



MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION,
THE NEVADA STATE HISTORIC PRESERVATION OFFICER,
AND AT&T MOBILITY, LLC
REGARDING THE CONSTRUCTION OF A COMMUNICATIONS TOWER
WITHIN THE AUSTIN HISTORIC DISTRICT IN AUSTIN,
LANDER COUNTY, NEVADA

WHEREAS, AT&T Mobility, LLC (AT&T Mobility) proposes to construct a communications tower and associated features, including a 100 foot self-support lattice tower and a 11 foot, 6 inch by 26 foot prefabricated equipment shelter and other support equipment, within a 40 foot by 60 foot lease area within the Austin Historic District at 146 Third Street in Austin, Lander County, Nevada (with coordinates of N 39° 29' 34.03" and W 117° 04' 1.16"), for use by multiple licensees of the Federal Communications Commission (FCC) (Attachment 1); and

WHEREAS, AT&T Mobility is an FCC licensee and intends to use the Facility in connection with the provision of its licensed wireless telecommunications service; and

WHEREAS, the FCC has determined that the construction of the Facility is a federal undertaking; and

WHEREAS, AT&T Mobility, pursuant to delegation from the FCC under the authority of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA), initiated the National Historic Preservation Act (NHPA) Section 106 review for the site, as required by FCC rules, 47 C.F.R. §1.1307(a)(4); and

WHEREAS, AT&T Mobility has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to 36 C.F.R. Part 800, regulations implementing Section 106 of the NHPA,

and the SHPO has been invited to participate in this Memorandum of Agreement (MOA); and

WHEREAS, the FCC, in consultation with the SHPO, has determined that the Facility construction may have an adverse effect on the following properties listed in the National Register of Historic Places (NRHP): The Austin Historic District (NRHP #71000489), the Lander County High School building (NRHP #00000821), St. George's Episcopal Church (NRHP #03000755) Lander County Courthouse (NRHP #03000750), Austin Masonic Hall and Odd Fellows Hall (NRHP #03000756), Austin City Hall (NRHP #03000754), St. Augustine's Catholic Church (NRHP #03000758), Austin Methodist Church (NRHP #03000751), and Gridley Store (NRHP #03000752); and

WHEREAS, AT&T Mobility, as an invited signatory, consistent with the NPA, has considered and evaluated a number of alternative sites for locating the Facility and has concluded that all of the sites it considered are unavailable for AT&T Mobility use, would pose a greater adverse effect to historic resources, or are unsatisfactory from a technical perspective for the needs of the communications systems supported by the antennas to be located on the Facility (Attachment 2); and

WHEREAS, members of the general public and other interested parties were afforded an opportunity to participate in and comment on this undertaking pursuant to notices published in *The Las Vegas Review Journal* on April 26, 2014 and *The Battle Mountain Bugle* on September 24, 2014. No comments regarding effects to historic properties or requests for consulting party status were received; and

WHEREAS, AT&T Mobility, using the FCC's Tower Construction Notification System (TCNS), has made a reasonable and good faith effort to identify and contact federally recognized Indian tribes including the Duckwater Shoshone Tribe, the Battle Mountain Band Council, the Fallon Paiute-Shoshone Tribe, Kaibab Band of Paiute Indians, Yomba Shoshone Tribe, Walker River Paiute Tribal Council, and the Shoshone-Bannock Tribes that might attach religious and cultural significance to historic properties. These communications resulted in either an affirmative response

that no historic properties of religious or cultural significance would be affected by the Facility or that the individual tribe was not interested in further pre-construction review; and

WHEREAS, AT&T Mobility obtained contact information from the Inter-Tribal Council of Nevada (ITCN). Twenty-six Tribes and Community Organizations that serve Indian People living in Nevada and the Great Basin Region were identified through this consultation process as Additional Consulting Parties. The following Tribes were invited to comment on the proposed project including the Carson City Council, the Dresslerville Community Council, the Duck Valley Shoshone Paiute Tribe, the Elko Band Council, the Ely Shoshone Tribe, the Fort McDermitt Tribe, the Goshute Business Council, the Lovelock Paiute Tribe, the Pyramid Lake Paiute Tribe, the Reno-Sparks Indian Community, the South Fork Band Council, the Stewart Community Council, the Summit Lake Paiute Tribe, the Te-Moak Tribal Council, the Wells Band Council, the Winnemucca Colony Council, and the Yerington Paiute Tribe that might attach religious and cultural significance to historic properties. The identified Tribes have not expressed an interest in continued consultation; and

WHEREAS, the local government that has primary land use jurisdiction over the site of the Facility, the Lander County Community Development Department, was notified of the Facility and has reviewed and approved construction of the Facility at the proposed location; and

WHEREAS, AT&T Mobility on behalf of the FCC has consulted with the Nevada SHPO to ensure that historic properties effected by the construction of the Facility are taken into account; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) was invited to participate in the negotiation of this MOA and has subsequently declined that invitation; and

NOW THEREFORE, the FCC, the SHPO, and AT&T Mobility agree that the Facility shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and together with the undersigned Consulting Parties, agree that these measures shall constitute full, complete and adequate mitigation measures under the NHPA and the implementing regulations of the ACHP and the FCC.

