320:**

This facility is located in Atlantic County (Hammonton Township). This facility matches with Facility 53 in the Comprehensive Cellular Plan. It is in the “unrestricted” and is required for coverage.

Cell Plan

**Facility 326:**

This facility is located in Burlington County (North Hanover Township). This facility matches with Facility 38 in the Comprehensive Cellular Plan. It is in the Federal or Military Facility and is required for coverage.

Cell Plan

**Facility 331:**

This facility is located in Burlington County (Tabernacle Township). This facility matches with Facility 26 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

Cell Plan

**Facility 338:**

This facility is located in Burlington County (Evesham Township). This facility matches with Facility 44 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

Cell Plan

**Facility 350:**

This facility is located in Cape May County (Woodbine Township). This facility matches with Facility 23 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

Cell Plan

**Facility 352:**

This facility is located in Cape May County (Upper Township). This facility matches with Facility 51 in the Comprehensive Cellular Plan. It is in the “height restrictive” area and is required for coverage.

Cell Plan

**Facility 354:**

This facility is located in Cumberland County (Maurice River Township). This facility matches with Facility 22 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

This facility is proposed in the area of the Tuckahoe River, one of the special areas that the Pinelands Commission regulations seek to protect from visual intrusions. This facility does not appear to be one that can be relocated nor does it deem likely to be relocated on an existing structure. AT&T Wireless recognizes its obligation to minimize the visual impact and will pursue locations and design features to mitigate the impact to the maximum extent practicable.

Cell Plan

**Facility 356:**

This facility is located in Gloucester County (Monroe Township). This facility matches with Facility 15 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

Cell Plan

**Facility 359:**

This facility is located in Ocean County (Jackson Township). This facility matches with Facility 36 in the comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

Cell Plan

**Facility 360:**

This facility is located in Ocean County (Manchester Township). This facility matches with Facility 1 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

Cell Plan

**Facility 362:**

This facility is located in Ocean County (Jackson Township). This facility matches with Facility 37 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

Cell Plan

**Facility 372:**

This facility is located in Cumberland County (Maurice River). This facility matches with Facility 21 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

**D. EXISTING STRUCTURES ON WHICH AT&T WIRELESS PROPOSES TO LOCATE**

**Facility 300:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the “unrestricted” area and is required for coverage.

**Facility 302:**

This facility is located in Atlantic County (Hamilton Township). It is in the “unrestricted” area and is required for coverage.

**Facility 303:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the “unrestricted” area and is required for coverage.

**Facility 304:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the Federal or Military Facility and is required for coverage.

**Facility 305:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the “unrestricted” area and is required for coverage.

**Facility 307:**

This facility is located in Atlantic County (Egg Harbor Township). It is in the “unrestricted” area and is required for coverage.

**Facility 309:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height and least number of structures restricted” area and is required for coverage.

**Facility 311:**

This facility is located in Atlantic County (Mullica Township). It is in the “height and least number of structures restricted” area and is required for coverage.

**Facility 315:**

This facility is located in Atlantic County (Galloway Township). It is in the “unrestricted” area and is required for coverage.

**Facility 324:**

This facility is located in Atlantic County (Folsom Township). It is in the “height and least number of structures restricted” area and is required for coverage.

**Facility 325:**

This facility is located in Atlantic County (Galloway Township). It is in the “unrestricted” area and is required for coverage.

**Facility 327:**

This facility is located in Burlington County (Tabernacle Township). It is in the “unrestricted” area and is required for coverage.

**Facility 328:**

This facility is located in Burlington County (Pemberton). It is in the “unrestricted” area and is required for service.

**Facility 330:**

This facility is located in Burlington County (Medford Township). It is in the “unrestricted” area and is required for coverage.

**Facility 339:**

This facility is located in Burlington County (Bass River Township). It is in the “height and least number of structures restricted” area and is required for coverage.

**Facility 346:**

This facility is located in Camden County (Winslow Township). It is in the “height and least number of structures restricted” area and is required for coverage

**Facility 347:**

This facility is located in Camden County (Winslow Township). It is in the “height and least number of structures restricted” area and is required for service.

**Facility 353:**

This facility is located in Cumberland County (Maurice River Township). It is in the “unrestricted” area and is required for coverage.

**Facility 355:**

This facility is located in Gloucester County (Monroe Township). It is in the “unrestricted” area and is required for coverage.

**Facility 357:**

This facility is located in Ocean County (Berkeley Township). It is in the “height and least number of structures restricted” area and is required for coverage..

**Facility 364:**

This facility is located in Burlington County (Tabernacle Township). It is in “the height restricted” area and is required for coverage.

**Facility 367:**

This facility is located in Ocean County (Lakehurst Township). It is in the “unrestricted” area and is required for coverage.

**Facility 368**

This facility is located in Ocean County ( South Toms River Borough). It is in the “unrestricted” area and is required for coverage.

**Facility 370:**

This facility is located in Atlantic County (Egg Harbor City). It is in the “unrestricted” area and is required for coverage.

**Facility 371:**

This facility is located in Atlantic County (Egg Harbor Township). It is located in the “unrestricted” area and is required for coverage.

**Facility 373:**

This facility is located in Atlantic County (Folsom River). It is located in the “height and least number of structures restricted” area and is required for coverage.

**Facility 374:**

This facility is located in Gloucester County (Monroe Township). It is in the “height restricted” area and is required for coverage.

**Facility 375:**

This facility is located in Ocean County (Lacey Township). It is in the “height and least number of structures restricted” area and is required for coverage.

**E. RAW LAND SITES PROPOSED TO BE CONSTRUCTED BY AT&T WIRELESS**

**Any sites built by AT&T Wireless shall be constructed for co-location. AT&T Wireless shall use its best efforts in working with other wireless communication carriers so that other carriers can co-locate on AT&T Wireless structures.**

**Facility 322:**

This facility is located in Atlantic County (Hamilton Township). It is in the “height restricted” area and is required for coverage.

**Facility 323:**

This facility is located in Atlantic County (Galloway Township). It is in the “unrestricted” area and is required for coverage.

**Facility 334:**

This facility is located in Burlington County (Pemberton Township) on municipal property. It is in the “unrestricted” area and is required for coverage.

**Facility 336:**

This facility is located in Burlington County (Pemberton Township). It is in the “unrestricted” area and is required for coverage.

**Facility 358:**

This facility is located in Ocean County (Berkeley Township). It is in the “height and least number restricted” area and is required for coverage.

**Facility 363:**

This facility is located in Atlantic County (Mullica Township). It is in the “unrestricted” area and is required for coverage.

**F. AT&T WIRELESS SITES ALREADY ON AIR**

On Air Site

**Facility 001**

This facility is located in Gloucester County (Monroe County). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 002:**

This facility is located in Camden County (Winslow Township). It is in the “height restricted” area and is required for coverage.

On Air Site

**Facility 020:**

This facility is located in Burlington County (Woodland Township). It is in the “height and least number of restricted” area and is required for coverage.



On Air Site

**Facility 030:**

This facility is located in Atlantic County (Hammonton Township). This facility matches with Facility 12 in the Comprehensive Cellular Plan. It is in the “height and least number of structure restricted” area and is required for coverage.

On Air Site

**Facility 035:**

This facility is located in Ocean County ( Barnegat Township). This facility matched with Facility 5 in the Cellular Comprehensive Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

On Air Site

**Facility 039:**

This facility is located in Ocean County (Manchester Township). This facility matches with Facility 24 in the Comprehensive Cellular Plan. It is in “unrestricted” area and is required for coverage.

On Air Site

**Facility 048:**

This facility is located in Atlantic County (Hammonton Township). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 059:**

This facility is located in Ocean County (Stafford Township). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 308:**

This facility is located in Atlantic County (Hamilton Township). This facility matches with Facility 50 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 313:**

This facility is located in Atlantic County (Hamilton Township). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 332:**

This facility is located in Burlington County (Woodland Township). This facility matches with Facility 7 in the Comprehensive Cellular Plan. It is in the “height and least number of structures restricted” area and is required for coverage.

On Air Site

**Facility 337:**

This facility is located in Burlington County (Medford Township). This facility matches with Facility 28 in the Comprehensive Cellular Plan. It is in the “height restricted” area and is required for coverage.

On Air Site

**Facility 340:**

This facility is located in Burlington County (Bass River Township). It is in the “height and least number of structure restricted” area and is required for coverage.

On Air Site

**Facility 343:**

This facility is located in Camden County (Berlin Township). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 344:**

This facility is located in Camden County (Waterford Township). This facility matches with Facility 29 in the Comprehensive Cellular Plan. It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 348:**

This facility is located in Camden County (Winslow Township). It is in the “unrestricted” area and is required for coverage.

On Air Site

**Facility 366:**

This facility is located in Camden County (Chesilhurst Borough). It is in the “unrestricted” area and is required for coverage.

## **G. SITES NOT INCLUDED IN PROPOSED OR ADOPTED PLANS**

### **Facility 21:**

This facility is located in Burlington County ( Pemberton ) and is in a problem area. AT&T Wireless has deleted this site from its plan, however, this site is needed by AT&T Wireless and other carriers. It is located in the “height and least number of structures restricted” area and is required for coverage.

## **III. SIGNAL PROPAGATION MAP**

This Amended Plan includes a signal propagation map which demonstrates that AT&T Wireless has designed its network to utilize the least number of facilities in the Pinelands . Please note that on the propagation map a few of the numbers include the letter “c”. The “c” represents corrected. The latitudes and longitudes used by AT&T Wireless were the original latitudes and longitudes utilized on the Comprehensive Plans. Since the adoption of the Comprehensive Plans many sites have been built. A few of the sites were built slightly off of the original latitude and longitude designation. Thus AT&T Wireless used the letter c to show the exact location of the structures which deviate from the original latitudes and longitudes.

Also, the propagation map distinguishes between -85dBm and -95dBm. Residential coverage is identified at -85dBm while Outdoor coverage is identifies as -95dBm. Please note that -85dBm has a stronger signal strength than -95dBm. When a signal passes through a any type of material it loses strength. If a -85dBm signal passes through a window or wall the remaining signal strength would be in the range of -93dBm to -95dBm, thus the customer would be able to receive or make a call in his/her home. Whereas, if -95dBm were to pass through a window or wall the coverage in a building would be -103dBm to -105dBm and the likelihood of receiving or initiating a call would be difficult. Signal strengths of -103dBm and higher are very weak and service would be unreliable. AT&T Wireless identified -85dBm as Residential because the signal could be received in a home whereas -95dBm is generally acceptable coverage for the outdoors.

## **IV. CODE COMPLIANCE**

PLAN COMPLIANCE WITH CODE – N.J.A.C. 7:50-5.4

Pursuant to N.J.A.C. 7-50 - 5.4, the plan shall include:

1. Five (5) and ten (10) year horizons (N.J.A.C. 7:50-5.4 (c) (6))

The Amended Plan, as submitted, does include such horizons as outlined in AT&T Wireless Map Summary Plan. It is AT&T Wireless' intent to develop all sites as quickly as possible, with the majority of the site being built within the next five (5) years however this is AT&T Wireless five (5) to ten (10 ) year projection of required sites.

2. The approximate location of all proposed facilities (N.J.A.C. 7:50-5.4 (c) (6))

The Amended Plan, as submitted, does include PCS and Cell Plan numbers as well as latitude and longitude. (See attached Spread Sheet identified at Exhibit A).

3. Demonstration that the facilities to be located in the Preservation Area District, Forest Area, Special Agricultural Production Area and certain Pinelands Villages are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands that may influence the number and location of facilities needed within the Pinelands [N.J.A.C. 7:505.4 (c) (6)].

AT&T Wireless worked to determine the least number of towers necessary within the Preservation Area District, the Forest Area, the Special Agricultural Production Area and Pinelands Villages. AT&T Wireless designed its network in the Pinelands region “from the outside in” as requested by the Pinelands Commission. That is, AT&T Wireless attempted to design its networks so as to provide coverage for as much of the Pinelands as possible from facilities located outside the Pinelands and only designated facilities within the Pinelands to the extent necessary to complete the network and provide adequate service to the Pinelands.

This Amended Plan represents a network that when completed should provide adequate coverage for those areas within the Pinelands included in the AT&T Wireless planned coverage area while keeping the number of new towers in the most sensitive zones of the Pinelands to a minimum. In summary, the Commission can be assured that the least number criteria has been met. AT&T Wireless will not exceed four (4) new towers within the Regional Growth Area and Pinelands Town Areas, and one (1) in the Rural Development Area, and one (1) in the Forest Management, Preservation and Pineland Village Areas, and one (1) in the Federal or Military Facilities.

