Item #3:
Ordinance Approving Co-Location Of Cellular Antenna At 5105 Arlington Heights Road

VILLAGE OF LONG GROVE

ORDINANCE NO. 2011-O- __

**AN ORDINANCE AMENDING
VILLAGE OF LONG GROVE ORDINANCE NO. 2009-O-37
TO AUTHORIZE THE FURTHER CO-LOCATION OF
PERSONAL WIRELESS SERVICE FACILITIES ON THE
EXISTING MONOPOLE AT 5105 ARLINGTON HEIGHTS ROAD**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this ___ day of November, 2011

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
This ____ day of November, 2011

VILLAGE OF LONG GROVE

ORDINANCE NO. 2011-O- __

AN ORDINANCE AMENDING VILLAGE OF LONG GROVE ORDINANCE NO. 2009-O-37 TO AUTHORIZE THE FURTHER CO-LOCATION OF PERSONAL WIRELESS SERVICE FACILITIES ON THE EXISTING MONOPOLE AT 5105 ARLINGTON HEIGHTS ROAD

WHEREAS, pursuant to Village of Long Grove Ordinance No. 99-O-13, the Village of Long Grove (***"Village"***) granted a special use to permit the construction and maintenance of a 125-foot telecommunications tower ("***Tower***"), antennas, and an equipment structure on real property located at 5105 Arlington Heights Road, Long Grove, Illinois, and legally described in Exhibit A, attached hereto and made a part hereof ("***Subject Property***"); and

WHEREAS, pursuant to Village of Long Grove Ordinance No. 2005-O-15, the Village granted to Chicago SMSA Limited Partnership d/b/a Verizon Wireless a special use permit to co-locate personal wireless services antennas for cellular communications on the Tower and an equipment structure on the Subject Property; and

WHEREAS, pursuant to Village of Long Grove Ordinance No. 2008-O-18, the Village granted to Denali Spectrum Communications d/b/a Cricket Communications a special use permit to authorize co-location of an additional personal wireless services antenna array for cellular communications on the Tower and an equipment structure on the Subject Property; and

WHEREAS, pursuant to Village of Long Grove Ordinance No. 2009-O-37, the Village granted to Clear Wireless LLC d/b/a Clearwire a special use permit to authorize co-location of an additional personal wireless services antenna array for cellular communications on the Tower and an equipment structure on the Subject Property; and

WHEREAS, the Subject Property is located in the "R-2" Single Family Residence District under the Long Grove Zoning Code; and

WHEREAS, Section 5-3-6(K) of the Long Grove Zoning Code authorizes personal wireless services antennas in the R-2 Single Family Residence District only pursuant to a

special use permit and only subject to the special procedures and standards contained in Section 5-9-6 of the Long Grove Zoning Code; and

WHEREAS, AT&T Mobility ("***Applicant***") proposes to co-locate three LTE antennas and three Radio Remote Units behind the antennas ("***Antennas***") on the Tower and additional equipment located within the existing equipment structure ("***Equipment Building***") on the Subject Property (collectively, "***Antenna Facilities***"); and

WHEREAS, the Applicant has or will enter into a lease with the owner of the Subject Property and the owner of the Tower to permit the installation of the Antenna Facilities on the Subject Property; and

WHEREAS, the Applicant has applied to the Village for a special use permit pursuant to Section 5-11-17 of the Long Grove Zoning Code to authorize the installation and maintenance of the Antenna Facilities on the Subject Property; and

WHEREAS, pursuant to notice duly published in the *Daily Herald*, the Plan Commission Zoning Board of Appeals ("***PCZBA***") held a public hearing which was opened on July 17, 2011 and ultimately continued and concluded on November 1, 2011, regarding the Antenna Facilities; and

WHEREAS, during the public hearing the PCZBA made the following findings:

1. According to the testimony submitted by the Applicant, the Applicant intends to construct and maintain the Antenna Facilities on the Subject Property.

