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P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Project Permit
2011-156

Date Issued:

In the Matter of the Application of

**INDEPENDENT TOWERS HOLDINGS, LLC,
NEW CINGULAR WIRELESS PCS, LLC,
ST. LAWRENCE COUNTY OFFICE OF
EMERGENCY SERVICES, and LISA ANNE
SIZELAND**

for a permit pursuant to § 809 of
the Adirondack Park Agency Act

To the County Clerk: This permit
must be recorded on or before _____.
Please index this permit in the grantor
index under the following names:

- 1. Independent Towers Holdings, LLC**
- 2. New Cingular Wireless PCS, LLC**
- 3. St. Lawrence County Office of
Emergency Services**
- 4. Lisa Anne Sizeland**

SUMMARY AND AUTHORIZATION

Independent Towers Holdings, LLC, New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility - Upstate NY), St. Lawrence County Office of Emergency Services, and Lisa Anne Sizeland are granted a permit, on conditions, authorizing a new structure (a major public utility use) in excess of 40 feet in height, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Clifton, St. Lawrence County.

This project may not be undertaken, and no transfer deed shall be recorded, until this permit is recorded in the St. Lawrence County Clerk's Office. This permit shall expire unless so recorded on or before _____ in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the lease agreement has been finalized, the tower constructed, and the utility lines have been extended to the site.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The project is a new structure in excess of 40 feet in height, a major public utility use, and a subdivision by lease creating a non-shoreline lot less than 40,000 square feet. Therefore, the project is a Class A regional project requiring an Agency permit pursuant to §§ 810(1)(b)(5) and (15) and a Class B regional project requiring an Agency permit pursuant to § 810(2)(a)(2)(b) of the Adirondack Park Agency Act.

PROJECT LOCATION

The project site is a 28.69±-acre parcel, located on the west side of Columbian Road, in the Town of Clifton, St. Lawrence County, in an area classified Moderate Intensity Use and Resource Management by the Adirondack Park Land Use and Development Plan Map. All new land use and development proposed as part of this project will occur on the Moderate Intensity Use portion of the project site. The 28.69±-acre site is designated Tax Map No. 205.078-2-3.

PROJECT DESCRIPTION AS PROPOSED

A subdivision into sites involving the lease of a 100-foot by 100-foot parcel for the construction of a new 100-foot-tall (above existing ground level - AGL) telecommunications tower, the top 35 feet to be concealed as a simulated pine tree. The total height of the simulated tree tower will be 110 feet (100-foot tower plus 10-foot crown branch). The tower will be located within a 75-foot by 75-foot fenced-in equipment compound located 1,150± feet (0.22 miles) west of Columbian Road. A vegetative "no cutting" easement will protect trees in the vicinity of the proposed tower.

AT&T Mobility - Upstate NY is proposing to install nine 8-foot-tall panel antennas on the tower (at a centerline height of 100 feet AGL) and construct a 20-foot by 11.5-foot equipment shelter along with a backup generator. St. Lawrence County Office of Emergency Services is proposing to install one 5-foot-tall whip antenna to the top of the tower (total height 105 feet AGL) and construct a 10-foot by 8-foot equipment shelter. Access to the facility will follow an existing trail, except where deviation is necessary to avoid wetlands, and be upgraded to a 1,550-foot-long gravel driveway to accommodate construction and service vehicles. Underground utilities will be located along the 12-foot-wide driveway and within the 30-foot-wide access and utility easement.

Room for four additional carriers is available both within the compound and on the tower. Project plans show how Verizon Wireless equipment would fit on the tower (at a centerline height of 90 feet AGL) and in the compound. Verizon Wireless is not part of the application and this permit does not authorize their co-location on this tower.

