

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

REPLY COMMENTS OF THE CITY OF LIBERTY, MISSOURI

The City of Liberty, Missouri would like to take this opportunity to reply to AT&T's misleading characterization of a recent cell tower project in the City of Liberty to which AT&T refers in its July 18, 2011 Comments in response to the FCC's Notice of Inquiry, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WT Docket 11-59. The statements regarding the project in the City of Liberty, Missouri appear on pages 18-19 of AT&T's Comments.

On March 8, 2010, AT&T submitted an application to construct a 150-foot tower near Liberty's historic downtown district. The tower proposed by AT&T was not allowed as of right under the City's Unified Development Ordinance (UDO) because it was an exposed tower (nearly 70 feet over the tree line and adjacent 80-foot tower), and thus a special use permit (SUP) was sought by AT&T to obtain a variance to allow this height, design and location in violation of the UDO. Because of its considerable height above the surrounding neighborhood and tree line, AT&T's proposed tower did not qualify for the less-stringent zoning approval enjoyed by the 80-foot tower operated by Sprint on the same property, and which had been painted to be concealed within the trees on the site.

Contrary to AT&T's statement that "zoning board staff was initially supportive of AT&T's proposal and designs," city staff recommended denial of AT&T's application because applicable zoning district regulations required the tower to be disguised or stealth, which it would have been satisfied at the heights comparable to the adjacent Sprint tower. The Liberty City Council, on April 26, 2010, failed to pass a motion to approve AT&T's application and subsequently issued findings stating that the application failed to meet the standards of review for a SUP, due to the visibility of the undisguised tower on the historic downtown skyline, among other reasons.

On May 26, 2010, AT&T filed suit in federal court against the City of Liberty. The City filed a motion to dismiss as failing to state a claim under applicable law.

After AT&T, contrary to their original representation, determined that it did not in fact need a 150-foot tower to meet its system requirements, it submitted a plan to reduce the height to 100 feet with a painting scheme to be approved by the City to mitigate its impact on the City's historic downtown skyline. However, the 100-foot height would still leave the tower substantially taller than surrounding trees and structures, making effective camouflaging or disguising of the tower into the surround area virtually impossible. Because of the City's education emphasis, it selected the simple painting scheme of a yellow monopole that would look like a pencil (no additional features or attachments were required to meet the mitigation scheme). The City and AT&T settled the dispute by the City granting the zoning approval in August 2010 (just 5 months later even despite the inappropriate lawsuit filed by AT&T), and AT&T dismissing its case with prejudice in favor of the City.

The City of Liberty strongly objects to AT&T's characterization of the process that led to the approval of the subject tower. The facts bear out that the any "delays" that AT&T

complains of were actually of AT&T's own making including its improper application for an unauthorized tower it did not need, and its filing of improper litigation. The City conducted its actual processing of AT&T's application without any delay; including within the City's normal six-week application cycle.

It was AT&T that submitted an application for a 150-foot tower, the height of which was grossly out of character with the surrounding area, thus requiring extended and more stringent review by City planning staff and subjecting the application to denial. When its application was not approved, instead of working with the City to come up with a compromise that addressed the mutual needs of both AT&T and the City, AT&T filed suit in federal court seeking injunctive relief requesting approval of AT&T's application as-submitted. These actions, which greatly contributed to the delays of which AT&T now complains, were completely out of the control of the City.

Furthermore, the complaints regarding the pencil painting scheme that AT&T presents to the FCC stand in stark contrast to the actual support for this cooperative solution of the City that AT&T has touted to the City and public. According to the attached press release issued by AT&T (see Attachment 1), the company's general manager for the Greater Midwest Region was "thrilled to bring greatly enhanced mobile broadband speeds to downtown Liberty, and do so in a way that is aesthetically pleasing to community leaders." (Emphasis added). In fact, AT&T hosted a "ribbon cutting" for the pencil tower which was attended by Missouri State Senator Luann Ridgeway and Missouri State Representative Myron Neth, and informed the City that the pencil tower was to be featured in *AGL Magazine*, a national wireless industry trade magazine. Clearly, AT&T has directly and falsely misrepresented its actual position to the FCC.

The City does not believe that AT&T should be free to mischaracterize facts or disavow the positive reaction of AT&T presented to the City and public regarding the City's cooperative approach to AT&T's non-compliant tower application that was clearly higher than needed and in violation of City Code before change in height and design. The City hopes the FCC will take the actual facts, as well as AT&T's conduct and lack of complete candor, into consideration in reviewing AT&T's Comments to the FCC's Notice of Inquiry.