4. Demonstration of need for the facility to serve the local communication needs of the Pinelands, including those related to public, health and safety, as well as demonstration of the need to locate the facility in the Pinelands in order to provide adequate service to meet those needs [N.J.A.C. 7:50-5.4 (c) (1)]

The proposed facilities are needed to provide adequate coverage to the Pinelands pursuant to AT&T Wireless' FCC licenses, AT&T Wireless' current coverage plan and customer requirements. The Telecommunications Act of 1996 (“TCA”) is the federal law which governs the regulation of the placement, construction, and modification of personal wireless service

facilities by any State or local government. Specifically, the TCA, 47 U.S.C. § 332(c)(7)(B) provides in part:

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof ;

(ii) shall not unreasonably discriminate among providers of functionally equivalent services; and

(iii) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(iv) Any State or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(v) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(vi) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(vii) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The TCA further provides at § 253(a):

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

The Superior, Appellate and Supreme Courts of New Jersey recognize the need for these types of facilities. The New Jersey Supreme Court has recognized the need for wireless service in its recent decision, Smart SMR of New York Inc. d/b/a Nextel Communications vs. Borough of Fair Lawn Board of Adjustment. The Court noted that “[I]n today's world, prompt and reliable information is essential to the public welfare....” To this end, the Court was satisfied that a proposed “facility, including the monopole, is a necessary part of an increasingly public service. In fact, the Court noted that a Federal Commission (FCC) license will suffice to establish that the use serves the general welfare. Regarding placement of such facilities, the Court, in agreement with the telecommunications Act of 1996, stated that municipal boards may not altogether prohibit (mobile communication facilities) from being constructed within the municipality.” It went on to say that its “goal in making these suggestions is to facilitate the decision of cases involving the location of telecommunication facilities“ (emphasis added).

Further, although enhanced and beneficial to everyone, the fact that wireless service is utilized by Emergency Medical Services, Police and Firefighters greatly increases this need. In fact, the Federal Government has recognized the need for such communications and has made wireless communications a priority as evidenced by the enactment of the Telecommunications Act of 1996.

5. Demonstration that the antenna utilizes an existing communications or other suitable structure to the extent practicable. [N.J.A.C. 7:50-5.4 (e) (3)]

Wherever possible, AT&T Wireless has utilized existing structures or sought to site at locations approved under the PCS and CP Plans where the CPs and PCS' carriers will likely be constructing structures in the future. AT&T Wireless will further address the use of existing structures at the time that an application for site approval is made to the Pinelands Commission.

It shall be noted that existing structures are not considered practicable for use until and unless:

- ?? There is an agreement in place to use the structure with the land owner and/or the structure owner;
- ?? The property meets the Pinelands Site criteria for the placement of AT&T Wireless' equipment shelter; and
- ?? Access and utilities to the site are available.

To ensure that existing structures were indeed utilized to the greatest extent possible, AT&T Wireless conducted extensive field research in the vicinity of each proposed location and reviewed the Location of Existing CP and PCS Facility Structures and the lists of existing structures in the Pinelands. AT&T Wireless reviewed the lists with respect to identifying any existing structures that could be used to site its facilities. Where such structures were identified, AT&T Wireless designed its network so as to make use of such existing structures.

It should be noted that all information research about existing structures not developed during AT&T Wireless field research was provided to AT&T Wireless by outside sources and, therefore, AT&T Wireless does not certify its accuracy or completeness. In the future, any existing structure found to be in close proximity to a proposed facility at the time that an application is made to the Pinelands will be evaluated to determine if such structure might meet the technical needs of the proposed service area and AT&T Wireless will make every effort to use any additional existing structures identified that meet the technical network requirements.

6. Demonstration, or indication of the need to demonstrate when the actual siting of facilities is proposed, that the supporting structure is designed to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area. [N.J.A.C. 7:50-5.4, (2)]

AT&T Wireless acknowledges that all new structures will be constructed so that they can be extended, if need be, to a height of 200 feet for the purposes of co-location. Particular design criteria will be addressed at the time application for a Certificate of Filing is made.

7. Demonstration, or indication of the need to demonstrate when the actual siting of facilities is proposed, that, if an existing communications or other suitable structure cannot be utilized, the antennas and any necessary supporting structure is located such that it meets all siting criteria per the code. [N.J.A.C. 7-50-5.4 (c) (4)]

AT&T Wireless acknowledges that compliance with siting criteria as outlined in the Code is required. Such criteria will be addressed for each individual facility at the time that an application for site approval is made to the Pinelands Commission.

In addition, AT&T Wireless further certify that any facilities which may have a visual impact as outlined in NJAC. 7:50-5.4 (c)(4) will be designed to minimize or avoid such impact to the maximum extent practicable.

8. Demonstration, or indication of the need to demonstrate when the actual siting of facilities is proposed, that the antenna and any supporting structure does not exceed 200 feet in height, but, if of a lesser height, shall be designed so that the height can be increased to 200 feet if necessary to accommodate other local communications facilities in the future [N.J.A.C. 7:50-5.4 (c) 5]

AT&T Wireless acknowledges that all new structures will be designed and constructed so that they can be extended, if need be, to a height of 200 feet for the purposes of co-location. Particular design criteria will be addressed at the time of a Certificate of Filing is made.

9. Demonstration that, where more than one entity is providing the same type of service or has a franchise for the area in questions, the Amended Plan shall be agreed to and submitted by all such providers where feasible, and shall provide for the joint construction and use of the least number of facilities that will provide adequate service by all providers for the local communication system intended. Shared service between entities, unless precluded by Federal law or regulation, shall be part of the Amended Plan when such shared services will reduce the number of facilities to be otherwise developed [N.J.A.C. 7:50-5.4 (c) 6]

The Amended Plan signatory is a current CP and PCS provider, providing the same type of service (fully duplexed voice and data service in the 800-850; and 1850-1990 range), licensed by the Federal Communications Commission (FCC) to provide such service throughout southern New Jersey including the New Jersey Pinelands, and is ready, willing and able to participate in preparation of such an Amended Plan. The Amended Plan, as submitted, provides for the joint construction and use of the least number of facilities that will provide adequate service under the current build out plan of the signatory provider.

## **V. PUBLIC NEED**

Pursuant to N.J.A.C. 7:50-5.4 (c)(1), AT&T Wireless must demonstrate the need for the facility to serve the local communication needs of the Pinelands, including those related to public health and safety. The proposed facilities are needed to provide adequate coverage to the Pinelands pursuant to AT&T Wireless' FCC licenses, AT&T Wireless' current coverage plan and customer requirements. In fact, the Federal Government has made wireless communications a priority as evidenced by the enactment of the Telecommunications Act of 1996. Reliable coverage is necessary for calls of convenience and, more importantly, calls of necessity. Over 57 million 9-1-1 calls are made each year in the US from wireless phones. This benefits not only those who have phones, but also other individuals who may be in need and benefit from a wireless customer making a call for them. Calls are also made to other "Emergency Services" such as Coast Guard Boater's Assistance, Assistance on Major State Roadways, and the State Police. Wireless service has also been utilized during disaster situations such as the Edison gas leak, Hurricanes Fran, Andrew, and others; San Francisco Earthquake; the Oklahoma Bombing; and the World Trade Center tragedy. Wireless service is widely used by Emergency Medical Services, Police, and Firefighters.

## **VI. CO-LOCATION**

In an effort to work with the communities of the New Jersey Pinelands to minimize the impact of wireless facilities, AT&T Wireless has made a commitment to promote co-location. To the extent possible, AT&T Wireless will design and make all of its owned future



structures available for use by other FCC-licensed wireless providers (WPs) in accordance with the policies set for in this Section.

As a threshold matter, AT&T Wireless, including the Commission, recognize that a lessee can grant no more rights than it has under a lease. The AT&T Wireless' co-location policies under this Amended Plan are as follows, subject always to this basic limiting principle.

#### **A. Equal Access**

1. Space on existing and proposed tower structures will be made available to other WPs in accordance with the process described.
2. Request for co-location will be considered in a timely manner.
3. No reciprocal agreements (e.g. *quid pro quo* access to another structure owned by the party requesting co-location) will be required to make an application eligible for co-location.
4. To facilitate initial and future co-locations, master agreements are encouraged.
5. With respect to proposed tower structures, AT&T Wireless will attempt to ensure that the lease allows for co-location by proposing and advocating lease agreement language that permits subleasing. Where the lessor does not permit subleasing, AT&T Wireless agrees to be supportive of potential users in their attempts to work with the lessor.
6. Notice of construction of new structures will be provided in accordance with any relevant Pinelands Comprehensive Management Plan regulations.

#### **B. Market Value Pricing**

Co-location will be provided at fair market value rental rates. These rates will take into account rates in comparable leases for similar sites, and any site development costs incurred by the structure owner/operator during the site design, approvals, construction and maintenance stages for the site in question.

### **C. Design of Tower Structures**

Tower structures will be designed to allow sufficient room for cable, antennas and equipment of future co-locators and to support the anticipated weight and wind load of their future additional facilities. Space for ground level maintenance, equipment shelter, and switching facilities will be reserved for future co-locators to the extent practical.

The tower structure will be designed to allow antenna attachment and independent maintenance at various heights.

The tower structure will be designed so as to easily expandable to a height of 200 feet above ground level.

Relocation of existing antennas on a tower structure to accommodate a new co-locator will be permitted, if the new location(s) meet the existing co-locator's needs and the cost of the relocation is borne by the new co-locator. The relocation plans and schedules must be coordinated with AT&T Wireless and in compliance with the lease agreement.

If any modification (lease, structure, ground space, etc.) are required for an existing structure, AT&T Wireless will attempt, at the time such modification is made, to make the site and structure suitable for co-location, both within the existing lease and otherwise.

### **D. Access and Utilities**

Each co-locator will be responsible for independently obtaining and maintaining their respective required electric and telephone utilities services so long as the underlying ground lease allows for same. The tower structure owner or first tower user shall inform the telephone and electric companies, at the time of its utility installation, of the fact that the site may be occupied by other users in the future.

Co-locators, if allowed by the underlying ground lease, will have: (1) a non-exclusive right of access for ingress and egress, seven (7) days a week, twenty four (24) hours a day, for the installation and maintenance of utility wires, poles, cables, conduits and pipes either over or underground, extending from the most appropriate public right of way to the tower structure area, and (2) access privileges to the tower facility area for all authorized personnel of co-locators for the maintenance and operation of their respective facilities.

## **E. Co-location Procedures**

### 1. Application

When a WP has identified a need for service in an area where there is an existing or proposed AT&T Wireless tower structure, the WP may contact AT&T Wireless and request the exact location, geographical coordinates, heights and available ground space within the structure lease area, etc. Contact information will be provided to the Pinelands Commission when determined.

If the WP decides to pursue co-location on the structure, a formal application that contains information about the WPs radio frequency requirements, antenna specification, equipment shelter dimensions, height of antennas, etc. will be provided to AT&T Wireless. The application will be reviewed by AT&T Wireless for any potential radio frequency interference issues, tower structural conflicts, electrical concerns, security or access issues, space availability, and lease term and regulatory compliance.

### 2. Approval

The application will be approved if there are no service disruptions or service affecting interference with existing signals, site operations or lease terms, regulatory conditions and lack of structural analysis failure issues. Existing site restrictions and technical incompatibility may not always permit co-location.

Should a structural analysis prove that the tower structure will not hold the additional antennas and equipment requested, the WP may investigate with AT&T Wireless the possibility/feasibility and cost of modifying the tower structure or extending the height up to 200 feet, and relocating all existing users as necessary to accommodate the WP needs as well as the existing facilities and possible future co-locators. If the WP desires to pursue such reconstruction and/or relocation of antennas, and same is feasible, AT&T Wireless will allow it provided such action does not cause unreasonable service disruptions or service affecting interference with existing signals, or cause interference with site operations, lease terms, regulatory conditions or future needs of AT&T Wireless. AT&T Wireless retains all rights previously held, including, but not limited to, those regarding tower ownership, unless otherwise negotiated in the agreement with WP.

Reasons for any denial of co-location request will be provided to the applicant by the tower structure owner in writing

### 3. Contract & Site Development

Once AT&T Wireless approves the co-location application, a “co-location package” shall be supplied to the WP including site plans and tower drawings. Concurrently, a license, sublease or other appropriate agreement, will be prepared, reviewed and executed by the parties.

Once an agreement for the specific site has been executed, site development and design will be coordinated between AT&T Wireless and the applicant. Right of Way access will be provided in accordance with the agreement.

The WP will also contract with a design firm to prepare site plans and construction drawings as required by the WP and AT&T Wireless. The WP will prepare the application for all required regulatory site plan approvals. When the WP has secured permits, a pre-construction meeting will be scheduled with the WP to ensure that all guidelines are followed in the planning and construction process with an emphasis on safety and security. Once construction is completed, access privileges to the secured lease area will be provided for all authorized personnel of the users of the facility for maintenance and operation in accordance with the agreement.