The project is shown on a set of plans (31 sheets) titled "Cranberry Lake, IND-148," prepared by Infinigy Engineering and Surveying of Latham, NY, and having a final revision date of February 24, 2012. All plans are stamped "Final Plans, Adirondack Park Agency, P2011-156, April 10, 2012." Reduced-scale copies of the sheets titled "Overall Site Layout (Drawing Number C2A)" and "Tower Elevation (Drawing Number C4)" are attached as part of this permit for easy reference. The original, full-scale maps and plans referenced above are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the site plan maps and plans referred to herein shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease, and by the applicant and/or any subsequent owner or lessee to all contractor(s) undertaking any construction activities pursuant to the permitted project. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2011-156 issued _____, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Proposed Development

4. The proposed project shall be undertaken as shown on the project plans, except that the top 35 feet of the tower shall be a simulated tree. The simulated tree tower shall not exceed 110 feet in height (including the 10-foot-tall simulated "crown branch" approved herein, or any lightning rod) and the antennas shall be located on the tower as shown on the plans referenced herein, with the top of the AT&T panel antennas at an elevation not to exceed 104 feet above ground level (centerline elevation of 100 feet above ground level) and the top of the St. Lawrence County whip antenna at an elevation not to exceed 105 feet above ground level. All clearing and grading for the proposed access road, tower, and equipment compound shall also be undertaken as shown on the project plans.

Simulated Tree Tower

5. The simulated tree tower approved herein shall be constructed such that it appears no taller or broader than depicted in the photosimulations from Cranberry Lake, prepared on January 19, 2012 by EI - Environmental Integration, LLC. From off-site public viewpoints, the antennas and supporting infrastructure (i.e., antenna mounting cross members, cables, etc.) shall not be readily apparent as to size, composition, or color. The tower shall be constructed as proposed and shall mimic the branching structure, needle pattern, and coloration of a mature, fully-formed eastern white pine tree. The Agency shall be notified (in writing, accompanied by high resolution color photographs in print and digital form) within 30 days of completion of the simulated tree tower and associated tower-mounted infrastructure. Within 30 days of notification, the Agency shall provide written confirmation of permit compliance or shall specifically state the reason(s) for non-compliance with this condition. In the event of non-compliance with this condition, the applicant shall within 45 days submit a plan for Agency review and approval to modify the structure and achieve compliance. Such plan shall also include a good faith estimate regarding the time necessary to undertake such changes upon final approval by the Agency.

Review of Future Development

6. Any future new land use and development on the 28.69±-acre project site involving the construction of any new communications towers or the addition of any new antennas, parabolic dishes, or other equipment to the authorized tower, shall require prior Agency review and approval in the form of a new or amended permit. Maintenance and/or "in-kind" replacement of the tower, antennas, simulated branching, equipment building and other appurtenant facilities authorized herein is allowed without a new or amended permit.
7. No principal building shall be constructed on the parcel measuring 10,000 square feet (0.23± acres) in area and leased by Independent Towers Holdings, LLC, absent an Agency permit that ensures conformance with Executive Law § 809(10), including but not limited to conformance with the overall intensity guidelines. Any deed conveying this 10,000-square-foot parcel shall contain the preceding sentence pertaining to the prohibition of principal buildings on the 10,000-square-foot parcel.

Visual/Open Space Impacts

8. In order to minimize the visual appearance of the authorized tower, antennas, and support poles, they shall be painted dark charcoal grey or black with a non-reflective flat or matte finish or the tower may be clad in artificial bark designed to mimic a mature eastern white pine tree. The top 35 feet of the tower shall be concealed as a simulated tree.
9. On the project site and within 200 feet of the tower authorized herein, no existing trees shall be cut, culled, trimmed, pruned, or otherwise removed from the project site without prior Agency review and approval in the form of a new or amended permit or letter or permit compliance, except for the removal of those trees necessary to undertake the project (i.e., those 28± trees that are greater than 6 inches in diameter at breast height and within the 100-foot by 100-foot lease area or the 30-foot-wide access and utility easement) as shown on the project plans. This condition shall not be deemed to prevent the removal of dead or downed trees within the parcel leased by Independent Towers, LLC, provided there is two weeks prior written notice to the Agency of the proposed cutting that includes verification by a forester or landscape architect of the condition of the tree(s) to be removed.