I. STIPULATIONS

The FCC, through coordination with AT&T Mobility, shall ensure that the following measures are carried out:

- A. AT&T Mobility shall remove the existing temporary Cell on Wheels (COW) tower currently located approximately 40 feet southwest of the proposed project area upon completion of the Facility (Attachment 3).
- B. AT&T Mobility shall make the proposed tower available for future microwave-fiber interconnection collocations by AT&T Mobility and other wireless carrier collocated equipment as the opportunities arise and the structural integrity of the proposed tower allows.
- C. AT&T Mobility shall paint the proposed tower, cabling on the proposed tower, microwave antennas and all other appurtenances on the proposed tower a color that will blend in with the sky to limit the potential visual impact the proposed Facility will have on the Austin Historic District. Color samples or photographs of sample towers painted applicable colors, including galvanized steel, “sky blues” and “neutral grays,” shall be submitted to SHPO for review and final selection prior to construction. If galvanized steel is selected as the appropriate color, the tower, cabling, and appurtenances will not be painted.
- D. AT&T Mobility shall paint the proposed equipment shelter to match existing buildings in the surrounding area to further minimize the visual impact that the shelter will have to the identified historic properties. Color samples or pictures simulating the painted appearance of the shelter shall be submitted to SHPO for review and approval prior to construction.
- E. AT&T Mobility shall not add additional fencing to the perimeter of the Facility due to the presence of existing perimeter fencing.

F. AT&T Mobility will fund, up to a maximum of \$5,000, an updated photographic survey of the Austin Historic District and the identified historic properties, including photographs of each contributing element as well as general views from within the previously identified historic district boundaries. Photographs will be keyed to an updated map and to the property descriptions in the original nomination form. This updated photographic survey will be completed within three (3) months of execution of this MOA. Once completed, it will be submitted to the SHPO for review.

G. AT&T Mobility will make the Facility available for the future placement of antennas and associated equipment for public safety broadband service, as legislated in Section 6206 of the Middle Class Tax Relief Act, to the extent that space on the Facility is available for use and the structural integrity of the proposed tower allows.

Once Stipulation F is met, AT&T Mobility will notify the FCC and SHPO in writing, providing documentation for same. Upon written notification from SHPO that said mitigation effort is complete, the FCC will provide AT&T Mobility with a Notice to Proceed with construction of the Facility.

II. MONITORING AND REPORTING

After the stipulations are executed and the Facility constructed, AT&T Mobility shall provide all Parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in AT&T Mobility's efforts to carry out the terms of this MOA.

III. REMOVAL

In the event AT&T Mobility or its successor(s) abandons the Facility, AT&T Mobility or its successor(s) shall disassemble the Facility with the proposed tower removed down to four feet below grade, and notify the SHPO accordingly.

IV. DISPUTE RESOLUTION

Should the Nevada SHPO object within thirty (30) days to any plans provided for review pursuant to the MOA, the FCC shall consult with the Nevada SHPO to resolve the objection. If the FCC determines that the objection cannot be resolved, the FCC shall request further comments or recommendations of the ACHP concerning the dispute pursuant to 36 C.F.R. Part 800. Any ACHP comment provided in response to such a request will be taken into account by the FCC in accordance with 36 C.F.R. Part 800 with reference only to the subject of the dispute. The FCC's responsibility to carry out all actions under this MOA that are not the subject of the dispute will remain unchanged.

V. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation IV above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Facility, the FCC must either (A) execute a MOA pursuant to 36 CFR §800.6 or (B) request, take into account, and respond to the comments of the ACHP under 36 CFR §800.7 The FCC shall notify the signatories as to the course of action it will pursue.

VI. ENFORCEMENT

Failure to carry out the terms of this MOA will require that the FCC again request the comments of the ACHP, in accordance with 36 C.F.R. Part 800. If the terms of this MOA are not implemented, the FCC shall provide the ACHP with the opportunity to comment on the effects and mitigation alternatives.

VII. OTHER REQUIREMENTS

AT&T Mobility will file with the FCC an application and environmental assessment within fifteen (15) days of the effective date of this MOA. AT&T Mobility will not initiate construction of the Facility until the FCC has approved the environmental assessment.

Stipulation 1 of this MOA shall be carried out within two (2) years from the date the FCC issues a Finding of No Significant Impact or otherwise authorizes construction of the Facility, unless the FCC, SHPO, and AT&T Mobility agree in writing to an extension for carrying out its terms.

VIII. DURATION

This MOA shall be effective upon notice from the FCC that all Parties have agreed to and signed this MOA. This MOA shall be null and void if its terms are not carried out within five (5) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this MOA by the FCC and SHPO and implementation of its terms evidence that the FCC has afforded the ACHP a reasonable opportunity to comment on the Facility and taken into account the effects of this undertaking on historic properties.

Attachments to MOA:

- *Attachment 1 – Project Location Map Identifying Affected Historic Properties*
- *Attachment 2—Alternatives Analysis*
- *Attachment 3—Cell On Wheels (COW) That Will Be Removed Post-Construction of Facility*

Signature Page

SIGNATORIES:

FEDERAL COMMUNICATIONS COMMISSION

By: *Dan Abeyta* Date: *9/14/15*

Dan Abeyta

Assistant Chief, NEPA Adjudications, Federal Communications Commission

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on page numbers
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THE NEVADA STATE HISTORIC PRESERVATION OFFICER

By: Rebecca L. Palmer Date: 10/16/15

Rebecca L. Palmer

State Historic Preservation Officer

Department of Conservation and Natural Resources

Signature Page

INVITED SIGNATORY:

AT&T MOBILITY, LLC

By:  _____ Date: 11/15/15

Michael Guibord

Director C&E West

AT&T Mobility, LLC