

## Jeff Bond

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**From:** Beth Pollard  
**Sent:** Thursday, December 02, 2010 9:41 AM  
**To:** Jeff Bond; Jackie Bucholz  
**Subject:** FW: Deny Verizon's Nonconforming Request for 6 New Antennas on the Monopole at 423 San Pablo Avenue

### *Beth Pollard*

City Manager  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706  
(510) 528-5710  
[bpollard@albanyca.org](mailto:bpollard@albanyca.org)  
[www.albanyca.org](http://www.albanyca.org)

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**From:** Francis Cebulski [<mailto:cebulski@pacbell.net>]  
**Sent:** Thursday, December 02, 2010 12:26 AM  
**To:** [jwile46@gmail.com](mailto:jwile46@gmail.com); [ge.atkinson@mac.com](mailto:ge.atkinson@mac.com); [fjavandel@ci.berkeley.ca.us](mailto:fjavandel@ci.berkeley.ca.us); [Peggy.thomsen@gmail.com](mailto:Peggy.thomsen@gmail.com); [liebtaub@sbcglobal.net](mailto:liebtaub@sbcglobal.net); Beth Pollard  
**Subject:** Deny Verizon's Nonconforming Request for 6 New Antennas on the Monopole at 423 San Pablo Avenue

Dear Mayor Wile and Albany City Council Members:

I respectfully ask that you deny Verizon's request for 6 new antennas on the monopole at 423 San Pablo Avenue.

Albany's Wireless Communication Facilities ordinance clearly states that only routine maintenance is allowed for this nonconforming tower and that what Verizon requests -- adding new antennas, changing antenna models, and changing antenna output power -- are upgrades and modifications, not routine maintenance. Verizon's application for these antennas clearly states that they are an "upgrade." Our zoning ordinance also prohibits enlargement of nonconforming uses such as this one.

Many of us in the community worked hard to pass our Wireless Ordinance 5 years ago. We are counting on the City Council to uphold it and to enforce the provisions in it that allow us to regulate the placement and modification of cell towers as provided for under federal law. Verizon is free to apply to locate its new antennas at a site that meets our ordinance's requirements. This is our community; please do not give up our legal right to regulate where and how wireless companies can locate and expand facilities here. Hold Verizon to the same standard that you would apply to any applicant for a use permit: require that they adhere to our zoning ordinance.

Sincerely,  
Frank Cebulski  
627 Talbot Avenue  
Albany, CA 94706-1307  
510-526-6061 home  
510-334-3195 cell  
[cebulski@pacbell.net](mailto:cebulski@pacbell.net)

Sent to:

Mayor Joanne Wile [jwile46@gmail.com](mailto:jwile46@gmail.com)  
Council Member Marge Atkinson [marge.atkinson@mac.com](mailto:marge.atkinson@mac.com)  
Council Member Farid Javandel [fjavandel@ci.berkeley.ca.us](mailto:fjavandel@ci.berkeley.ca.us)  
Council Member Peggy Thomsen [Peggy.thomsen@gmail.com](mailto:Peggy.thomsen@gmail.com)  
Council Member Robert Lieber [liebtaub@sbcglobal.net](mailto:liebtaub@sbcglobal.net)  
City Manager Beth Pollard [bpollard@albanyca.org](mailto:bpollard@albanyca.org)

## Jeff Bond

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**From:** Clay Larson [clayl@comcast.net]  
**Sent:** Wednesday, October 27, 2010 6:17 AM  
**To:** Jeff Bond  
**Cc:** efields@berkeley.edu; Francis Chapman  
**Subject:** Appeal of Administrative Decision on 423 SPA

Jeff;

The P&Z Commission voted to refer the wireless facility project at 423 SPA to staff for review as a maintenance project. Presumably, staff will take action and either issue or deny a permit for the applicant to proceed. Albany's zoning ordinance (§20.100.080 C.1) provides that staff administrative decisions can be appealed to the P&Z Commission. There's no mention in the ordinance of any fees for such an appeal. I realize that P&Z has in a sense already heard this item, but there's nothing in the ordinance that provides for any pre-review of the staff's decisions and in fact the commission won't know about the actual decision until it's been made. My question is, when is the decision on the 423 SPA project likely to be made? How does the public learn about an administrative decision? Does this decision take effect immediately or is there ever an appeal period? What is the status of the stop work order between now and the time staff completes its review? I have some other questions, but this is a start.