10. If a natural cause such as blow-down, ice storm, fire, disease or another event beyond the control of the operator of the tower and/or the antennas authorized herein results in the complete or partial loss of the vegetation that provides the screening and/or backdrop for the tower and/or its antennas, then Independent Towers Holdings, LLC, or their successors and assigns, shall within six months, present a plan for Agency approval intended to achieve "substantial invisibility" as set out in the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park". Landowners of the site shall negotiate in good faith to allow for the implementation of any plan approved by the Agency. The plan shall describe a program of re-vegetation and/or re-design intended to achieve substantial invisibility within 10 years, or relocation to an alternate substantially invisible site within two years. The plan shall also provide for substantially the same wireless service existing prior to the loss of vegetation. Approval of the plan may be in the form of a letter of permit compliance, or a new or amended permit.
11. The tower shall not be lighted without prior Agency review and approval in the form of a new or amended Agency permit.
12. The ten 6-foot-tall evergreen trees shown on Sheet C2A of the project plans shall be planted at the southern property boundary within 30 days of tower installation, or before May 31st of the year following tower installation if installation occurs after August 31st. Any trees which do not survive or become diseased shall be replaced annually until such time as all of the trees have been established in a healthy growing condition.

Co-Location

13. Independent Tower Holdings, LLC, its successors and assigns shall make space available within their leasehold to other FCC-licensed carriers for their use in creating cellular telephone "cells" and to other entities to the extent that space is available at the then-current market rate customarily charged for such space leases. However, such further use shall require prior review and approval from the Adirondack Park Agency, and will be subject to the environmental impact analysis required by law and the Agency's "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park". Should the carriers and/or owners be unable to agree on the terms of the lease for such co-location; they shall submit the dispute to mediation or arbitration pursuant to the guidelines of a nationally recognized dispute resolution organization.

Invasive Species Prevention

14. To reduce the spread of invasive species, any mulching (as described on Drawing Number EC5, Grading, Drainage, and Erosion Control Notes and Details) shall use only straw, and not hay.
15. All heavy equipment, including but not limited to trucks, excavators, and tractors to be used on the site for earth moving, grading or excavating, shall be washed with high pressure hoses and hot water either (i) prior to being brought on the project site or (ii) if washed on the project site, equipment shall be washed in one location to prevent the distribution of invasive species among different wash sites. The intent of this condition is to ensure that all equipment utilized for the project is clean and free of all soil, mud, or other similar material that may contain invasive plant materials, seeds, or other propagules.

Documentation of Construction

16. The Agency shall be provided with color photographs (both in print and digital form) showing the completed tower, antennas, and equipment compound within 30 days of project completion. Photographs shall be taken at the project site and from Photostation 2 (Cranberry Lake, Image #702) and Photostation 8 (west on NY State Route 3, approaching the Cranberry Lake Lodge). At the project site, photographs showing the entire completed project shall be provided. From both photostations, digital equivalent 55 mm and 85 mm lenses shall be employed. All photographs must clearly identify the date the picture was taken, the location of the photograph, and the lens size employed. Compliance photographs shall be taken on a clear day with little cloud cover.

Discontinuance of Use

17. If the use of the tower for the authorized cellular telephone, voice, data or other forms of wireless communications is discontinued for more than one year, Independent Towers Holdings, LLC, its successors and assigns, shall remove the tower from the site within the following year. If the use of the herein authorized antennas for cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, then AT&T Mobility-Upstate NY and/or St. Lawrence County Office of Emergency Services, their successors and assigns, shall remove their respective antennas from the tower within the following six months. Once the time frames for removal have expired according to this condition, placement of a new tower on the project site or replacement of the antennas on the tower for cellular telephone, voice, data or other forms of wireless communications shall be

subject to review and approval by the Agency in the form of a new or amended permit. The landowners, their successors and assigns shall allow timely removal of the tower or antenna array pursuant to this condition.

FINDINGS OF FACT

Background/Prior History

1. The project site is described in a deed dated July 16, 1980 from the County of St. Lawrence to Lisa Anne Sizeland and recorded August 14, 1980 at the St. Lawrence County Clerk's Office in Liber 952 at page 561.
2. On the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan, the landowner, Virgie Dean, owned no additional adjoining property.
3. The project site has not been the subject of any prior Agency determinations or permits.
4. New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility - Upstate NY) is a public utility and wireless telecommunications company licensed by the Federal Communications Commission (FCC) and authorized to do business in Warren County, New York.
5. The St. Lawrence County Office of Emergency Services is a co-applicant to this application for the purposes of improving emergency communications in the vicinity of this tower, including the Cranberry Lake Fire District.
6. The northwestern corner of the project site is located in a critical environmental area under the Adirondack Park Agency Act, as it is within one-quarter mile of the Oswegatchie River, a designated Study River. However, the tower and access drive are not within this critical environmental area.