Respectfully Submitted,



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August 17, 2011

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ATTACHMENT 1

AT&T Press Release

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AT&T DEDICATES “PENCIL” MOBILE BROADBAND SITE IN LIBERTY

Unique New Cell Site Activated as Part of Ongoing AT&T Investment in Local Wireless Network

LIBERTY, Mo., July 26, 2011 — [AT&T](#)* today announced the activation of a new mobile broadband cell site in Liberty that will provide greatly enhanced call reliability and next-generation data speeds for area residents and businesses - and do so with an eye-catching design that looks like a classic No. 2 yellow pencil.

The new cell site, located near historic downtown Liberty, is one part of AT&T's ongoing effort to deliver the nation's best, most advanced mobile broadband experience for customers. With the nation's fastest [mobile broadband network](#), AT&T provides accelerated mobile data speeds and simultaneous voice and data capabilities.

“Our goal is for our customers to have an extraordinary experience. As part of the Liberty community, we're always looking for new opportunities to provide enhanced coverage, and our investment in the local wireless network is just one way we're accomplishing that,” said Nancy Garvey, AT&T's vice president and general manager for the Greater Midwest Region. “We are thrilled to bring greatly enhanced mobile broadband speeds to downtown Liberty, and do so in a way that is aesthetically pleasing to community leaders.”

What makes the new site unique is its pencil-like design, which Liberty officials hope will draw attention to the community's commitment to education at institutions such as William Jewell College and Liberty School District.

“This is a terrific example of how business and government can work together for the best possible outcome,” said Liberty Mayor Greg Canuteson. “We recognize AT&T's strong commitment to provide great service to its customers in a sometimes challenging setting defined by rolling, wooded hills. And we greatly appreciate AT&T's willingness to design a cell site that evokes this community's commitment to quality education.”

Liberty's business community also welcomes an investment that will enhance innovation in a district that resonates with local history.

"The new cell site is sure to improve service for residents and businesses in historic downtown Liberty," said Alicia Stephens, executive director of the Liberty Economic Development Council. "Improved connectivity to smartphones and other cutting-edge mobile devices will enhance both quality of life and economic competitiveness in this crucial part of our community."

This network upgrade results from the investment AT&T makes year over year in communities all across the country. From 2008 to 2010, AT&T invested nearly \$1.7 billion in its wireless and wireline networks to continue improving customer service in Missouri. And AT&T's commitment to Liberty is ongoing.

"Fiber optic cable is the key to both wireline and wireless communication," said AT&T Missouri President John Sondag, "AT&T continues to invest in its Liberty fiber optic network, reaching into neighborhoods to provide our U-verse television service, to wireless sites, and to businesses that handle large amounts of data."

[AT&T's mobile broadband network](#) is based on the 3rd Generation Partnership Project (3GPP) family of technologies that includes GSM and UMTS, the most widely used wireless network platforms in the world. AT&T has the broadest [international coverage](#) of any U.S. wireless provider, providing access to voice service in more than 220 countries and data service in more than 200 countries. AT&T also offers voice and data roaming coverage on more than 135 major cruise ships, as well as mobile broadband services in more than 130 countries.

AT&T also operates the [nation's largest Wi-Fi network](#)** with more than 24,000 hotspots in the U.S. and provides access to more than 135,000 hotspots globally through roaming agreements. Most AT&T smartphone customers get access to our entire national Wi-Fi network at no additional cost, and Wi-Fi usage doesn't count against customers' monthly wireless data plans.

For more information about AT&T's coverage in Liberty or anywhere in the United States, consumers can visit the [AT&T Coverage Viewer](#). Using the online tool, AT&T customers can measure coverage quality from a street address, intersection, ZIP code or even a landmark.

For updates on the AT&T wireless network, please visit the [AT&T network news](#) page.

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[AT&T Invests Nearly \\$225 Million in Its Missouri Networks](#)

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About AT&T

AT&T Inc. (NYSE:T) is a premier communications holding company. Its subsidiaries and affiliates – AT&T operating companies – are the providers of AT&T services in the United States and around the world. With a powerful array of network resources that includes the nation's fastest mobile broadband network, AT&T is a leading provider of wireless, Wi-Fi, high speed Internet, voice and cloud-based services. A leader in mobile broadband and emerging 4G capabilities, AT&T also offers the best wireless coverage worldwide of any U.S. carrier, offering the most wireless phones that work in the most countries. It also offers advanced TV services under the AT&T U-verse® and AT&T | DIRECTV brands. The company's suite of IP-based business communications services is one of the most advanced in the world. In domestic markets, AT&T Advertising Solutions and AT&T Interactive are known for their leadership in local search and advertising.

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