### 4. Application Period; Emergency Services; Compliance with Law

Application to co-locate will continue to be accepted by AT&T Wireless for that site as long as support structure space and ground space are still available. If sufficient ground space is not available under current lease terms, AT&T Wireless will support efforts to retain additional ground space. Applications will be accepted on a first come first serve basis until the support structure can no longer hold additional facilities without compromising the service of existing co-locators or the structural integrity of the tower structure.

Co-location opportunities may be provided to emergency service providers utilizing the same procedures outlined in this section.

All WPs must operate in compliance with all applicable local, state or federal, laws, rules and regulations.

## **VII. LEVEL OF SERVICE**

With regard to the level of service on which this plan is based, N.J.A.C. 7:50-5.4 effectively provides that the Pinelands Commission’s goal for the wireless facilities plan is to provide adequate service that serves the local communication needs of the Pinelands. The facilities proposed by AT&T Wireless in this plan are indeed those that are needed to provide

adequate service to the Pinelands pursuant to AT&T Wireless' FCC licenses, the current coverage plan and customer requirements.

Currently, portions of the Pinelands receive either inadequate or no wireless telephone service. In some cases, these may represent rather large geographic areas, many of which are located in the less populated portions of the region. In others, stretches along highway arteries are not adequately served, leaving coverage gaps that lead to dropped calls or to a customer's inability to receive or make a call.

In evaluating the need for service, AT&T Wireless relied upon three widely recognized parameters that help to define service levels. These are uniformly used by AT&T Wireless inside and outside the Pinelands and consist of :

1. Signal to Interference ratio at audio

This parameter describes the ratio of the power of the intended (desired) audio signal in the customer audio band (typically 30 – 3,400 MHz) to the power level of interference from all other sources in the same frequency band. In wireless radio, interference is typically the result of other signals in the same (RF) frequency band, present due to the practice of frequency re-use in other cells.

2. Dropped call rate

This parameter represents the ratio of dropped calls to the total number of active calls in a service area. The “dropped call” rate is measured over a period of time. A “dropped call” is a previously active call, which was ended due to non-availability of wireless communication services to customers in the service area. For purpose of this plan, “non-availability” in the “service area” refers to customers (and equipment that serves customers) who are physically present inside the Pinelands, and is limited to services and equipment of the provider to the Pinelands customer. Specifically, a call dropped due to non-availability of service (or non-availability of equipment) to a customer who is outside the Pinelands is not considered a “dropped call” for purposes of assessing the “dropped call” rate in the Pinelands.

3. Blocked call rate

This parameter represents the ratio of the number of blocked calls to the number of all dialed calls made in a service area. The “block call” rate is measured over a unit of time (order of magnitude of a minute). A “blocked call” is a dialing attempt from the service area that does not result in an active call due to non-availability of wireless phone service or equipment to the service area calling party. The probability of a “block call” can increase in the event of a public emergency located in an area of inadequate service. For the purpose of this plan, “non-availability” in the “service area” refers to customers (and equipment that serves customers) who are physically present inside the Pinelands, and is limited to services and equipment of the provided to the Pinelands customer. Specifically, a “block call” due to non-availability of

service (or non-availability of equipment) to a customer who is outside the Pinelands is not considered a “block call “ for purposed of assessing the “block call” rate in the Pinelands.

AT&T Wireless firmly believes that each of the currently proposed facilities is needed to provide minimum adequate service under their current build out plan. AT&T Wireless has developed this plan to meet its anticipated service needs for the next five years, however, any modification in technical standards may require evaluation changes to be used in the future.

### **VIII. FUTURE TECHNOLOGY**

The Amended Plan takes into account AT&T Wireless’ emerging technology towards third generation wireless. The sites proposed by AT&T Wireless will provide coverage for its current and near future needs.

The Pinelands Commission has asked AT&T Wireless to generally address a new technology referred to as “Distributed Antenna Systems.” This system is not utilized by AT&T Wireless or other carriers in the Pinelands for many reasons as set forth at a recent meeting with all of the carriers. Some of the issues that were discussed was the fact that the antennas are placed at a low height on structures very close in proximity. The radio frequency coverage is directed along roadways in a small oval shaped pattern. This technology would only cover a roadway and a very small area to the north and south of the roadway, not a complete circular area of approximately a two (2) mile radius covered by a “standard” site around the roadway. In fact it would take from eight (8) to sixteen (16) Distributed Antenna Sites to cover one (1) “standard” site and the quality of coverage by the Distributed Antenna System would vary greatly depending upon whether or not the antennas are placed above the tree line. The result is an unacceptable level of coverage which does not meet AT&T Wireless’ required coverage area pursuant to its license. This also causes unacceptable coverage for public safety reasons. Only those customers traveling on the designated roadway would have coverage, none of the homes or people traveling away from the roadway would have service. Thus required emergency services such as fire, evacuation or search and rescue would fail.

If the Pinelands Commission chooses a particular stealth technology in a specific area then AT&T Wireless would evaluate the specific technology based upon its operational and business aspects. Each proposed area would have to be evaluated on a site by site basis. AT&T Wireless cannot give a general opinion on whether or not it would use stealth technology when the exact location and technology has not been determined. The providing of wireless communications is very technical and a blanket statement on stealth technology cannot be made. However AT&T Wireless will work with the Commission in regard to this issue.

## **IX. SHARED FREQUENCIES**

Under AT&T Wireless' federal license, it is required to provide services to its customers. AT&T Wireless will provide its own service pursuant to its license. In connection with shared frequencies, AT&T Wireless does not currently plan to have the Pinelands covered by another carrier's frequency, however, if there is a change, AT&T Wireless will notify the Commission.

## **X. CONCLUSION**

In summary, this Amended Plan constitutes an accurate representation of the existing and proposed communication facilities necessary to provide adequate, reliable AT&T Wireless service to the New Jersey Pinelands region now and for the near future. AT&T Wireless has attempted to design its network in the Pinelands region "from the outside in" as requested by the Pinelands Commission. AT&T Wireless has attempted to provide coverage for as much of the Pinelands as possible from facilities located outside the Pinelands and only designated facilities within the Pinelands to the extent they are necessary to complete the network and provide adequate service throughout the AT&T Wireless build out area in the Pinelands. The high level of time and resources that AT&T Wireless has devoted to the design of its networks in the Pinelands, has yielded a network plan that successfully limits the number of new structures required in the Pinelands and directs those new structures, that are required, to sites most appropriate for those structures.

**EXHIBIT A**

SEE ATTACHED SPREAD SHEET



AT&T Wireless Services  
Pinelands Plan  
10/28/2003

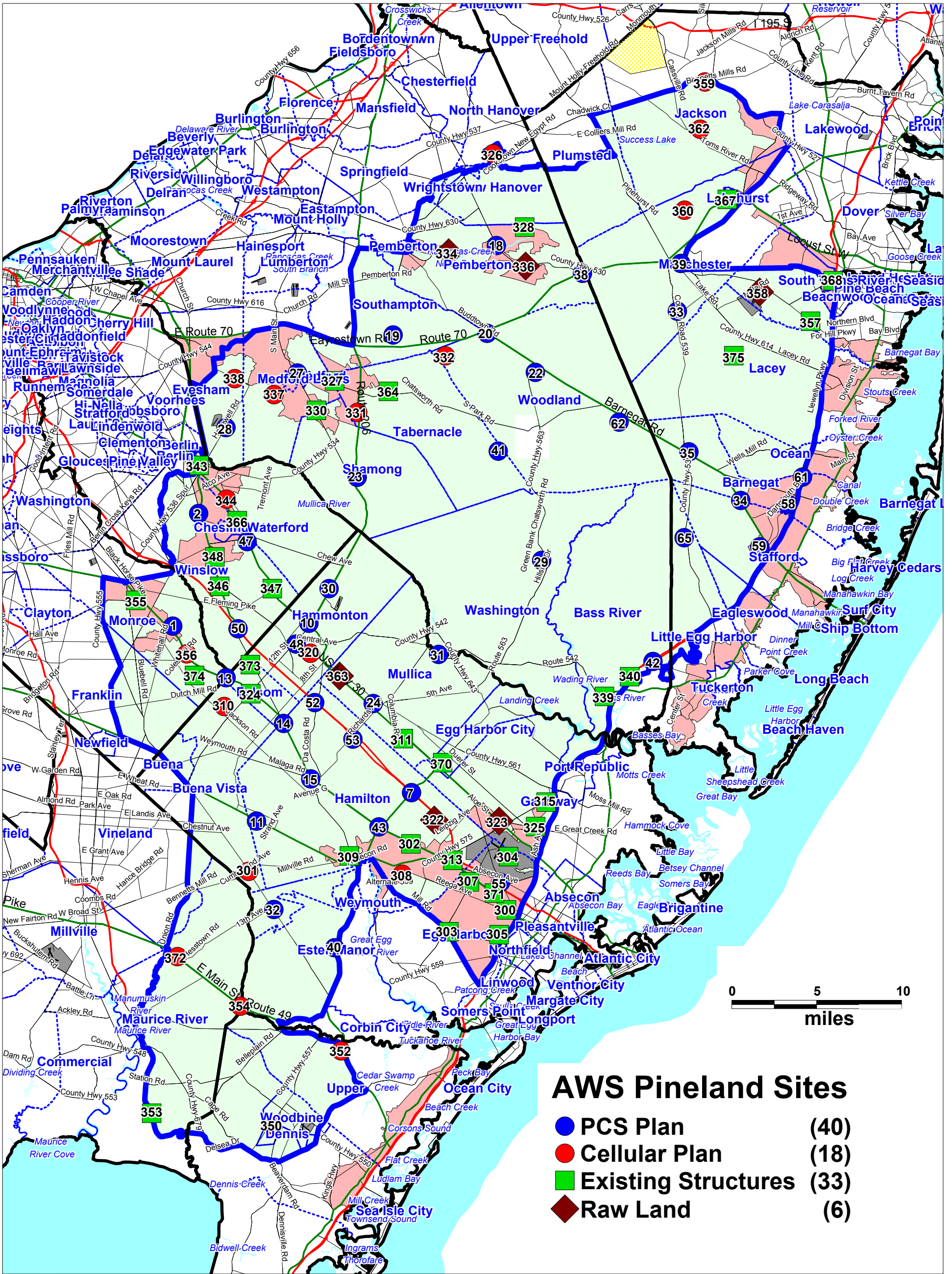
SITE_NUM	COUNTY	TOWNSHIP	PINE_ZONE	SITECLASS	SITECLASSN	ON_AIR	PCS_LABEL	CELLPLAN	LATDDUSE	LONDDUSE
Pine001	NJGL	Monroe	Regional Growth Area	1	PCS Plan	OnAir	1	Cell_30	39.648100000	-74.940800000
Pine002	NJCA	Winslow	Rural Development Area	1	PCS Plan	OnAir	2		39.743900000	-74.912200000
Pine007	NJAC	Hamilton	Rural Development Area	1	PCS Plan		7	Cell_17	39.506400000	-74.676900000
Pine010	NJAC	Hammonton	Pinelands Town	1	PCS Plan		10	Cell_13	39.650500000	-74.790300000
Pine011	NJAC	Hamilton	Forest Management Area	1	PCS Plan		11	Cell_34	39.482200000	-74.848300000
Pine013	NJGL	Folsom	Rural Development Area	1	PCS Plan		13		39.604200000	-74.881900000
Pine014	NJAC	Hamilton	Forest Management Area	1	PCS Plan		14		39.565300000	-74.818300000
Pine015	NJAC	Hamilton	Forest Management Area	1	PCS Plan		15		39.518100000	-74.788310000
Pine018	NJBU	Pemberton	Regional Growth Area	1	PCS Plan		18	Cell_39	39.971900000	-74.583100000
Pine019	NJBU	Southampton	Rural Development Area	1	PCS Plan		19		39.895800000	-74.697200000
Pine020	NJBU	Woodland	Preservation Area	1	PCS Plan	OnAir	20		39.897200000	-74.593300000
Pine022	NJBU	Woodland	Preservation Area	1	PCS Plan		22	Cell_41	39.864000000	-74.540000000
Pine023	NJBU	Shamong	Preservation Area	1	PCS Plan		23	Cell_11	39.774700000	-74.736900000
Pine024	NJAC	Mullica	Pinelands Village	1	PCS Plan		24		39.582200000	-74.719200000
Pine027	NJBU	Medford Lakes	Regional Growth Area	1	PCS Plan		27	Cell_08	39.863440000	-74.803030000
Pine028	NJBU	Evesham	Rural Development Area	1	PCS Plan		28	Cell_09	39.817000000	-74.882000000
Pine029	NJBU	Washington	Special AG Production Are	1	PCS Plan		29	Cell_25	39.704000000	-74.533000000
Pine030	NJAC	Hammonton	Preservation Area	1	PCS Plan	OnAir	30	Cell_12	39.680000000	-74.768000000
Pine031	NJAC	Mullica	Pinelands Village	1	PCS Plan		31	Cell_16	39.624000000	-74.647000000
Pine032	NJAC	Weymouth	Pinelands Village	1	PCS Plan		32	Cell_35	39.407000000	-74.829000000
Pine033	NJOC	Manchester	Pinelands Town	1	PCS Plan		33	Cell_03	39.916000000	-74.383000000
Pine034	NJOC	Barnegat	Regional Growth Area	1	PCS Plan		34	Cell_04	39.755000000	-74.313000000
Pine035	NJOC	Barnegat	Preservation Area	1	PCS Plan	On Air	35	Cell_05	39.796390000	-74.370280000
Pine038	NJBU	Pemberton	Special AG Production Are	1	PCS Plan		38	Cell_02	39.948250000	-74.487930000
Pine039	NJOC	Manchester	Pinelands Town	1	PCS Plan	On Air	39	Cell_24	39.956670000	-74.379170000
Pine040	NJAC	Estell Manor	Forest Management Area	1	PCS Plan		40		39.374400000	-74.761900000
Pine041	NJBU	Tabernacle	Preservation Area	1	PCS Plan		41	Cell_06	39.797000000	-74.581000000
Pine042	NJBU	Bass River	Preservation Area	1	PCS Plan		42		39.618000000	-74.410000000
Pine043	NJAC	Hamilton	Rural Development Area	1	PCS Plan		43		39.477260000	-74.712940000
Pine047	NJCA	Waterford	Pinelands Village	1	PCS Plan		47		39.720000000	-74.858610000
Pine048	NJAC	Hammonton	Pinelands Town	1	PCS Plan	OnAir	48		39.632780000	-74.804440000
Pine050	NJCA	Winslow	Rural Development Area	1	PCS Plan		50		39.645830000	-74.868610000
Pine052	NJAC	Hamilton	Forest Management Area	1	PCS Plan		52		39.583060000	-74.783890000
Pine053	NJAC	Hamilton	Forest Management Area	1	PCS Plan		53		39.551940000	-74.741670000
Pine055	NJAC	Egg Harbor	Regional Growth Area	1	PCS Plan		55		39.430000000	-74.578610000
Pine058	NJOC	Barnegat	Regional Growth Area	1	PCS Plan		58		39.751690000	-74.260810000
Pine059	NJOC	Stafford	Regional Growth Area	1	PCS Plan	On Air	59		39.715560000	-74.291940000
Pine061	NJOC	Barnegat	Regional Growth Area	1	PCS Plan		61		39.774860000	-74.244720000
Pine062	NJBU	Woodland	Preservation Area	1	PCS Plan		62		39.821660000	-74.447500000
Pine065	NJOC	Little Egg Harbor	Preservation Area	1	PCS Plan		65		39.723330000	-74.375560000
Pine300	NJAC	Egg Harbor	Regional Growth Area	3	Existing Structure		300		39.406670000	-74.571900000
Pine301	NJAC	Buena Vista	Pinelands Village	2	Cell Plan		301	Cell_20	39.439440000	-74.856900000
Pine302	NJAC	Hamilton	Regional Growth Area	3	Existing Structure		302		39.462780000	-74.677500000
Pine303	NJAC	Egg Harbor	Regional Growth Area	3	Existing Structure		303		39.388000000	-74.635600000
Pine304	NJAC	Egg Harbor	Federal or Military Facil	3	Existing Structure		304		39.451940000	-74.569700000
Pine305	NJAC	Egg Harbor	Regional Growth Area	3	Existing Structure		305		39.385560000	-74.580000000
Pine307	NJAC	Egg Harbor	Regional Growth Area	3	Existing Structure		307		39.430500000	-74.612900000
Pine308	NJAC	Hamilton	Regional Growth Area	2	Cell Plan	OnAir	308	Cell_50	39.436940000	-74.687200000