Existing Environmental Setting

7. There is no existing development on the project site other than an old logging road/trail. The project site is primarily forested. Within 200 feet of the tower, maple trees are the most numerous species, followed by beech, cherry, and ash.
8. Existing slopes at and around the tower location are 9± percent. Existing slopes are generally 15± percent or less along the route of the access drive, except for two 50-foot long stretches of 20± to 25± percent. The driveway will be 12 feet in width and 1,550± feet in length.

9. Soils in the vicinity of the tower are mapped by the USDA Natural Resource Conservation Service's SSURGO program as the Potsdam-Tunbridge Complex, which is typically very bouldery and well-drained.
10. There are no mapped water bodies on the project site. There are wetlands on the project site in two locations along either side of the proposed access drive, as shown on the project plans. An Agency wetland biologist confirmed the presence and location of wetlands during a June 9, 2011 site visit (W2011-77). Both are broad-leaved deciduous forested wetlands assigned a preliminary value rating of "2" pursuant to 9 NYCRR Part 578.

Character of the Area

11. The project site has frontage on and is accessed from Columbian Road. The Columbian Road corridor contains residential and camp structures and is otherwise forested. The only nearby existing structure is a seasonal cabin located on an adjoining parcel south of the project site, 250± feet from the tower. The tower location is 0.50± miles south of the Hamlet of Cranberry Lake and 0.25± miles west of the waterbody of Cranberry Lake.

Public Notice and Comment

12. There were two rounds of notices seeking public comment, first for the initially proposed 90-foot tower with AT&T antennas and later for a modified proposal for a 100-foot tower with both AT&T and St. Lawrence County antennas. On October 7, 2011 and March 21, 2012, the Agency notified all adjoining landowners and those parties as statutorily required by § 809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. The Agency received nine comment letters on the initially proposed 90-foot-tall tower and three additional comment letters on the modified proposal for a 100-foot-tall tower. Of the combined total, six of the letters expressed some concern about the project and six of the letters were in support of the project.
13. The letters expressing concern about the project were all from owners and family members of the cabin nearest to the proposed tower. Their concerns included continued use of the project site for accessing their own property, as well as lighting, noise, radiation, vandalism, trespassing, safety, and aesthetics. The current and future use of the project site for access to their own adjoining property is entirely between those with legal interest in the properties, not the Agency. The 1996 Federal Telecommunications Act pre-empts state and local jurisdictions concerning the effects of radio-frequency emissions, and is

therefore not a matter for Agency review. Addressing concerns of access, vandalism, and trespassing, the proposed project was modified to include a gate at the base of the access driveway that may be locked with a combination lock, allowing the property owner(s) with legal interest to control access. Addressing aesthetic concerns, the proposed project was modified to include the planting of ten 6-foot tall evergreen trees along the property line between the cabin property and the tower property. Further, vegetative cutting will be restricted by easement within a circular area surrounding the tower, 200 feet in radius, and the top 35 feet of the tower will be concealed as a simulated tree. In Agency staff's opinion, these measures will ensure that the tower and its equipment base are not readily apparent from the cabin in question. Addressing the noise concern, the only sources of additional noise associated with this project are the on-site generator, which will be on during power outages and to charge the battery, and possibly an air conditioner. As for the safety concern, the "fall zone" for the tower is entirely on the project site. There is no exterior lighting proposed or authorized as part of this project.

14. Letters in support of the project were from a resident of Columbian Road, the Supervisor of the Town of Clifton, the Chairman of the Town's Site Plan Review Board, the District Chairman of the Board of Fire Commissioners for the Cranberry Lake Fire District, and the St. Lawrence County Office of Emergency Services. They cited the local need for improved cellular and emergency communications as reasons for their support.