Clay Larson

## Jeff Bond

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**From:** Francis Chapman [francischapman@yahoo.com]  
**Sent:** Tuesday, October 26, 2010 6:10 PM  
**To:** Jeff Bond  
**Subject:** Comment on Verizon WCF on 400 block of San Pablo

Jeff - if Verizon wishes to upgrade their WCF on the 400 block of San Pablo (the monopole next to the apartment building behind the Goodyear store and near Al's Big Burgers), they should be required to bring the site into conformance with our zoning code.

City of Albany  
Community Development Department  
1000 San Pablo Avenue  
Albany, CA 94706

April 21, 2010

CITY OF ALBANY

APR 26 2010

Ref: Wireless Antenna at 423 San Pablo Avenue

COMMUNITY DEVELOPMENT  
DEPARTMENT

Dear Mr. Barn,

We are a property owner of 412 Kains Avenue in Albany. In 1990, GTE installed cellular tower adjacent to our property. We and our neighbors fought to remove this 65-foot high pole. This pole is only 4 feet from our fence and directly facing our balcony. At the time, California Public Utilities Commission started investigation OII 91-01-012, Rules relating to the construction of commercial mobile radio service facilities in CA. It is adopted May 8 1996; effective May 8, 1996, by Decision 96-05-035, R 90-01-12

Since then, they put up second layer of antennas without any notice and no public hearing. These additional antennas will double the dose of potential health effect of Cellular Electric and Magnetic Fields to the residents. It is an eyesore tower.

The cooling outlet of operating room did move North corner after we complained noise blowing out from the bent in 1991. After Crown Castle added second layer of antennas, they installed cooling bent to East side again.

We remember that Commission made decision not allow putting the towers near residents, school ground and church where public gathering places. It was my mission to serve for public safety. I helped to make the decision by Public Utility Commission, OII 91-01-012.


There are 7 adults and 4 kids living on this property. A baby is expecting in the nearest unit to this pole.

1. We recommend removal of existing 65-foot high monopole.
2. Replacement should be installed away from this residential area. Should not feed the greedy property owner who signed for leasing the corner to 2034.

Thus, we and public will feel safe living in this peaceful city of Albany.

We appreciate if this opinion can be heard at the meeting since we are not able to attend the Public Hearing.

Sincerely yours,

  
Sun Yung Kim and Yongyop Kim  
10104 E Cedar Waxwing Dr  
Sun Lakes, AZ 85248

## Jeff Bond

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**From:** efields@berkeley.edu  
**Sent:** Friday, December 03, 2010 9:41 AM  
**To:** Jeff Bond  
**Cc:** Robert Zweben; NanWishner  
**Subject:** Review of 423 San Pablo Wireless Application  
**Attachments:** USCell-Excerpts.doc

Jeff,

I copied a few excerpts from this decision, as I was reading through it.

UNITED STATES CELLULAR TELEPHONE OF GREATER TULSA v. CITY OF BROKEN ARROW, OKLAHOMA

I added a few comments in a different (typewriter) font. Basically I was interested in the importance of the written record for a denial of a use permit, local authority over wireless communication facilities, and alternatives analysis.

What is our written record for a review or appeal of a P&Z decision to Council? Is it the motion, the minutes of the discussion, and/or any findings the Council makes and incorporates into the motion?

I will look more closely at the findings in the 10-26-2010 staff report, but I was disturbed by this finding in particular: "The City retained an independent third-party consultant specializing in telecommunications facilities. The consultant concluded that the project is best suited location within the area for AT&T [sic] coverage and that the applicant's justification for the site is sound."

Is this something which doesn't belong here because it was left in from an AT&T staff report? I don't see anywhere where Hammett & Edison or Kramer made any reference to suitability of location or alternative locations.