AT&T Wireless Services  
Pinelands Plan  
10/28/2003

SITE_NUM	COUNTY	TOWNSHIP	PINE_ZONE	SITECLASS	SITECLASSN	ON_AIR	PCS_LABEL	CELLPLAN	LATDDUSE	LONDDUSE
Pine309	NJAC	Hamilton	Forest Management Area	3	Existing Structure		309		39.452580000	-74.745600000
Pine310	NJAC	Buena Vista	Rural Development Area	2	Cell Plan		310	Cell_14	39.579690000	-74.884000000
Pine311	NJAC	Mullica	Forest Management Area	3	Existing Structure		311		39.552330000	-74.686000000
Pine313	NJAC	Hamilton	Regional Growth Area	3	Existing Structure	OnAir	313		39.448860000	-74.631300000
Pine315	NJAC	Galloway	Regional Growth Area	3	Existing Structure		315		39.498330000	-74.528100000
Pine320	NJAC	Hammonton	Pinelands Town	2	Cell Plan		320	Cell_53	39.625000000	-74.788600000
Pine322	NJAC	Hamilton	Rural Development Area	8	Raw Land		322		39.483100000	-74.651700000
Pine323	NJAC	Galloway	Regional Growth Area	8	Raw Land		323		39.482200000	-74.580060000
Pine324	NJAC	Folsom	Forest Management Area	3	Existing Structure		324		39.590580000	-74.854500000
Pine325	NJAC	Galloway	Regional Growth Area	3	Existing Structure		325		39.477500000	-74.539700000
Pine326	NJBU	North Hanover	Federal or Military Facil	2	Cell Plan		326	Cell_38	40.050000000	-74.586700000
Pine327	NJBU	Tabernacle	Regional Growth Area	3	Existing Structure		327		39.856670000	-74.761900000
Pine328	NJBU	Pemberton	Regional Growth Area	3	Existing Structure		328		39.987650000	-74.551800000
Pine330	NJBU	Medford	Regional Growth Area	3	Existing Structure		330		39.831670000	-74.781900000
Pine331	NJBU	Tabernacle	Regional Growth Area	2	Cell Plan		331	Cell_26	39.830000000	-74.736389000
Pine332	NJBU	Woodland	Preservation Area	2	Cell Plan	OnAir	332	Cell_07	39.878060000	-74.639400000
Pine334	NJBU	Pemberton	Regional Growth Area	8	Raw Land		334		39.965830000	-74.635800000
Pine336	NJBU	Pemberton	Regional Growth Area	8	Raw Land		336		39.954440000	-74.550800000
Pine337	NJBU	Medford	Rural Development Area	2	Cell Plan	OnAir	337	Cell_28	39.845000000	-74.828900000
Pine338	NJBU	Evesham	Rural Development Area	2	Cell Plan		338	Cell_44	39.858610000	-74.872200000
Pine339	NJBU	Bass River	Pinelands Village	3	Existing Structure		339		39.588330000	-74.463600000
Pine340	NJBU	Bass River	Pinelands Village	3	Existing Structure	OnAir	340		39.605080000	-74.435700000
Pine343	NJCA	Berlin	Regional Growth Area	3	Existing Structure	OnAir	343		39.784830000	-74.911700000
Pine344	NJCA	Waterford	Regional Growth Area	2	Cell Plan	OnAir	344	Cell_29	39.756110000	-74.881400000
Pine346	NJCA	Winslow	Pinelands Village	3	Existing Structure		346		39.681940000	-74.888900000
Pine347	NJCA	Winslow	Pinelands Village	3	Existing Structure		347		39.680000000	-74.830800000
Pine348	NJCA	Winslow	Regional Growth Area	3	Existing Structure	OnAir	348		39.706940000	-74.894200000
Pine350	NJCM	Woodbine	Rural Development Area	2	Cell Plan		350	Cell_23	39.223890000	-74.831400000
Pine352	NJCM	Upper	Pinelands Village	2	Cell Plan		352	Cell_51	39.286670000	-74.754700000
Pine353	NJCU	Maurice River	Rural Development Area	3	Existing Structure		353		39.233600000	-74.964100000
Pine354	NJCU	Maurice River	Forest Management Area	2	Cell Plan		354	Cell_22	39.324720000	-74.866100000
Pine355	NJGL	Monroe	Regional Growth Area	3	Existing Structure		355		39.670000000	-74.981700000
Pine356	NJGL	Monroe	Rural Development Area	2	Cell Plan		356	Cell_15	39.624440000	-74.925300000
Pine357	NJOC	Berkeley	Preservation Area	3	Existing Structure		357		39.907500000	-74.235800000
Pine358	NJOC	Berkeley	Forest Management Area	8	Raw Land		358		39.932370000	-74.291990000
Pine359	NJOC	Jackson	Pinelands Village	2	Cell Plan		359	Cell_36	40.111110000	-74.352500000
Pine360	NJOC	Manchester	Forest Management Area	2	Cell Plan		360	Cell_01	40.002000000	-74.375000000
Pine362	NJOC	Jackson	Pinelands Village	2	Cell Plan		362	Cell_37	40.070830000	-74.357800000
Pine363	NJAC	Mullica	Pinelands Town	8	Raw Land		363		39.605580000	-74.756400000
Pine364	NJBU	Tabernacle	Agricultural Production A	3	Existing Structure		364		39.847800000	-74.702500000
Pine366	NJCA	Chesilhurst	Regional Growth Area	3	Existing Structure	OnAir	366		39.737800000	-74.869400000
Pine367	NJOC	Lakehurst	Pinelands Town	3	Existing Structure		367		40.011200000	-74.327800000
Pine368	NJOC	South Toms River	Regional Growth Area	3	Existing Structure		368		39.942000000	-74.210800000
Pine370	NJAC	Egg Harbor City	Pinelands Town	3	Existing Structure		370		39.531940000	-74.642500000
Pine371	NJAC	Egg Harbor	Regional Growth Area	3	Existing Structure		371		39.420940000	-74.585300000
Pine372	NJCU	Maurice River	Pinelands Village	2	Cell Plan		372	Cell_21	39.366900000	-74.935500000
Pine373	NJAC	Folsom	Pinelands Village	3	Existing Structure		373		39.615300000	-74.855000000
Pine374	NJGL	Monroe	Rural Development Area	3	Existing Structure		374		39.606110000	-74.916700000

AT&T Wireless Services  
 Pinelands Plan  
 10/28/2003

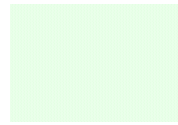
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Pine 375	NJOC	Lacey	Preservation Area	3	Existing Structure		375		39.878220000	-74.320600000



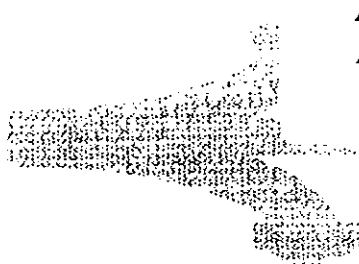
**AT&T Wireless  
Final Pinelands Plan  
Site Classifications  
2003-10-28**



Regional Growth Area



NJ Pinelands Area



**Appendix B  
AT&T Siting Plan Amendment**

**The Consulting Group  
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**Report**

To

The Pinelands Commission  
P.O. Box 7  
New Lisbon, NJ 08064

In reference to

AT&T Wireless  
Amendment to the Comprehensive Plan for Cellular and PCS Service

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bruce A. Eisenstein

Report on the AT&amp;T PCS Plan for the Pinelands

Page 2

### Background

Since August 1999, The Consulting Group (TCG: Bruce Eisenstein, Ph.D. P.E.; Moshe Kam, Ph.D. P.E.; Leonid Hrebien, Ph.D., and P. M. Shankar, Ph.D.) has been providing the Board and the staff of the Pinelands Commission (PC) with technical assistance in the area of mobile radio and telecommunications, in particular the siting of the antenna facilities for these systems. This assistance was made in conjunction with the anticipated "Comprehensive Plan for PCS Communications Facilities in the Pinelands," and following previous consulting to the PC by the TCG on matters of cellular telephony.

The TCG reviewed technical and administrative information supplied by the PC and by the prospective PCS providers ("providers" in the sequel), *Sprint Spectrum LP* and *OmniPoint PCS*. The TCG reviewed several drafts of the document entitled "Comprehensive Plan for PCS Communications Facilities in the Pinelands" ("the *Plan*") submitted by *Sprint* and *OmniPoint*, and a number of coverage maps, land-use maps, and topographical maps. The Plan was adopted and published.

At that time we wrote: "The TCG is unable to assess the ramifications of future actions by PCS entities who failed to join the present plan." We now have a new applicant, AT&T Wireless that has filed an amendment to the existing plan with proposals for 100 antenna sites in the Pinelands boundaries.

### The AT&T Amendment

AT&T writes

At the time of submissions and adoption of the Comprehensive Plans, AT&T Wireless PCS of Philadelphia and its affiliates ("AT&T Wireless") were not actively developing their wireless communications system in the Pinelands and did not participate in the adoption of the Comprehensive Plans. AT&T Wireless is now building out its wireless communications system in the Pinelands and submits the within amendment to the Cellular and PCS Comprehensive Plans ("Amended Plan"). This Amended Plan is not proposed to supersede the Comprehensive Plans but is in addition to and incorporates all documents that have been approved by the Pinelands Commission in regard to the Comprehensive Plans.