2. The evidence presented demonstrates that, subject to the conditions hereinafter set forth, the construction and maintenance of the Antenna Facilities on the Subject Property:

   (a) is deemed necessary for the public convenience at the Subject Property;

   (b) is designed, located, and proposed to be operated to protect the public health, safety, and welfare;

   (c) has not been shown to cause substantial injury to the value of other property in the neighborhood of the Subject Property; and

   (d) conforms to the applicable special use standards for Antenna Facilities in the R-2 District of the Long Grove Zoning Code.

3. The evidence presented demonstrates that the Applicant's proposal satisfies the requirements for granting a special use permit for the construction and maintenance of the Antenna Facilities on the Subject Property, subject to the terms and conditions hereinafter set forth;

WHEREAS, based on these findings, the PCZBA recommended that the Applicant be granted a special use permit to permit the construction and maintenance of the Antenna Facilities on the Subject Property; and

WHEREAS, the President and Board of Trustees, having considered the recommendations of the Plan Commission and being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to grant the Applicant a special use permit to allow the construction and maintenance of the Antenna Facilities on the Subject Property, subject to the terms and conditions of this Ordinance as hereinafter set forth, including the prohibition of further installations of antennas on the Tower in the future;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth.

SECTION TWO. Grant of Special Use Permit for Antenna Facilities. Pursuant to Subsection 5-3-6(K), Section 5-9-6, and Section 5-11-17 of the Long Grove Zoning Code, and subject to the limitations therein and the conditions set forth in Section Three of this Ordinance, a special use permit is hereby granted to the Applicant to permit the Applicant to construct and maintain the Antenna Facilities on the Subject Property.

SECTION THREE: Conditions on Approval. The special use permit granted pursuant to Section Two of this Ordinance permitting the construction and maintenance of the Antenna Facilities on the Subject Property, shall be, and it is hereby, conditioned upon and limited by the following conditions, the violation of any of which shall, in the reasonable discretion of the

President and Board of Trustees, be grounds for the repeal and revocation of the special use permit:

A. Approval of Lease Agreement. Prior to issuance of any permits or approvals for undertaking any work related to the Antenna Facilities on the Subject Property, the Applicant shall enter into one or more lease agreements necessary for the co-location of the Antennas on the Tower and construction of the Equipment Building on the Subject Property under such terms and conditions that will be sufficient to permit the Applicant to construct, maintain, and operate the Antenna Facilities on the Subject Property in accordance with this Ordinance and other applicable codes, ordinances, and regulations.

B. Compliance with Plans. The Applicant shall construct the Antenna Facilities in conformity with the Plans attached to this Ordinance as Exhibit B.

C. Engineering Plans. Prior to the issuance of any permit for the construction of the Antenna Facilities on the Subject Property, the Applicant shall submit engineering plans and specifications to the Village Engineer for review and approval, which plans and specifications shall demonstrate that the Tower can adequately support the Antennas depicted in the Plans attached to this Ordinance as Exhibit B at a minimum wind speed of 90 miles per hour.

D. Licenses and Permits. Prior to commencing any work on the Subject Property in connection with the Antenna Facilities, the Applicant shall be required to obtain all necessary licenses, permits, and approvals from the Village and any other governmental agency having jurisdiction over the Antenna Facilities. The Applicant shall maintain all such licenses, permits, and approvals and shall provide copies of such licenses, permits, and approvals to the Village, and evidence of renewal or extension thereof, when requested by the Village Manager. All work relating to the installation and maintenance of the Antenna Facilities shall be performed in accordance with all applicable laws, codes, ordinances, and regulations, including the terms and provisions of this Ordinance.

E. Equipment Installation. Any equipment installed pursuant to this Ordinance shall be located in the existing Equipment Building on the Subject Property. The Equipment Building must be fully enclosed and used exclusively to house equipment required for the operation and maintenance of the antenna installations on the Tower, including the Antenna Facilities.