Amber wrote Crown Castle that an alternatives analysis would be required, and they wrote back that they wanted to discuss "...the validity of adherence to this requirement...." If Verizon can't upgrade at this nonconforming facility, has any discussion taken place about alternative locations?

Please forward to Greg if you think appropriate.

Thanks,

Ed

Excerpts from:

340 F.3d 1122 (2003)

**UNITED STATES CELLULAR TELEPHONE OF GREATER TULSA, L.L.C.,  
an Oklahoma Limited Liability Company, Plaintiff-Appellant,  
v.  
CITY OF BROKEN ARROW, OKLAHOMA, Defendant-Appellee.  
United States Cellular Telephone of Greater Tulsa, L.L.C., an Oklahoma  
Limited Liability Company, Plaintiff-Appellee,  
v.  
City of Broken Arrow, Oklahoma, Defendant-Appellant.**

Nos. 02-5128, 02-5172.

**United States Court of Appeals, Tenth Circuit.**

August 19, 2003.

Second, the Zoning Ordinance specifically provides that "[a]ny decision[] to deny an application for the placement, construction, modification of towers for cellular or personal communication service, or specialized radio mobile service shall be conveyed to the applicant in writing." Broken Arrow Zoning Ord. art. VIII, § 18.16. Thus, local law identifies the written decision as the proper source for the reasons supporting the denial, *see Borough of Ho-Ho-Kus*, [197 F.3d at 72](#), and this court will not assume that the City acted in contravention of section 18.16's self-imposed procedural requirement.

Similarly, given the "writing" requirement contained in the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(iii), logic dictates that we look to the required writing to determine the basis for the City Council's decision. As the First Circuit suggested in *Todd*, the purpose of section 332(c)(7)(B)(iii)'s "writing" requirement is to facilitate meaningful judicial review. [244 F.3d at 60](#) ("**[The] written denial must contain a sufficient explanation of the reasons for the permit denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons.**"). *My emphasis.*

Third, according to U.S. Cellular, "[i]t would be patently unfair to speculate that the members of the City Council who voted upon the specific motion, as seconded, would agree to that which was not expressly voted upon." We agree. But it would be similarly unfair to assume, as U.S. Cellular invites us to, that each City Council member who voted to deny U.S. Cellular's application necessarily adopted only those reasons stated by the Council member who initiated the motion at the end of lengthy written and oral consideration. Fortunately, the City's denial letters, which set forth in writing the City's reasons for denial, remove the need for such speculation.

Based on the above, we reject U.S. Cellular's argument that we should remove from the scope of our substantial-evidence review the reasons set forth in the City's denial letters of July 17, 2001, and July 20, 2001 and record evidence supporting those reasons.

Note dissenting opinion below stresses importance of the findings and the actual motion and decision by the City Council. I do not see where our zoning ordinance states that the decision shall be delivered to the applicants in writing. So is the written record the minutes and the motion?

SHADUR, District Judge, dissenting: Here Congress has decreed that under the Telecommunications Act it is the actual "decision by a State or local government or instrumentality thereof," and not what *might* have been its decision, that must be "supported by substantial evidence." Although the statute also requires a "written record," that does not permit, as the majority would have it, a retrospective rewrite that does not track — that goes far beyond — the actual decision. In this instance the written record of what the City Council actually decided is embodied in the transcripts of its proceedings and meeting minutes that I have quoted earlier. In those terms the bulk of the majority's extended rationale falls away, and what little remains — what speaks to the two reasons advanced in each of the City Council's actual votes — does not even begin to approach the statutory standard.

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Rather, our task is a limited one; our sole inquiry under 47 U.S.C. § 332(c)(7)(B)(iii) is "whether the [local authority's] decision, *as guided by local law*, is supported by substantial evidence." *Borough of Ho-Ho-Kus*, [197 F.3d at 72](#) (emphasis added).