The proposed 100 new antenna sites are divided into four groups.

Group 1 Antennas to be placed on existing approved *cellular* communication facilities

Group 2 Antennas to be placed on existing approved *PCS* communication facilities

Group 3 Antennas to be placed on *existing structures*

Group 4 Antenna sites to be constructed from scratch, referred to as *raw land*

The Pinelands Comprehensive Master Plan divides the New Jersey Pinelands into three regions governing the development of communication facilities.

The first region, covering the Regional Growth and Pinelands Town Areas, is, "unrestricted." This region allows providers to build facilities with associated structures to any height necessary to meet radio frequency design requirements, with no defined height limit or no limit on the number of structures in the region. This will be referred to as the regional growth area (RGA).

The second region, covering the Agricultural Production Area, Regional Development Area, and Select Villages, is defined as "height restricted." This region requires the providers to meet certain siting criteria for proposed facilities, verify that no existing suitable structure exists within the immediate vicinity of the proposed facility, as well as submit a "Comprehensive Plan" of all existing and proposed facilities within the Pinelands, for approval by the Commission. This will be referred to as the height restricted area (HRA).

The third region, covering the Preservation Area, Forest Area, Special Agricultural Production Area, and Select Villages, is defined as "height and least number of structures restricted." This region requires that the above mentioned siting criteria be met, that the providers demonstrate that the least number of structures in this region is proposed, and that a "Comprehensive Plan" of all existing and proposed facilities within the Pinelands be submitted for approval by the Commission. This will be referred to as the restricted area (RA).

Raw Land or New Construction Sites

The eight sites shown below are proposed to be new construction sites. Of these, four sites are outside of the RGA, 317, 358, 372, and 322.

Table 1 – AT&T Proposed Raw Land Construction Sites

SITE NUMBER	COUNTY	TOWNSHIP	PINELANDS ZONE	SITE GROUP	PCS PLAN NUMBER	LATITUDE	LONGITUDE
Pine317	NJAC	Egg Harbor	Federal or Military Facility	8	317	39.457780000	-74.595800000
Pine358	NJOC	Berkeley	Forest Management Area	8	358	39.932370000	-74.291990000
Pine363	NJAC	Mullica	Pinelands Town	8	RGA 363	39.605580000	-74.756400000
Pine372	NICU	Maurice River	Pinelands Village	8	372	39.366900000	-74.935500000
Pine323	NJAC	Galloway	Regional Growth Area	8	RGA 323	39.482200000	-74.589000000
Pine334	NJBU	Pemberton	Regional Growth Area	8	RGA 334	39.965830000	-74.635830000
Pine336	NJBU	Pemberton	Regional Growth Area	8	RGA 336	39.954440000	-74.550800000
Pine322	NJAC	Hamilton	Rural Development Area	8	322	39.484100000	-74.651300000

Report on the AT&T FCS Plan for the Pinelands

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**Facility 317:**

**AT&T's Comment:** This facility is located in Atlantic County (Egg Harbor Township). It is in the Federal or Military Facility and is required for coverage.

We note that 317 is to be located in an airport that is part of the AC airport complex. We also note that there is more than adequate and even dense coverage around the area. Based on the propagation plots supplied by AT&T, we recommend against this site.

**Facility 322:**

**AT&T's Comment:** This facility is located in Atlantic County (Hamilton Township). It is in the "height restricted" area and is required for coverage.

We agree that it is needed to cover the area in question.

**Facility 323:**

**AT&T's Comment:** This facility is located in Atlantic County (Galloway Township). It is in the "unrestricted" area and is required for coverage.

Since this site is in the RGA and it appears necessary for coverage, we agree.

**Facility 334:**

**AT&T's Comment:** This facility is located in Burlington County (Pemberton Township) on municipal property. It is in the "unrestricted" area and is required for coverage.

This site is in the RGA, and although it is relatively close to the border of the Pinelands, there is an existing site in Pemberton, outside the Pinelands, that would prevent them from going outside the border. We agree.

**Facility 336:**

**AT&T's Comment:** This facility is located in Burlington County (Pemberton Township). It is in the "unrestricted" area and is required for coverage.

Even though this site is in the RGA, we will need further justification for why the coverage cannot be obtained by a combination of sites 18, 328, and 38.

**Facility 358:**

**AT&T's Comment:** This facility is located in Ocean County (Berkeley Township). It is in the "height and least number restricted" area and is required for coverage.

We agree that this site is needed for coverage.

**Facility 363:**

**AT&T's Comment:** This facility is located in Atlantic County (Mullica Township). It is in the "unrestricted" area and is required for coverage.

We agree that this site is needed for coverage.



**Facility 372:**

AT&T's Comment: This facility is located in Cumberland County (Maurice River). It is in the "height and least number of structures restricted" area and is required for coverage. The proposed PCS # 17 is not built and is not a viable alternative due to issues with Connective (sic). AT&T Wireless has a viable candidate located at the Cumberland Volunteer Fire Department.

We are somewhat puzzled by the reference to PCS #17 that is not part of the present AT&T Amendment. We assume that 17 refers to a site that is in the approved PCS CMP, and that AT&T is asserting cannot be built. We cannot independently verify this. We note that this site is very close to the border of the Pinelands and that there is AT&T coverage west of the border from an existing site. If the confusion concerning site 17 can be cleared up, and if a justification can be made about why they would not go on the approved site, we are prepared to agree with the proposed site. We need further justification beforehand.

AT&T Proposed Antenna Sites on Existing Structures in the Restricted Area

The 14 sites shown below are in the restricted areas indicated and are proposed to be built on existing structures. We have excluded from the list those sites that are already on the approved plans for cellular or PCS, and we have excluded the ones that are already on the air.

Table 2 -- AT&amp;T Proposed Sites on Existing Structures in the Restricted Zone

SITE NUMBER	COUNTY	TOWNSHIP	PINELANDS ZONE	SITE GROUP	PCS PLAN NUMBER	LATITUDE	LONGITUDE
Pine304	NJAC	Egg Harbor	Federal or Military Facility	3	304	39.451940000	-74.569700000
Pine309	NJAC	Hamilton	Forest Management Area	3	309	39.452580000	-74.745600000
Pine311	NJAC	Mullica	Forest Management Area	3	311	39.552330000	-74.686000000
Pine318	NJAC	Hamilton	Forest Management Area	3	318	39.529170000	-74.711700000
Pine319	NJAC	Hammonton	Agricultural Production Area	3	319	39.602220000	-74.811100000
Pine324	NJAC	Folsom	Forest Management Area	3	324	39.590580000	-74.851500000
Pine339	NJBU	Bass River	Pinelands Village	3	339	39.538330000	-74.463600000
Pine346	NJCA	Winslow	Pinelands Village	3	346	39.681940000	-74.888900000
Pine347	NJCA	Winslow	Pinelands Village	3	347	39.680000000	-74.836800000
Pine357	NJOC	Berkeley	Preservation Area	3	357	39.907500000	-74.735800000
Pine364	NJBU	Tabernacle	Agricultural Production Area	3	364	39.847800000	-74.702500000
Pine373	NJAC	Folsom	Pinelands Village	3	373	39.615300000	-74.855000000
Pine374	NJGI	Monroe	Rural Development Area	3	374	39.606110000	-74.916700000
Pine375	NJOC	Lacey	Preservation Area	3	375	39.878220000	-74.320600000

**Facility 308:**

*This facility is located in Atlantic County (Egg Harbor Township). It is in the "Federal or Military Facility and is required for coverage."*

This site is close to site 317 discussed above. Like 317, it is in an area that shows dense coverage. We feel that further justification is necessary.

**Facility 309:**

*This facility is located in Atlantic County (Hamilton Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

**Facility 311:**

*This facility is located in Atlantic County (Mullica Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

**Facility 319:**

*This facility is located in Atlantic County (Hammonton Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We need further clarification about why this site cannot be handled by sites 324, 373, 48, 320, 363, 52, and 14 - it is possible that 319 is the center of a seven-cell reuse pattern, but that is not obvious from the material we have.

**Facility 324:**

*This facility is located in Atlantic County (Folsom Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We need further clarification about why this site cannot be handled by sites 310, 13, 373, and 14.

**Facility 339:**

*This facility is located in Burlington County (Bass River Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

**Facility 346:**

*This facility is located in Camden County (Winslow Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

**Facility 347:**

*This facility is located in Camden County (Winslow Township). It is in the "height and least number of structures restricted" area and is required for service.*

We agree.

Report on the AT&amp;T PCS Plan for the Pinelands

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**Facility 357:**

*This facility is located in Ocean County (Berkeley Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

**Facility 364:**

*This facility is located in Burlington County (Tabernacle Township). It is in "the height restricted" area and is required for coverage.*

We agree.

**Facility 373:**

*This facility is located in Atlantic County (Folsom River). It is located in the "height and least number of structures restricted" area and is required for coverage.*

This site is in an area of somewhat dense coverage. One of the potential candidates for a portion of the coverage is site 319, which we brought into question above. We would like further justification for this site before reaching a conclusion.

**Facility 374:**

*This facility is located in Gloucester County (Monroe Township). It is in the "height restricted" area and is required for coverage.*

This site is in an area of dense coverage. We will need further justification about why this area cannot be covered by a combination of sites 356, 13, and 310.

**Facility 375:**

*This facility is located in Ocean County (Lacey Township). It is in the "height and least number of structures restricted" area and is required for coverage.*

We agree.

Proposed Facility that Will Only Be Utilized If the Existing Facility Cannot Be Used**Facility 318:**

*This facility is located in Atlantic County (Hamilton Township). It is in the "height and least number of structure restricted" area and is required for coverage. This facility shall only be utilized if Facility 7C cannot be used.*

We agree that they need either 318 or existing facility 7C for coverage.

**Appendix C**  
**AT&T Siting Plan Amendment**

PROCEDURES USED TO EXAMINE PCS CELL PLAN

PROCEDURE	WHO	PURPOSE
1. Examine plan to see if cells serve roughly 2.5 mile radius areas (a rough rule of thumb)	PC Staff/consultant	Preliminarily meet #5 and #6
2. Adjust plan if any cells "violate" the 2.5 mile need rule	PCS Industry	
3. Examine cell sites close to borders: Pinelands that could be moved out of Pinelands; Height restricted that could be moved out of height restricted; least number that could be moved out of least number	PC Staff/consultant	Preliminarily meet #5 and #6
4. Adjust plan for any that can be "moved out"*	PCS Industry	
5. For new tower sites, examine to see if there are any suitable structures in area	PC Staff/consultant	Meet #7
6. Adjust plan for any new structures that can be replaced by existing structures*	PCS Industry	
7. Examine approximate area of remaining new structures to see if there is a CMP permitted site	PC Staff/consultant	Meet #8
8. Adjust plan if no site or if only permitted site skews the network*	PCS Industry	
9. Detailed examination of final plan cells to ensure cell is needed	PC Staff/consultant	Finally meet #5 and #6
10. Adjust plan if need is questionable	PCS Industry	

\*Areas where the PCS plan was adjusted to take into account the results of this step

## Appendix D - Hierarchical Policy for Locating Individual Wireless Facilities

The Plan also references a one-half mile radius around every proposed facility's approximate location. To properly apply the CMP's standards within the context of this Plan, if approved, the following procedure (adopted by the Commission on September 11, 1998) will be used when the companies seek to finalize these approximate locations.

1. Except as otherwise specifically noted in this report, there will be a general presumption that a facility's final location will be within the immediate area of the location proposed in this Plan, i.e., the Pinelands management area group and municipality described in the Plan as further defined using the geographic coordinates prepared by the Commission's staff. If it proves to be infeasible to site the facility on an existing, suitable structure (i.e., one that does not require a change in mass or height which significantly alters its appearance), the use of other existing structures or, as appropriate, eligible sites which meet the standards in N.J.A.C. 7:50-5.4(c)4 will be considered. The company's feasibility assessment will need to include confirmation from other parties to this Plan who are slated to share the facility that the selected site meets their needs.
2. If siting of the facility within the immediate area of the Plan location is infeasible, the company will broaden its search area consistent with the service need for the facility and in conformity with other appropriate technical considerations, but in no case will that area extend beyond a half-mile radius. This will require consultation with other parties to this Plan who are slated to share the facility to ensure that any new location meets their needs.
3. Within that broader search area, consideration will first be given to locating the needed antenna on an existing, suitable structure if that structure does not require a change in mass or height that significantly alters its appearance.
4. Failing that, the use of other existing structures that may require a significant change in mass or height (if appropriate in view of the CMP's standards, including those related to visual impacts) or sites for a new structure within the search area will be evaluated. Only those structures or sites which meet the requirements of N.J.A.C. 7:50-5.4(c)4. and other applicable CMP standards will be selected. If that broader search area crosses the boundaries of the Pinelands Area or its management areas, the company will seek to site the facility in the following order of preference:
  - a. Outside the Pinelands;
  - b. Pinelands Regional Growth Areas, Pinelands Towns and the developed portions of Military and Federal Installation Areas;
  - c. Pinelands Rural Development Areas, Agricultural Production Areas, undeveloped portions of Military and Federal Installation Areas and Pinelands Villages other than those expressly identified in N.J.A.C. 7:50-5.4(c)6; and

d. Pinelands Preservation Area District, Special Agricultural Production Areas, Forest Areas and the Pinelands Villages expressly identified in N.J.A.C. 7:50-5.4(c)6.