Other Regulatory Permits and Approvals

15. The Town of Clifton Site Plan Review Board held a public hearing on the initially proposed project at an August 18, 2011 meeting. Comments at the hearing mainly concerned the need for cellular service in a rural setting. The board voted unanimously to pass Resolution 001-2011 to accept the plans from Independent Towers Holdings, LLC for a 90-foot cell tower. The Town of Clifton Site Plan Review Board discussed the modified project at their December 9, 2011 meeting, including the 10-foot increase in height to accommodate Verizon Wireless. The board voted unanimously to pass Resolution 002-2011 approving the addition of 10 feet to the previously proposed tower.
16. Letters of project support were received from representatives of the Town of Clifton and the Cranberry Lake Fire Department (see Finding 14). While St. Lawrence County Office of Emergency Services is the co-applicant named for this project, the whip antenna that they would install would also serve the emergency communications of the Cranberry Lake Fire Department.

17. By letter dated August 26, 2011, the Federal Aviation Administration determined that the project as proposed would not be a hazard to air navigation.
18. By letter dated September 6, 2011, the New York Air National Guard determined that the project as proposed would not cause any significant negative impact on the military training airspace it underlies and therefore the USAF would not contest the application.
19. The tower authorized herein will require licensing from the Federal Communications Commission (FCC).

PROJECT IMPACTS

Wetlands

20. Provided the access drive is constructed in the location shown on the project plans, thereby avoiding the class 2 wetlands present, then this project will have no impacts on wetlands.

Visual Analysis

21. A visual analysis of the proposed tower and antenna array titled "Visual Resource Evaluation Report" was issued on August 16, 2011 by Infinigy Engineering and Surveying of Latham, NY (Infinigy Project #168-148) and submitted by the applicant. It included computerized mapping showing areas of potential visibility based on topography, a balloon test to identify the tower location, height and actual areas of visibility, and photographs of the balloon test. An Agency staff member was present during the balloon test.
22. A site-specific simulated tree design was prepared for the 100-foot-tall tower by EL - Environmental Integration, LLC (drawn by Thor Holbek) on January 9, 2012 and submitted by the applicant. It included a branch layout titled "Cranberry Lake, NY Branch Layout" and simulations of the simulated tree tower as seen from four locations on Cranberry Lake, Photostations 2, 3, 4, and 5 of the "Visual Resource Evaluation Report" (see Finding 21). The branch layout specifies the location and length of 93 branches along the top 35 feet of the tower.
23. The tower and antennas (i.e., AT&T's antenna array and St. Lawrence County's whip antenna) are not visible from the north, west, or south. From the west, the top 15 to 20 feet of a 100-foot-tall unconcealed tower would be visible from NY State Route 3, the Cranberry Lake Lodge marina, and Cranberry Lake itself.

Provided the top of the tower is concealed as a simulated tree (see Finding 22), then the tower and its antennas will blend in with the existing forested treeline and be substantially invisible. The tower will not be visible from the Cranberry Lake state boat launch, campground, or beach or from the Oswegatchie River.

24. As a result of Agency review of the project based upon the pertinent development considerations set forth in § 805(4) of the Adirondack Park Agency Act and applicable regulations it has been determined that the project will not result in any undue adverse impacts on the Park's visual and open space resources because the proposed tower and antennas will not be readily apparent as viewed from off-site locations, provided the top 35 feet of the tower are concealed as a simulated tree and the tower, antennas, and support poles are painted dark charcoal grey or black with a non-reflective flat or matte finish or the tower is clad in artificial bark.

Towers Policy

25. On February 15, 2002, the Agency adopted a policy titled "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy). This policy is intended to protect aesthetic, open space and other resources, while providing for telecommunications systems consistent with federal law.
26. The proposed tower and antennas are consistent with the Agency's "Towers Policy" because the tower and antennas will be substantially invisible from off-site locations. The proposed simulated tree tower and antennas, including their appurtenant support facilities and access drive, will not be readily apparent as to size, composition, or color and the structure will, to the maximum extent practicable, blend with the background vegetation as seen from all significant potential public viewing points and as documented by simulation and other visual analysis methods.

Historic Preservation

27. On September 13, 2011, the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) concurred with the filing of No Effect (OPRHP File No. 0004853750), meaning OPRHP found that the project will not cause any change in the quality of "registered," "eligible," or "inventoried" property. Further, the application on record reveals no registered, eligible or inventoried property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980, would be materially affected by the proposed project.