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"Nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes." [Aegerter v. City of Delafield, 174 F.3d 886, 891 \(7th Cir.1999\)](#)

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Some may disagree with Congress's decision to leave so much authority in the hands of state and local governments to affect the placement of the physical infrastructure of an important part of the nation's evolving telecommunications network. But that is what it did when it passed the Telecommunications Act of 1996, and it is not our job to second-guess that political decision. [City of Delafield, 174 F.3d at 892](#).

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*Cf. Todd, 244 F.3d at 63* ("For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers.").

In her July 21, 2009 letter to Crown Castle, Amber Curl stated, "An alternative analysis conducted by an independent party will be required..." I presume this was never done. Yet the Findings for Approval in the 10/26/2010 staff report state: "The City retained an independent third-party consultant specializing in telecommunications facilities. The consultant concluded that the project is best suited location within the area for AT&T [sic] coverage and that the applicant's justification for the site is sound."



December 7, 2010

From Ed Fields

Mayor and Members of the City Council,

Here are some thoughts and questions I would like you to consider in your review of Planning Application #09-031 for wireless communication antennas at 423 San Pablo Avenue.

Is the Wireless Communications Facility at 423 San Pablo Avenue nonconforming according to Albany Municipal Code Chapter XX Planning and Zoning?

It is 17 feet taller than the 48-foot height limit for wireless towers in the SPC district, and it does not meet the aesthetic and screening requirements. It is also located within ten feet of an apartment building. See staff reports dated April 27 and October 26, 2010.

Section 20.20.100, I. 3. of the Planning and Zoning Code states that only routine maintenance is allowed on nonconforming uses. Section 20.20.100, F.1. lists "changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit" among others, as modifications or upgrades requiring a use permit.

If it is nonconforming, then upgrades or enlargement of use are not permitted. Is this project an upgrade?

In their application for a Conditional Use Permit and in their letters, Crown Castle consistently refers to the project as an "upgrade." In addition to its existing services, as the result of this project, Verizon would provide a new wireless LTE service using new antennas on an additional new (700 Megahertz) frequency band, with new channels in addition to the existing ones. No Verizon cell phone on the market before December 2010 has the capability to utilize this LTE service.

The City cannot regulate the technologies which Verizon can use, but can enforce the limitation on upgrading and expansion of use of nonconforming facilities. Verizon is free to request to add LTE antennas elsewhere in the City, in conformance with our current zoning code.

Will there be new antennas?

Verizon currently operates 2 Cell and 2 PCS antennas on this monopole. The application requests installation of 2 new Cell, 2 new PCS, and 2 LTE antennas. The Cell and PCS antennas would be combined in a "dual band" antenna that is under a single housing. See attached Andrew product specifications.

What additional upgrades are needed to serve the new antennas? Are additional cables needed?

Yes. At least four new coaxial cables would be added. See the original application and the revised plans dated 10/7/10 which request eight additional coaxial cables.

Each of the four existing antennas requires 2 cables for a total of 8. Each of the two proposed dual band antennas which would replace the four existing antennas requires 4 cables, (2 for each of the antennas within the housing). These are equivalent to the 8 cables required to provide the existing services.

Additionally, the two new LTE antennas each require 2 cables. The net result would be (six) antennas which require 12 cables in total.

This proposal for additional cables makes it clear that there would be more antennas installed and more services provided than there are currently.

Is additional ground-mounted equipment needed? Yes. See Kramer report.

Will there be additional output power? Yes, one LTE channel at 400 watts (for each sector). See Hammett & Edison report.

Can the City regulate the location/placement of wireless antennas?

The Telecommunications Act gives local government authority "over decisions regarding the placement, construction, and modification of personal wireless service facilities." Section 332(c)(7).

"Nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes."

[\*Aegerter v. City of Delafield\*, 174 F.3d 886, 891 \(7th Cir.1999\)](#)

What does the Telecommunications Act of 1996 prohibit the City from doing?

Unreasonably discriminating among providers.

Prohibiting or having the effect of prohibiting the provision of personal wireless services.

Regulating on the basis of environmental effects to the extent that facilities comply with FCC regulations.