5. If no feasible structures or sites are found, the company should reexamine the surrounding facility network and propose an amendment to this Plan which conforms to CMP standards. Of course, the company retains its right to seek a waiver of strict compliance from the standards of the CMP, although the Executive Director notes that the tests will be difficult to meet.

**APPENDIX E**  
**AT & T WIRELESS FACILITY SITING PLAN AMENDMENTS**  
**WRITTEN PUBLIC COMMENTS**

1. Alan B. Zublatt, Esq. - Law Office of Alan B. Zublatt  
(August 4, 2003)

2. Ryan A. Marrone - Law Office of Alan B. Zublatt  
(September 3, 2003)

Response by Barry J. Brady, Ph.D., Resource Planner, Pinelands Commission, to  
comments of August 4 and September 3, 2003 (September 22, 2003)

3. Jay Perez, Senior Corporate Counsel - AT & T Wireless  
(September 26, 2003)

4. Diane M. Constantine, Esq. - Law Office of Alan Zublatt  
(September 29, 2003)

5. Ryan A. Marrone - Law Office of Alan A. Zublatt  
(October 2, 2003)

6. R. Drew Patterson, Real Estate Project Manager, VelociTel, Inc., for Cingular  
Wireless (October 3, 2003)

7. Theodore J. Korth, Program Manager for Law and Policy, Pinelands Preservation  
Alliance (October 3, 2003)

AUG 5 - 2003

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RYAN A. MARRONE  
MEMBER OF N.J. BAR

SUSAN S. STOCKER  
MEMBER OF N.J. BAR

August 4, 2003

**VIA OVERNIGHT COURIER AND FACSIMILE**

Pinelands Commission  
15 Springfield Street  
New Lisbon, NJ 08064

Attn: John Stokes - Director  
Larry Liggett - Manager of Planning  
Dr. Bary Brady

**Re: Analysis of AT&T Amendment to the PCS and CMP Plan**

Dear Director Stokes, Mr. Liggett and Dr. Brady:

Our office has conducted a comprehensive analysis of the Amendment to the Comprehensive Plans for Cellular and Personal Communications Service to Include AT&T Wireless PCS of Philadelphia, LLC and its affiliates for Wireless Communications Facilities in the Pinelands ("Amendment"). This analysis included a comparative evaluation of the Amendment to the currently approved PCS and CMP Plans. The review process identified various provisions that raise issues and concerns. Set forth herein are our preliminary comments regarding those issues which we feel compromise the integrity of the previously approved plans and would only add to confusion and difficulty for the Pinelands Commission staff in processing future applications for Certificates of Filing. Please be advised that a detailed RF engineering analysis will be forthcoming. Once you have had an opportunity to review these items, please contact us to coordinate a meeting to discuss this matter in detail. Please note that the headings contained herein correspond to the headings delineated in the Amendment for ease of reference.

**I. Plan Introduction.**

While the general language of the Amendment is consistent with the prior plans, the introduction does not adequately identify the role of the Amendment nor how to resolve any conflict that exists between the contents of the Amendment and the previously adopted plans.



The Amendment is supplementary to the previously approved plans. Under no circumstances is it designed or intended to supercede anything previously approved and adopted by the Pinelands Commission. As discussed further herein, there are inherent discrepancies contained within the Amendment, particularly in relation to the numbering of facilities. Should the Pinelands Commission choose not to correct these deficiencies, or should others arise in the future, there should be language in the Amendment introduction to guide individuals in a determination as to what conflicting language is controlling. To accomplish this task, we suggest replacing the sentence: "This Amended Plan is not proposed to supercede the Comprehensive Plans but is in addition to and incorporates all documents that have been approved by the Pinelands Commission in regard to the Comprehensive Plans." With the following: *"This Amended Plan does not supercede the Comprehensive Plans but is in addition to, and supplementary of, those plans, and incorporates all documents that have been approved by the Pinelands Commission with regard to the Comprehensive Plans. Where a portion of this Amended Plan is in conflict with the Comprehensive Plans or other previously approved documents, the provisions set forth in the Comprehensive Plans and/or other previously approved documents shall be controlling, and the conflicted part of this Amended Plan shall be severed in part without affecting the remaining parts of the Amended Plan."*

#### **II.A. AT&T Wireless Map Summary.**

The method by which AT&T chooses to delineate facilities on its own map is inconsistent with the maps previously adopted in the Comprehensive Plans. *It is recommended that AT&T amend the mapping legend to be consistent with the previously adopted maps.*

#### **II.B. Existing PCS Facilities In Which AT&T Wireless Proposes to Locate.**

The Amendment improperly describes facility 061. The PCS Plan places this facility in the "height and least number of structures restricted" area.

#### **II.C. Existing Approved Cellular Facilities on Which AT&T Wireless Proposes to Locate.**

While the description and language utilized for each of these facilities is accurate, the problem is that the Amendment renumbers each of the facilities. All of the previously adopted plans and documents provide consistent numbering of the facilities. The Amendment changes all of the Cellular Plan facilities to new three digit numbers which have no correlation to any previously approved plan or document. For example, facility 20 of the Comprehensive Cellular Plan would now be numbered 301. This renumbering has no rational basis, and AT&T should maintain the previously established facility numbering scheme. Any deviation from the schemes which have been in place in excess of five years only creates unnecessary confusion. Furthermore, the Amendment does not adopt all of the Comprehensive Cellular Plan facilities, thus some would remain with only the original number and others would have the original number and the newly designated AT&T facility number further adding to confusion.

**V.D. Access and Utilities.**

The Amendment adds the qualifiers "Typically" and "Generally" to start each of the paragraphs in this section. The first paragraph describes the responsibility for provision of utilities and the second paragraph addresses access. The qualifiers should be redacted from the Amendment as they are inconsistent with the prior plans. Under the previous plans, Sprint and the other carriers are to have 24/7 access, "always", not "generally", and each co-locator is responsible for utilities, "always", not "typically".

**V.E.3.Co-Location Procedures – Contract & Site Development.**

The third paragraph of this section in the Amendment as written removes the right of Wireless Providers to prepare their own applications for regulatory site plan approvals. The sentence: "The WP will also contract with a design firm to prepare site plans and construction drawings as required by the WP and AT&T Wireless will prepare the application for all required regulatory site plan approvals." should be replaced with: "The WP will also contract with a design firm to prepare site plans and construction drawings as required by the WP and AT&T Wireless, *and prepare* the application for all required regulatory site plan approvals."

We will forward our detailed RF engineering analysis once it is finalized. In the interim, please contact our office to coordinate a meeting to discuss the issues set forth herein in greater detail. We look forward to hearing from you in this regard.

Very truly yours,

**LAW OFFICES OF ALAN B. ZUBLATT**

BY: 

Alan B. Zublatt

cc: Rob Cobane – SSLP  
Carole Knarich – SSLP  
Kimberly Demps - SSLP

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September 3, 2003

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**VIA LAWYER'S SERVICE**

John Stokes, Director  
Larry Liggett, Manager of Planning  
Dr. Barry Brady, Resource Planner  
The Pinelands Commission  
15 Springfield Street  
New Lisbon, NJ 08064

**Re: AT&T Cellular and PCS Plan Amendment**

Dear Director Stokes, Mr. Liggett and Dr. Brady:

Please be advised that we are in receipt of Dr. Brady's memorandum dated August 13, 2003, providing a copy of the revised version of AT&T's proposed Amendment to Comprehensive Plan for Wireless Communication Facilities in the Pinelands and the Comprehensive Plan for PCS Communication Facilities in the Pinelands (hereinafter, the "Plans"). As Dr. Brady notes, N.J.A.C. 7:50-5.4(c)(6)(v) provides that "any such amendments shall be agreed to and submitted jointly by all the local communications providers who provide the same type of service or have a franchise within the Pinelands Area." This regulatory language makes it abundantly clear that this Amendment, and any other Amendment to the Plan, must be agreed to in its entirety and submitted jointly by Sprint Spectrum, L.P. ("Sprint").

The legislative history in adopting the currently applicable administrative code regulations for the Pinelands Commission demonstrates and sets forth the Commission's intent. Specifically, 27 N.J.R. 3158(a) provides that the changes that were made to N.J.A.C. 7:50-5.4(c)(6) were done in order to "clarify the Commission's intent in requiring the joint submission of Comprehensive Plans for the development of certain local communications facilities in the Pinelands. Participation in the creation of the initial Comprehensive Plan by all members of the effected industries is considered fundamental to the design of the Plan. Notice and opportunity to participate in the design of the Plan must be provided to all service providers in the Pinelands who utilize local communication facilities to provide service. The plan will only be considered by the

Commission when it is demonstrated that it represents the joint effort of the effected entities.”

As you will recall, on August 4, 2003 we submitted an analysis of the AT&T Amendment to the Plans. In that correspondence several suggestions were made for modification to the Amendment. Our review of the latest revision of the Amendment reveals that none of the items set forth in our previous correspondence were addressed.

Therefore, please accept this correspondence as notice of Sprint’s present objection to the Amendment in its current form, and of Sprint’s intent to continue to review the Amendment and recommend further modifications to the Amendment before agreeing to, and joining in submission of, the Amendment for consideration by the Pinelands Commission.

Should you have any questions or considerations with this regard, please do not hesitate to contact our office. We look forward to your anticipated cooperation with this regard.

Very truly yours,

LAW OFFICES OF ALAN B. ZUBLATT

&

By: 

\_\_\_\_\_  
Ryan A. Marrone

Cc: Rob Cobane, Site Development Manager  
Carole Knarich, Senior Project Specialist  
Kimberly Demps, Project Specialist  
Alan Zublatt, Esq.  
Judith Babinski, Esq.



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JAMES E. MCGREEVEY  
Governor

JOHN C. STOKES  
Executive Director

September 22, 2003

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Monmouth Junction, NJ 08852

Re: Comments Regarding the Proposed  
AT&T Amendment to the Comprehensive  
Local Communications Facility Siting Plan

Dear Mr. Zublatt:

Thank you for your comments, dated 8/4/03 and 9/3/03, regarding the proposed amendment to the wireless communications facility siting plan for the Pinelands which was submitted by AT&T and its affiliates. Should the Commission decide to approve AT&T's amendment (tentatively scheduled for consideration at its meeting of 11/7/03), a formal response to these comments will be included in the Executive Director's Report, which will summarize the amendment, its conformance with the standards of the Comprehensive Management Plan (CMP), and all comments received. However, we wanted you to be aware of the staff's initial reaction to your submission and the recommendation we are preparing concerning it.

Our staff does not feel that the concerns you have raised are of sufficient weight that we would recommend that the amendment not be approved. At this point, we anticipate recommending approval of the amendment as presented. While the AT&T submission is not without minor errors, they are no more egregious than those in the previously adopted cellular and PCS plans (in which Sprint participated) and certainly do not rise to the level of a fatal flaw.

With regard to the specific items raised in your letter of 8/4/03, I will respond according to the same headings you used:

#### I. Plan Introduction

Our review of the AT&T amendment does not indicate that there are any conflicts or discrepancies between it and the adopted plans that are of a substantive nature. Renumbering of the facilities to be consistent with the adopted cellular and PCS plans might be helpful, but it is certainly not



<http://www.state.nj.us/pinelands/>  
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required by the CMP. Moreover, the additional wording you suggested is not necessary to establish the relationship between the adopted plans and any amendments.

#### **II.A. AT&T Wireless Map Summary**

There is no legal requirement that the legends and symbols of the AT&T map conform to the earlier maps. Although we agree that this would have been preferable, our preferences are not legally enforceable.

#### **II.B. Existing PCS Facilities In Which AT&T Wireless Proposes to Locate**

We had also noted this discrepancy between the AT&T and the adopted PCS amendments; our GIS staff determined that the lat/long listed in both documents is in a Regional Growth Area.

In any event, similar errors occurred in the PCS plan, e.g., facility #38 was identified as being in a Regional Growth Area, but is actually in a Special Agricultural Production Area. The staff decided at that time that such occasional errors should not prevent the plan from going into effect. They can be addressed and corrected at the time a development application is filed.