F. Landscaping and Buffering. The Applicant shall install and maintain landscaping and buffering around the perimeter of the Equipment Building designed to be harmonious with, and to blend with, the existing landscaping and buffering on the Subject Property. The buffering shall include fencing around the Equipment Building identical in materials and design to the existing fencing on the Subject Property. The Applicant shall be further required to maintain the landscaping installed by the Applicant on the Subject Property in accordance with good arboricultural and landscaping practices. If, for whatever reason, any of the plantings installed by the Applicant are removed, destroyed, or fail to survive, the Applicant shall, not later than the next planting season occurring at least 30 days

after the Applicant receives notice from the Village, replace such plantings with substitute plantings that substantially conform to the size and type of the original plantings. For purposes of this Subsection (F), a "planting season" shall be either the period between 15 April and 15 June or the period between 1 September and 1 November in any calendar year.

G. Term; Review. The special use permit and other approvals granted in this Ordinance shall be limited to the term of any lease agreement for the Subject Property, including any extension thereof. Further, the special use permit and other approvals granted in this Ordinance shall be subject to review by the Board of Trustees, at 10-year intervals, to determine whether changed circumstances exist to require the termination or modification of such special use permit and other approvals.

H. Abandonment and Removal. If the Antennas are not operated for a continuous period of 12 months or more, regardless of any intent to re-commence use or not to abandon, then such Antennas shall be deemed to be abandoned and the special use permit therefor will immediately terminate. Under such circumstance, the Applicant shall be required to remove the Antennas from the Tower and the Subject Property and its equipment from the Equipment Building and the Subject Property within 90 days after notice to the Applicant from the Village that such removal is required.

I. Fees and Costs. The Applicant shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Long Grove Zoning Code. In addition, the Applicant shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or enforcement of this Ordinance. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Subject Property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

J. Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant and upon any and all of the Applicant's heirs, successors, and assigns, and upon any and all successor legal or beneficial owners of all or any portion of the Subject Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, the Applicant shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Applicant to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Applicant remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Applicant.

K. No Further Antennas on Tower. The Village will not authorize any further installation of personal wireless services antennas on the Tower.

In addition, any violation of this Ordinance shall be deemed a violation of the Long Grove Zoning Code and shall subject the Applicant to enforcement proceedings accordingly.

SECTION FOUR. Termination or Repeal; Site Restoration. If this Ordinance is terminated or repealed, then the Applicant shall be responsible for (a) removing the Antennas from the Tower and the Subject Property, (b) removing its equipment from the Equipment Building on the Subject Property, and (c) restoring the Subject Property to its condition prior to the Applicant's installation of the Antennas.

SECTION FIVE: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law; provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant has (i) caused a duly authorized person to execute and (ii) thereafter files with the Village its unconditional agreement and consent, in the form attached hereto as Exhibit C and by this reference incorporated herein and made a part hereof; provided further that, if the Applicant does not so file its unconditional agreement and consent within 30 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, repeal this Ordinance and thereby revoke the special use permits granted in this Ordinance. Upon this Ordinance having full force and effect, the Village Clerk shall cause it to be recorded in the Office of the Lake County, Illinois Recorder of Deeds.

PASSED this ____ day of November, 2011.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of November, 2011.

_____
Village President

ATTEST:

_____

Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

[staff to insert legal description]

EXHIBIT B

PLANS

[staff to insert plans]

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

Pursuant to Section Five of Long Grove Ordinance No. 2011-O-____, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigneds acknowledge for themselves and their successors and assigns in title to the Subject Property that they

1. have read and understand all of the terms and provisions of said Ordinance No. 2011-O-____;

2. hereby unconditionally agree to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Long Grove Zoning Code, and all other applicable codes, ordinances, rules, and regulations;

3. acknowledge and agree that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Subject Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the Applicant and Owner against damage or injury of any kind and at any time;

4. acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right;

5. agree to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of these parties in connection with the Village's adoption of the Ordinance granting the approvals to the Applicant pursuant to the Ordinance; and

6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on behalf of the Applicant and owner of record of the Subject Property.

AT&T MOBILITY:	**OWNER:**_____
By:_____	By:_____
Its:_____	Its:_____