Denying the application at 423 San Pablo Avenue would not discriminate; the prohibition against upgrades of nonconforming facilities applies to all providers, as does the right to apply for new antennas at any site that conforms with our ordinance's requirements. Denying the antennas on this monopole would not prohibit Verizon from providing wireless service; they operate another site in the city and, as noted above, are free to apply to locate these new antennas in conformance with our ordinance. For this application, there is no issue regarding regulating environmental effects beyond what the FCC regulations require.

What procedures must be followed under the Telecom Act?

Local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.

Decision to deny a request to place, construct, or modify personal wireless service facilities shall be in writing

[A]nd supported by substantial evidence contained in a written record.

Regarding the substantial evidence requirement, the court in *U.S. Cellular v. City of Broken Arrow, Oklahoma*, ruled that the court's only concern is (emphasis added) "whether the [local authority's] decision, **as guided by local law**, is supported by substantial evidence." In other words, the local authority must document in writing how its decision conforms to its local laws.

Crown Castle/Verizon has not provided an alternatives analysis as requested by the City's planning department on July 21, 2009 and as required by our ordinance.

"For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers." ([Todd, 244 F.3d at 63](#) )

# Product Specifications



## DBXLH-6565A-VTM

DualPol® Dual Band Antenna, 824–960 MHz and 1710–2180 MHz, 65° horizontal beamwidth, RET compatible variable electrical tilt



**NOTE :**

- > • Two DualPol® antennas under one radome
- > • Interleaved dipole technology providing for attractive, low wind load mechanical package
- > • Each antenna is independently capable of field adjustable electrical tilt
- > • Fully compatible with Andrew Teletilt® remote control system

## CHARACTERISTICS

### General Specifications

Antenna Type	DualPol® dual band
Brand	DualPol®   Teletilt®
Operating Frequency Band	1710 – 2180 MHz   824 – 960 MHz

### Electrical Specifications

Frequency Band, MHz	824–896	870–960	1710–1880	1850–1990	1920–2180
Beamwidth, Horizontal, degrees	68	65	65	63	61
Gain, dBd	11.9	12.2	14.4	14.7	14.9
Gain, dBi	14.0	14.3	16.5	16.8	17.0
Beamwidth, Vertical, degrees	16.0	15.0	7.2	6.8	6.5
Beam Tilt, degrees	0–15	0–15	0–8	0–8	0–8
Upper Sidelobe Suppression (USLS), typical, dB	16	18	15	15	15
Front-to-Back Ratio at 180°, dB	25	25	28	28	27
Isolation, dB	25	30	30	30	30
VSWR   Return Loss, db	1.4:1   15.6	1.5:1   14.0	1.5:1   14.0	1.4:1   15.6	1.5:1   14.0
Intermodulation Products, 3rd Order, 2 x 20 W, dBc	-150	-150	-150	-150	-150
Input Power, maximum, watts	300	300	250	250	250
Polarization	±45°	±45°	±45°	±45°	±45°
Impedance, ohms	50	50	50	50	50
Lightning Protection	dc Ground	dc Ground	dc Ground	dc Ground	dc Ground

# Product Specifications

DBXLH-6565A-VTM



## Mechanical Specifications

Color	Light gray
Connector Interface	7-16 DIN Female
Connector Location	Bottom
Connector Quantity	4
Wind Loading, maximum	402.2 N @ 150 km/h 90.4 lbf @ 150 km/h
Wind Speed, maximum	201.0 km/h   124.9 mph

## Dimensions

Depth	132.0 mm   5.2 in
Length	1294.0 mm   50.9 in
Width	269.0 mm   10.6 in
Net Weight	14.2 kg   31.3 lb

## Remote Electrical Tilt (RET) Information

Model with Factory Installed AISG 1.1 Actuator	DBXLH-6565A-R2M
Model with Factory Installed AISG 2.0 Actuator	DBXLH-6565A-A2M
RET System	Teletilt®

## Regulatory Compliance/Certifications

Agency	Classification
RoHS 2002/95/EC	Compliant by Exemption
China RoHS SJ/T 11364-2006	Above Maximum Concentration Value (MCV)



## INCLUDED PRODUCTS



### **600899A-2**

Downtilt Mounting Kit for 2.4 - 4.5 in (60 - 115 mm) OD round members

[www.commscope.com/andrew](http://www.commscope.com/andrew)