#### **II.C. Existing Approved Cellular Facilities on Which AT&T Wireless Proposes to Locate**

Again, consistency in the facility numbering scheme, while desirable, is not required by the CMP.

#### **V.D. Access and Utilities**

Our staff feels that the current wording of the amendment is sufficient to obligate each co-locator to provide for and maintain its services and equipment and to allow for adequate access. The terms you find objectionable are vague and do not seem to us to prevent installation, maintenance or access.

#### **V.E.3. Co-Location Procedures**

Since the sentence you find objectionable refers to the Wireless Provider preparing site plans and construction drawings and the sentence following refers to the Wireless Provider securing permits, it does not appear to us that the other providers are prevented in any meaningful way from submitting applications for local permits. However, we will discuss this wording further with AT&T's representatives.

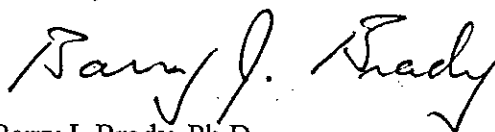
Finally, the Pinelands Commission does not agree with your interpretation of the language of NJAC 7:50-5.4(c)6.v. The intent of that section was to allow providers an opportunity to examine a proposed amendment and suggest ways whereby service could be enhanced while allowing for collocation, to the extent possible, and the fewest number of towers overall. We appreciate your

comments on the proposed amendment, but your concurrence is not required for the Commission to consider it for approval.

Please note that you may submit additional comments at the public hearing, which will be held at our offices on October 1. Moreover, the written comments you have submitted will be appended to the Executive Director's Report on the amendment, as will all written comments received by October 3. At the Commission's discretion, an opportunity for additional public comment will be provided at its meeting of November 7, when, presumably, the Commission will take action on the proposed amendment. However, comments must be confined to the record developed at the public hearing.

Please feel free to contact us with any other questions or comments.

Sincerely,



Barry J. Brady, Ph.D.  
Resource Planner

P10A/LLL/SR

cc: Judith A. Babinski, Esq.  
Warren Stillwell, Esq.  
Charles Krudener for Cingular  
Margie Weber for Nextel  
Scott Wiatrowski for Verizon

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**Subject:**

**Date:** Fri, 26 Sep 2003 10:28:17 -0500

**From:** "Perez, Jay" <jay.perez@attws.com>

**To:** planning@njpines.state.nj.us

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September 29, 2003

Via Overnight Mail & Facsimile

The Pinelands Commission  
15 Springfield Street; PO Box 7  
New Lisbon, NJ 08064

Attn: John Stokes, Director  
Larry Liggett, Manager of Planning  
Dr. Barry Brady

**RE: Legal Commentary: Proposed AT&T Amendment to the Comprehensive  
Local Communications Facility Siting Plan**

Dear Director Stokes, Mr. Liggett and Dr. Brady:

Please accept this legal commentary in response to Dr. Brady's advices: (1) that the Pinelands Commission staff intends to have AT&T include a provision in its "Amendment to the Comprehensive Plans for Cellular and Personal Communications Service to include AT&T Wireless PCS of Philadelphia, LLC and its affiliates for Wireless Communications Facilities in the Pinelands", requiring wireless service providers to utilize Distributed Antenna Systems ("DAS") along certain areas of the Pine Plains, more particularly, along Route 72 and (2) should AT&T decline to include DAS technology in its plan amendment, the Pinelands Commission may consider imposing the use of DAS technology as a condition of approval of the plan amendment.

It is our position that such action would constitute rulemaking on the part of the Pinelands Commission in accordance with the criteria set forth in Metromedia, Inc. v. Dir. Div. of Tax., 97 N.J. 313, 331-32 (1984), mandating compliance with the procedural notice requirements of the Administrative Procedure Act., N.J.S.A. 52:14B-1 et. seq. . Additionally, the Pinelands Commission has no authority to dictate the type of

technology a wireless provider should deploy as part of its network build-out. The Federal Communications (“FCC”) is the sole agency charged with licensing and regulating the implementation of personal wireless communications services. System integration, service coverage and technology platforms are within the regulatory purview of the FCC, and not the Pinelands Commission. Although the Pinelands Commission is authorized to make determinations with regard to the siting of wireless telecommunications facilities, pursuant to Sections 253(a) and 704 of the Telecommunications Act of 1996 (“TCA”) such determinations may not create a barrier to entry or prohibit or have the effect of prohibiting the provision of personal wireless services. Should the Pinelands Commission require the implementation of DAS technology within, or adjacent to, the Pine Plains areas, that determination will effectively prohibit the provision of wireless services in violation of the TCA.

**I. The Requirement that DAS Technology be Utilized in the Pinelands Management Areas Adjacent to the Pine Plains near Route 72 Constitutes Agency Rulemaking**

In order to implement legislative policy, an agency has discretion to choose between rulemaking, adjudication, or an informal disposition in discharging its statutory duty. Northwest Covenant Med. Ctr. v. Fishman, 167 N.J. 123, 137 (2001). However, the manner in which the agency exercises its discretion in choosing an appropriate procedure may implicate the procedural requirements of the APA. Ibid. If an agency’s action constitutes a rule, it must comply with the APA requirements of notice and opportunity for comment. N.J.S.A. 52:14B-4(a) (1), (2); Woodland Private Study Group v. State, Dep’t of Env’tl. Prot., 109 N.J. 62, 63-64 (1987). The purpose of the notice requirements is “to give those affected by the proposed rule an opportunity to participate in the rule-making process not just as a matter of fairness but also as “a means of informing regulators of possibly unanticipated dimensions of a contemplated rule.” In re Adoption of Regulations Governing Volatile Organic Substances in Consumer Prods., N.J.A.C. 7:27-23, 239 N.J. Super. 407, 411 (App. Div. 1990) (quoting American Employer’s Ins. v. Commissioner of Ins., 236 N.J. Super. 428, 434 (App. Div. 1989)).

An “administrative rule” is defined in the APA as follows:

An agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and interagency statements; and (3) agency decisions and findings in contested cases.

N.J.S.A. 52:14B-2(e).

In the seminal case of Metromedia, Inc. v. Dir. Div. of Tax., supra, the court set forth six factors to be assessed in determining whether agency action constitutes rulemaking. They include whether the agency action:

(1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

Id., 97 N.J. at 331-32.

These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the APA is questioned, for example, in adopting orders, guidelines, or directives. Doe v. Poritz, 142 N.J. 1, 97 (1995); Woodland Private Study Group, supra, 109 N.J. at 67-68; Bullet Hole, Inc. v. Dunbar, 335 N.J. Super. 562, 580 (App. Div. 2000). However, not all of these factors must be present for an agency action to constitute rulemaking; instead, each of the factors are weighed and balanced. Metromedia, supra, 97 N.J. at 332.

In the instant matter, review of the relevant factors indicates that imposition of a requirement that only DAS technology will be approved for the siting of wireless communications facilities within, or adjacent to, the Pine Plains near Route 72 constitutes rulemaking. First, the action is intended to encompass all personal communication service providers seeking to locate facilities in this area pursuant to the Comprehensive Plan for PCS Communications Facilities in the Pinelands satisfying the first two factors.

The third factor is satisfied because the proposed siting requirement is intended to operate prospectively. That is, if the plan amendment is adopted with the DAS siting requirement, going forward, all wireless service providers will be required to implement DAS technology within the specified area.

The fourth and fifth factors are present because this proposed directive regarding DAS technology is not expressly provided by, nor is it clearly and obviously inferable from the enabling legislation and was not previously expressed in any official and explicit agency determination, adjudication or rule. The facility siting criteria set forth in N.J.A.C. 7:50-5.4 (c) 4 (i) and (iii) respectively, provide that the thirty-five foot height limitation would not be applicable if an antenna and supporting structure could be located such that it meets technical operating requirements and avoids to the maximum extent

practicable, visual impact as viewed from the Pine Plains. In the proposed plan amendment, AT&T has stated, after investigation at the request of the Pinelands Commission, that DAS technology would not provide an acceptable level of service coverage required pursuant to its FCC license. At the recent carriers meeting, all of the carriers concurred that DAS technology was not utilized in the Pinelands because it was generally useful in controlled, smaller range stadium or indoor environments. This technology is not viable for longer range coverage and due to the increased number of antennas at lower heights required by this technology, it has a greater potential for radio frequency interference and degradation of the system network.

Plainly, the carriers have expressed their view that this alternative technology could not satisfy technical operating requirements. Further, it is clear that this technology will require numerous antennas to achieve the coverage radius that one, taller antenna, could satisfy. Evidently, the proposed DAS requirement represents a departure from the expressed legislative goal to limit the number of local communications facilities within the most restrictive Pinelands management areas. If the Pinelands Commission seeks to require lower heights for communication facilities adjacent to the Pine Plains with the goal of making such facilities less visibly intrusive, then it may only validly do so via rulemaking procedures in accordance with the APA. It cannot attempt to achieve the same result by circumventing the procedural requirements of the APA and including a requirement for DAS technology in specified management areas in the proposed plan amendment.

Turning to the final Metromedia factor, the proposed requirement reflects a decision on administrative regulatory policy in the nature of a general policy. That is, when it comes to the Pine Plains, the height requirements formerly permissible for communications facilities are no longer palatable and shorter facilities associated with DAS technology will now be required.

I note that visual conspicuity with regard to communications facilities and the Pine Plains has been a concern with one environmental organization and was discussed in the Executive Director's Report To The Pinelands Commission For Proposed Comprehensive Plan For PCS Communication Facilities In The Pinelands, December 29, 1999, p. 17. At that time, the Executive Director wrote:

Some members of the public remain opposed to any tower that affects or could affect such scenic resources [Pine Plains], even if the need were conclusively demonstrated to their satisfaction. Their concern, thus, is not with the PCS Plan per se, but with the regulations that clearly permit such siting in these cases. However, the PCS plan must be reviewed by the regulations as written and adopted.

In this regard, the Metromedia court explained:

Persons subject to regulation are entitled to something more than a general declaration of statutory purpose to guide their conduct before they are

restricted or penalized by an agency for what it then decides was wrong from its hindsight conception of what the public interest requires in the particular situation.

Id., 97 N.J. at 337.

This reasoning is equally applicable to the agency action contemplated here. Accordingly, the Pinelands Commission cannot legitimately require wireless service providers to utilize DAS technology in areas adjacent to the Pine Plains near Route 72 without amending its regulations in accordance with APA procedural requirements.

## **II. The Proposed DAS Requirement is Violative of the TCA and Falls Within the Regulatory Auspices of the FCC.**

AT&T has unequivocally stated in its proposed plan amendment that utilizing DAS technology as part of its network within the Pinelands would not satisfy the required level of coverage it must provide pursuant to its FCC license. Nevertheless, it appears that implementation of this system in specific areas of the Pinelands may be required by the Pinelands Commission.

The FCC is charged with regulating and enforcing signal service levels as well as construction requirements for broadband PCS licenses. The FCC has established construction requirements for broadband PCS licenses to ensure that the broadband PCS spectrum is used effectively and made available to as many communities as possible. 47 C.F.R. §24.203. The Pinelands Commission may not mandate a particular technology application that would not satisfy FCC requirements and could place the provider's license in jeopardy.

It is strictly within the purview of the FCC to regulate the type of technology and system integration that will satisfy its licensing requirements. Conditions attached to zoning approval may not impinge upon subject matters which have been preempted by the State or a higher governmental unit. See, F&W Associates v. County of Somerset, 276 N.J. Super. 519 (App. Div. 1994) and Freeman v. Burlington Broadcasters, Inc. 204 F.3d 311 (2d Cir. 2000), cert. denied, 531 U.S. 917 (2000) (local zoning board was preempted from enforcing a permit condition requiring the permittees (a radio station operator, a cellular provider and a volunteer rescue and fire company) to remedy any radio frequency interference from tower signals with appliances and devices in local homes). Recently, the FCC determined that federal law preempted provisions of a county zoning ordinance involving radio frequency interference. In the Matter of Petition of Cingular Wireless LLC for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance Are Preempted as Impermissible Regulation of Radio Frequency Interference Exclusively to the Federal Communications Commission, Memorandum Opinion and Order, WT-Docket No. 02-100 (7/7/03).

Further, Section 253 (a) of the TCA entitled, "Removal of barriers to entry" provides:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. 47 U.S.C. §253 (a).

Section 332 (c) (7)(B)(i)(II) of the TCA provides:

The regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government or instrumentality thereof—shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

Should the Pinelands Commission insist upon requiring wireless service providers to utilize DAS technology in specific areas in which the providers have advised that DAS would not fulfill the significant gaps in their service coverage, the Pinelands Commission determination would effectively prohibit the provision of personal wireless services in violation of TCA Sec. 332 (c)(7)(B)(i)(II).