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page 2 of 4  
10/30/2010

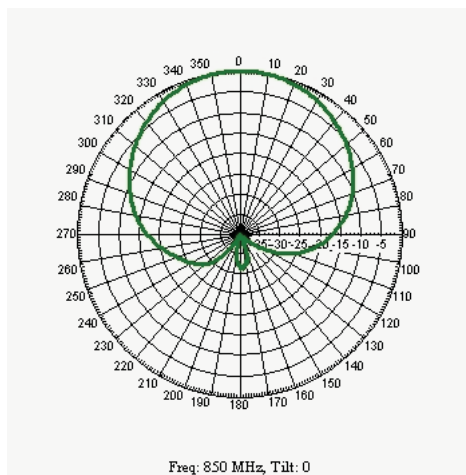
# Product Specifications

DBXLH-6565A-VTM

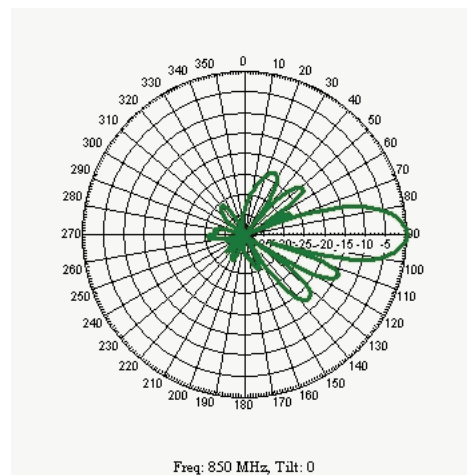


## Horizontal Pattern

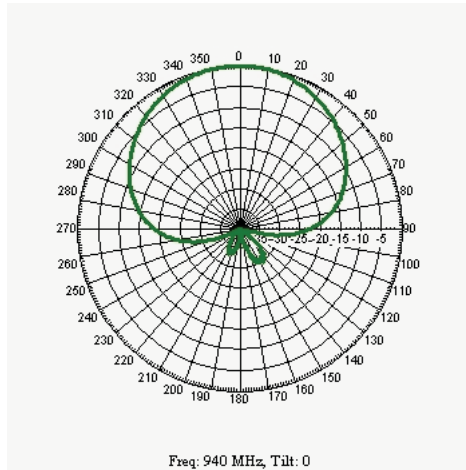
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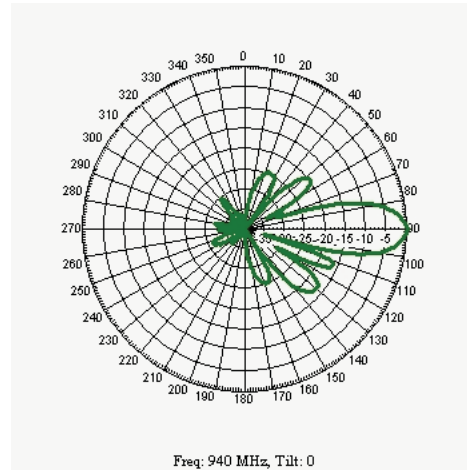
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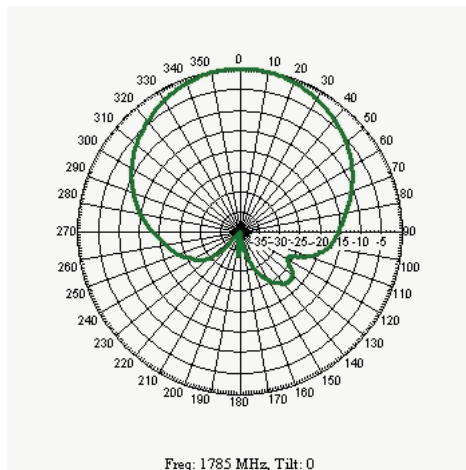
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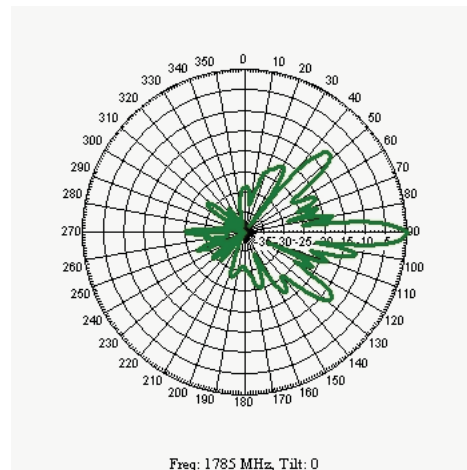
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Freq: 1785 MHz, Tilt: 0



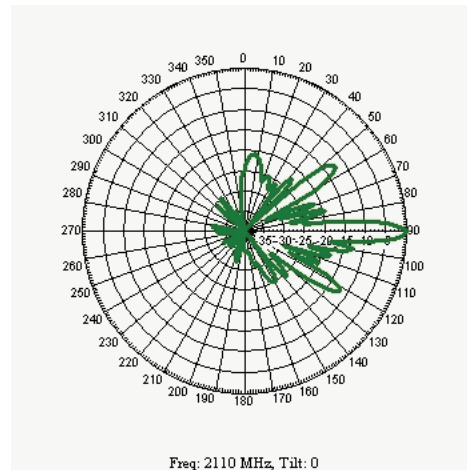
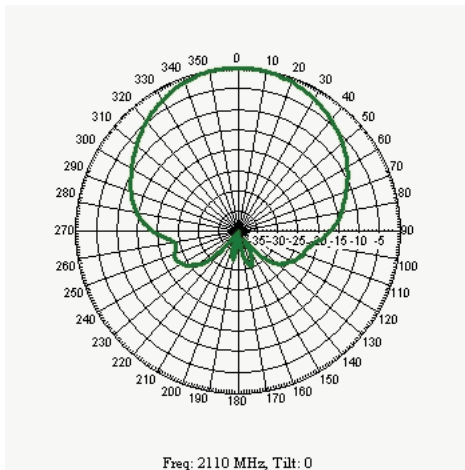
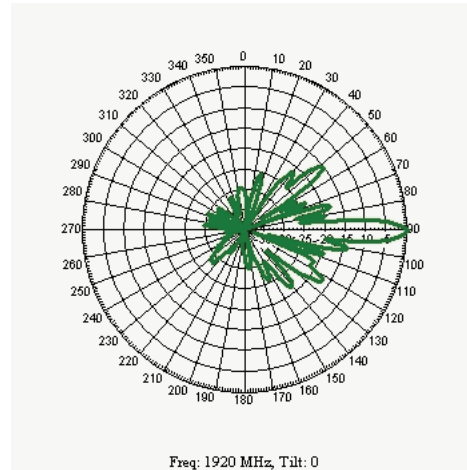
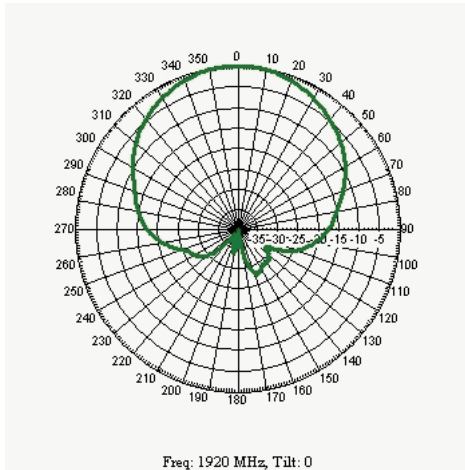
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# Product Specifications

DBXLH-6565A-VTM



November 9, 2010

To: Albany City Council

Re: Council Review of Planning Application #09-031

Crown Castle/Verizon-423 San Pablo Avenue

From: Ed Fields and Nan Wishner

The new proposal by Verizon/Crown Castle to replace the 4 existing antennas on the monopole at 423 San Pablo avenue with 4 new antennas must still be considered an upgrade, as described in Verizon/Crown Castle's original application for installation of six antennas: two for cellular (800 Mhz) coverage, two for PCS (1,900 MHz) coverage, and two for new "long-term evolution" (LTE) service. [From 6-22-09 Application for Conditional Use Permit: "Verizon Wireless proposes to install (2) additional antennas mounted to (E) monopole. No change to azimuths. Also add (8) new coax."]