### **III. Conclusion**

Imposition of a plan amendment requirement that DAS technology be utilized along certain areas of the Pine Plains is violative of APA procedural notice requirements attendant to rulemaking and violates Sections 253(a) and 332(c) (7)(B)(i)(II) of the TCA.

Sprint Spectrum L.P. could not endorse the proposed plan amendment should this requirement be imposed. Although the Pinelands Commission staff have maintained that N.J.A.C. 7:50-5.4(c) 6.v does not require provider concurrence with the proposed amendment, review of the regulatory language suggests otherwise. Pursuant to N.J.A.C. 7:50-5.4(c) 6: “Where more than one entity is providing the same type of service or has a franchise for the area in question, the plan shall be agreed to and submitted jointly by all such providers, where feasible...”[emphasis added]. This language references the initial plan and encourages the participation of all providers to develop a comprehensive siting plan. However, the phrase “where feasible” acknowledged that some providers may not have been ready to participate since they had not fully developed their network siting plans.

The “where feasible” qualifying phrase is conspicuously absent from N.J.A.C. 7:50-5.4(c) 6.v. That regulatory section is applicable to amending an approved plan and provides that: “Any such amendments shall be agreed to and submitted jointly by all of the local communications providers who provide the same type of service or have a franchise within the Pinelands Area.” Plainly, unanimity among the providers is now required to amend a plan that has been previously approved; otherwise, the initial plan signatories could be compromised by a plan amendment that vitiates the facility siting blueprint that they had worked to develop and have approved by the Pinelands Commission. Any other interpretation of this regulatory requirement contorts the plain meaning of its directive.

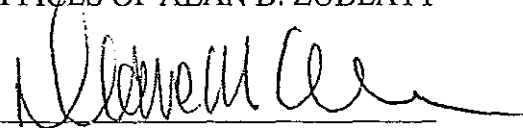
Should you have any questions with regard to this legal commentary, please do not hesitate to contact me. I look forward to your anticipated cooperation during the plan amendment approval process.

Very truly yours,

LAW OFFICES OF ALAN B. ZUBLATT

DMC/ac

BY:



Diane M. Constantine, Esq.

cc: Valerie Haynes, D.A.G.  
Ellen Balint, D.A.G.  
Carole Knarich, Sr. Property Specialist [SSLP]

10-1-2003

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October 2, 2003

**VIA FACSIMILE & OVERNIGHT COURIER**

John Stokes, Director  
The Pinelands Commission  
15 Springfield Street  
New Lisbon, NJ 08064

**Re: AT&T Cellular and PCS Plan Amendment**

Dear Director Stokes:

Please be advised that Sprint Spectrum, LP ("Sprint") requests this correspondence along with the previous correspondence dated September 29, 2003, of which a copy is enclosed herein, be included in the public record of the Pinelands Commission's consideration of the proposed AT&T Wireless Amendment to the PCS and Cellular Plans. In addition to the positions set forth in the September 29, 2003 correspondence, Sprint proposes the Plan Introduction of the Amendment be modified to state:

*"This Amended Plan does not supercede the Comprehensive Plans but is in addition to, and supplementary of, those plans, and incorporates all documents that have been approved by the Pinelands Commission with regard to the Comprehensive Plans including, but not limited to, Schedule "G". Where a portion of this Amended Plan is in conflict with the Comprehensive Plans or other previously approved documents, the provisions set forth in the Comprehensive Plans and/or other previously approved documents shall be controlling, and the conflicted part of this Amended Plan shall be severed in part without affecting the remaining parts of the Amended Plan."*



Should you have any questions or considerations with this regard, please do not hesitate to contact our office.

Very truly yours,

LAW OFFICES OF ALAN B. ZUBLATT

By: 

Ryan A. Marrone

Cc: Rob Cobane, Site Development Manager  
Carole Knarich, Senior Project Specialist  
Kimberly Demps-Reed, Project Specialist

VIA ELECTRONIC MAIL

October 3, 2003

Dr. Barry Brady  
Pinelands Commission  
15 Springfield Road  
New Lisbon, New Jersey 08064

RE: Cingular Wireless Comment on the AT&T Wireless PCS of Philadelphia, LLC  
Amendment to the Comprehensive Plans for Cellular and Personal Communications Service

Dear Dr. Brady:

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Dr. Barry Brady

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Regards,

R. Drew Patterson  
Real Estate Project Manager  
VelociTel, Inc., for Cingular Wireless



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October 3, 2003

Dr. Barry Brady  
Pinelands Commission  
15 Springfield Road  
New Lisbon, New Jersey 08064

**RE: *Cingular Wireless Comment on the AT&T Wireless PCS of Philadelphia, LLC  
Amendment to the Comprehensive Plans for Cellular and Personal  
Communications Service in the Pinelands***

Dear Dr. Brady:

As a response to the above referenced Amendment, Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless offers the following comments. In general, Cingular Wireless supports the AT&T Wireless PCS of Philadelphia, LLC Amendment to the Comprehensive Plans for Cellular and Personal Communications Service in the Pinelands. Cingular feels that the Amendment as proposed by AT&T Wireless with respect to the new and existing facilities is a positive attempt to provide reliable and seamless wireless coverage using the minimum number of new facilities and creating the least impact on environmentally sensitive areas. Cingular is interested in evaluating the new and rebuilt sites for its own needs in meeting the Federal Communications Commission ("FCC") requirements of its own license. However Cingular Wireless, as successor to Comcast Metrophone, wishes to reserve its rights under the approved Cellular Plan to construct its approved facilities on a timetable that meets its service deployment needs. That is not to say Cingular is unwilling to work in conjunction with the other licensed carriers in planning and building a previously approved structure. It is of no concern to Cingular Wireless, necessarily, which company owns the structure as long as it is subject to the accepted co-location policy and it provides a height sufficient for the effective and seamless operation of Cingular's network.

Insofar as the remainder of the Amendment is concerned, Cingular Wireless wishes to enter the following comments. In section VIII: Future Technology (page 29), Cingular notes the introduction to the debate of a technology known as Distributed Antenna Systems ("DAS"). Cingular's chief concerns are that this technology is both untested and severely limited in its ability to satisfy Cingular's FCC mandate for providing reliable and seamless wireless service to Cingular's license area. Furthermore, Cingular's experience with Nokia, its equipment vendor, is that this technology is designed exclusively for in-building coverage. Nokia does not design DAS for outdoor applications as is proposed in the aforementioned amendment. Given these limitations, it is unknown whether "DAS" could work with the existing Cingular network of sites.

An obvious limitation of DAS, assuming it could be designed for outdoor applications, would be its very limited coverage area. Specifically, intersecting roads or locations a short distance from the DAS could lack reliable coverage. This would



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Dr. Barry Brady

significantly impact the provision of emergency services in these areas not immediately adjacent to the antenna system. This contrasts greatly with the capabilities of a typical wireless facility whereby reliable service is provided over an approximate radius of three miles. Cingular Wireless would strongly object to any insistence by the Pinelands Commission to make DAS a required technology given its unproven feasibility and apparent limitations. Moreover, the lack of a published study on DAS means that Cingular Wireless cannot evaluate this technology in a timely manner for its suitability in the proposed application. It is therefore Cingular Wireless' opinion that no wireless carrier be prevented from constructing a facility which was previously approved in the Cellular or PCS Plans or be required to evaluate DAS in the manner proposed until such time as it has been proven an effective, seamless component of a fully developed wireless network.

Cingular Wireless is interested in the findings of any study undertaken by the Commission with respect to DAS and would welcome the opportunity to further discuss the above issues with the Pinelands Commission and the other licensed wireless carriers. Please contact me should you have any questions or comments.

Regards,

R. Drew Patterson  
Real Estate Project Manager  
VelociTel, Inc., for Cingular Wireless



Pinelands  
Preservation Alliance

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OCT 6 - 2003

October 3, 2003

Barry J. Brady, Ph.D.  
Resource Planner  
Pinelands Commission  
Post Office Box 7  
New Lisbon, New Jersey 08064

By Facsimile and U.S. Mail  
609-894-7336

Re: Public Comment  
AT&T Proposed Amendment to the Comprehensive Siting Plan  
for Local Communications Facilities in the Pinelands  
Submission Dated: August 5, 2003  
Public Hearing: October 1, 2003

Dear Mr. Brady:

Please accept the following as the public comment of Pinelands Preservation Alliance to the aforescribed proposed amendments as solicited by your Memorandum of September 16, 2003.

1. Failure to Plan for a Ten Year Horizon.

Section VII (3) of the ATT proposal states that AT&T "developed [the proposed] plan to meet its anticipated service needs for the next five years ... ." The use of such five year horizon directly contradicts the representations made by AT&T at the public hearing that the plan was designed for a ten year (10 yr.) period.

Because the proposed plan is not designed to meet service needs beyond five years, the proposal should not be accepted in its current form, and a ten year plan should be required.

2. Circumscribed Comment Opportunity.

The radio frequency report which will analyze the coverage area and distil existing need was not available prior to the close of public comment. Without access to the radio frequency report it is impossible for the public to independently ascertain that there is i) a significant gap in service, and ii) that the proposed facility is specifically designed to close such gap in the manner least intrusive to the purposes of the Pinelands National Reserve.

In effect, the opportunity for meaningful comment on the proposed AT&T plan is foreclosed by the withholding of this information. Radio frequency reports made for or used by the Pinelands Commission in passing on any proposal to construct communication towers in the Pinelands should be made available along with all other proposal documents when the matter is opened to public review.

### 3. Failure to Substantiate Need.

Ascertaining radio frequency information is particularly important when justification of service is not provided by the applicant during the submission process. For example, the proposal submitted by AT&T does not make clear that there is a significant gap in service justifying use of proposed sites 322, 358 and 372 (proposed new structures not located in "by-right" areas).

Complete information regarding the extent of existing gaps and the suitability of the proposed plan in closing such gaps is required to be produced by any applicant that relies on the Telecommunications Act of 1996 ("TCA"). The TCA, a federal law, will only preempt or interfere with state and local zoning determinations when an applicant i) clearly demonstrates that a significant gap exists in the ability of remote users to access the national network, ii) that the area the new facility will serve is not served by another carrier, and iii) that the manner by which the gap will be filled strictly conforms to the intent of the Pinelands Comprehensive Management Plan. *See Omnipoint Communications Enterprises, L.P. v. Zoning Hearing Board of Easttown Township*, 331 F.3d 386 (3<sup>rd</sup> Cir. 2003).<sup>1</sup> Absent these affirmative demonstrations, the TCA can not be used justify a less than strict application of the CMP.<sup>2</sup>

There is no question that a public need for wireless service exists generally throughout the Pinelands. There is a question as to whether there is a significant gap in existing service which justifies an implicating the resources of the PNR for AT&T.

The only section of the AT&T proposed plan which might be read as attempting to describe significant gaps in service appears to be Section VII (Level of Service). However, this section fails to identify any significant gap which the proposed sites will close. The mere explanation of why calls carried by AT&T may not be go through does not serve to identify any significant gap in service, does not establish the area or boundaries of such significant gap, and does not explain how that gap will be closed in the least Pinelands intrusive manner.

There is also a question as to whether if any significant gap in service were properly identified, that such gap would be closed by the proposed plan, in the least

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<sup>1</sup> The TCA is a federal law. AT&T's reliance on any state court decisions which provide conflicting interpretation from that of the Third Circuit Court of Appeals is misplaced.

<sup>2</sup> AT&T has not raised any issue of competition with existing providers as the basis for these sites, and so the discrimination provision of the TCA (§322(c)(7)(B)(i)(I) are not addressed by this comment.

intrusive manner. Because no significant gap has been identified, the suitability of the plan in closing such hypothetical gap can not be ascertained.

Because the AT&T proposed plan fails to adequately demonstrate the extent of any existing need, and fails to exhibit a plan tailored to that need, sites 322, 358 and 372 should not be approved.

4. Issues Specific to Facility 358.

The approximately four thousand acre (4,000 ac.) New Jersey Natural Lands Trust Crossley Preserve is located immediately adjacent to, and virtually surrounds, the industrial park proposed to support facility 358. Used for low intensity recreation, the Crossley Preserve is a "low intensive recreation facility" as understood at *N.J.A.C. 7:50-5.4(c)(4)(ii)*.

Because the specific need for facility 358 (significant gap) has not been identified, and because there is no indication facility 358 has been tailored to provide for such need, facility 358 has not been shown to avoid to the maximum extent practicable any direct line of site from a low intensity recreation facility as required for approval under *N.J.A.C. 7:50-5.4(c)(4)(ii)*.

Additionally, facility 358 is near-by an existing airport, and should be determined to comply with Federal Aviation Administration requirements prior to approval.

This concludes the comments of PPA. Thank you for your time and attention.

Sincerely yours,



Theodore J. Korth  
Program Manager for Law and Policy

cc: Judith Babinski (Counsel for AT&T)  
by facsimile and mail