Two of the currently proposed antennas are the same model as proposed previously, to provide new LTE data communications services. The other two newly proposed antennas are dual band antennas, and each antenna will replace the function of a pair of existing antennas—to provide cellular and PCS coverage. The manufacturer describes these dual band antennas as "Two DualPol antennas under one radome."

Each of the dual band antennas requires 4 cables, whereas the two currently installed antennas that each dual band antenna would replace each require only two cables. All the antennas are "dual polarized," but these new two are dual band, and each band is dual polarized. All of these details clearly indicate that the "dual band" antennas are two antennas in one. The manufacturer emphasizes on one of its publicity sheets that these dual band antennas are, among other things, designed "for ease in obtaining zoning approvals."

In other words, under the current proposal, six antennas would still be installed where there are now four; Verizon has simply revised the antenna models so that what would appear to be two new antennas would actually contain four antennas.

The nonconforming monopole may still have a similar appearance with the four new Verizon antenna radomes, but the effect will be to extend the life of a nonconforming structure by providing new antennas for a new technology on a new frequency band, in addition to the existing technologies and frequency bands. This is essentially a 50% increase in capability.

Now that Crown Castle has been advised that only maintenance is allowed on a nonconforming facility, they are referring to what they previously described as an upgrade as "routine maintenance."

The following are all quotes from the information provided by Crown Castle:

"The purpose of these 'antennas' will be to enhance the overall Verizon network."



"The proposed equipment modification will be located on an (e) Cellular facility. Therefore, the 'usage' is allowed, as we are merely 'upgrading' the facility to eliminate the need for an additional cell site in the area."

"This is a request to upgrade the existing facility, installation of 'LTE' (long term evolution) which will support the data services on your Verizon Wireless phone."

"We did not seek alternatives, as we are upgrading our existing network at this location, the purpose is to upgrade the facility with LTE, which is a direction all our facilities are moving towards."

"Alternative locations are not feasible, as we are 'upgrading' this existing facilities, [sic] not expanding or increasing the number of cell sites, merely enhancing our network."

"This is technological advancement with each individual facility, this is not a 'new build' site, we are enhancing the "data" capability services for this location."

Note that basis of our concern is not a question of Verizon's right to upgrade its facilities, enhance its network, or provide new technologies or services in Albany, but rather that this particular existing facility does not conform with our Zoning Ordinance and does not allow those upgrades.

A court decision, T-Mobile vs. Anacortes, has been mentioned as applicable to the 423 San Pablo Avenue situation. However, that decision refers to closing a significant gap in coverage and the need to rebut the provider's alternatives analysis by showing "the existence of some potentially available and technologically feasible alternative to the proposed location." In contrast, Crown Castle has done no alternatives analysis and has not alleged any significant gap in coverage. We have stated in previous correspondence regarding this application that the facility is legally nonconforming, and cannot be upgraded due to the following issues of nonconformance with our current Zoning Code, all of which the T-Mobile vs. Anacortes decision states are "legitimate concerns for a locality": "height of tower," (the existing tower is 17 feet higher than the 48 foot height allowed by the current ordinance), "proximity to residential structures," and "aesthetic concerns."

Also mentioned in our previous correspondence regarding this application, Albany's Wireless Telecommunications Facility ordinance clearly states that only "routine maintenance" is allowed on legal nonconforming structures (Section I3, "Existing Uses"). Our ordinance makes clear in Section F1 that the following activities are not routine maintenance but "upgrades" or "modifications" (and are subject to major or minor use permits, design review, and a building permit): "...any change in the specifications or conditions stipulated in the approved permit, including but not limited to, changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit, repositioning of antennas, increase in proposed dimensions of tower or support structure, or any other facility upgrades." This application entails changes in power output, increase in number of antennas, and changes in antenna type and model.