



Special Use Permit Application

CASE NUMBER: SUP-2019-01

Date Received: 3/15/19

Please type or print using BLACK ink

Applicant: <u>TOWER COM</u>	Property Owner: <u>FERNANDEZ VAZ TRADING COMPANY LLC</u>
Address: <u>3442 FRANCIS ROAD, #210</u>	Address: <u>40 TECHNOLOGY PKY S, #300</u>
City, State & Zip: <u>ALPHARETTA, GA 30004</u>	City, State & Zip: <u>NORCROSS, GA 30092-2924</u>
Contact Person: <u>CHIP BULLOCH, SVP</u>	Owner Contact: <u>PATRICK O'BRIEN</u>
Business Phone: <u>470-395-3774</u>	Business Phone: <u>770-925-0111</u>
Email: <u>CBULLOCH@TOWERCOMENTERPRISES.COM</u>	Email: <u>POBRIEN@TKN.COM</u>
Cell Phone: <u>404-931-7328</u>	Cell Phone: <u>678-894-1581</u>

APPLICANT IS THE Owner's Agent Property Owner Contract Purchaser

ADDRESS OF PROPERTY: 306 LUXONNI ROAD, LILBURN, GA 30047

LAND DISTRICT: 6TH LAND LOT(S): 132/150 PARCEL(S): _____ ACRE(S): 1.34

CURRENT ZONING: CB PROPOSED ZONING DISTRICT(S): _____

SPECIAL USE PERMIT REQUESTED: 175' monopole tower Tall Structure Permit

Has Applicant filed or intend to file, any other variance, rezoning or waiver applications? YES NO.
If YES, please describe: _____

Please attach all REQUIRED documents. Refer to Rezoning, SUP and CIC Instructions for fees, deadlines and hearing schedule.

- STANDARDS GOVERNING EXERCISE OF THE ZONING POWER (attached)
- CONFLICT OF INTEREST CERTIFICATION/DISCLOSURE OF CAMPAIGN CONTRIBUTIONS (attached)
- APPLICANT/PROPERTY OWNER NOTARIZED CERTIFICATIONS (attached)
- TYPED LEGAL DESCRIPTION OF PROPERTY
- TYPED LETTER OF INTENT – explain what is proposed
- SITE PLAN/ BOUNDARY SURVEY – 1 full size (to scale) copy and 5 reductions (8.5" x 11") or electronic file
- LIST OF ADJOINING PROPERTY OWNERS – names and mailing addresses

City of Lilburn Planning and Economic Development Department (770) 638-2198 • Fax (770) 921-8854
340 Main St. • Lilburn, Georgia 30047 • www.CityofLilburn.com

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MAR 15 2019

Kristen Pedersen

STANDARDS GOVERNING THE EXERCISE OF THE ZONING POWER

Pursuant to Section 1702 of the 1985 Zoning Resolution, the Mayor and Council of the City of Lilburn find that the following standards are relevant in balancing interest in promoting the public health, safety, unrestricted use of property and shall govern the exercise of the zoning power.

- (A) Whether a proposed rezoning (or Special Use Permit) will permit a use that is suitable in view of the use and development of adjacent and nearby property:

The proposed SUP (or TSP / conditional use) is compatible with adjacent uses which include billboards and commercial uses surrounding the property.

- (B) Whether a proposed rezoning (or Special Use Permit) will adversely affect the existing use or usability of adjacent or nearby property:

The proposed permit will enhance the existing uses and usability of adjacent or nearby properties by ensuring the availability of wireless service in this geographic area, not only for T-Mobile customers, but with collocation opportunities for 4 other carriers in addition. This includes enhanced safety for area residents, businesses and the general community driving by or through this area.

- (C) Whether the property to be affected by a proposed rezoning (or Special Use Permit) has a reasonable economic use as currently zoned:

The property as currently zoned and used is vacant. Although it had a use permit to allow expansion of an automotive use, that development has not happened. Instead, the property has sat vacant for a number of years.

- (D) Whether the proposed rezoning (or Special Use Permit) will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools:

The proposed wireless facility will not cause excessive or burdensome use of existing infrastructure. It will have no impact on schools, water or gas utilities. Once constructed, monthly visits for maintenance by one vehicle may be required. Electrical use is similar to a single family residence. So, significantly less burdensome than any other commercial project that could otherwise be built on the property.

- (E) Whether the proposed rezoning (or Special Use Permit) is in conformity with the policy and intent of the Land Use Plan:

The wireless use is in conformance with the policy and intent of the land use plan, particularly because no rezoning is required for the use.

- (F) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed rezoning (or Special Use Permit):

The significant demand for wireless service not only in the area but throughout the City, County and nation is the most important change supporting the approval of Applicant's request. The majority of businesses and residents are using wireless instead of wire line for not only traditional telephone usage, but for data whether for business, education or personal use. This demand requires additional wireless infrastructure and the demand is increasing at exponential rates each year.

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Stephen Robinson

CHAPTER 67A
CONFLICT OF INTEREST IN ZONING ACTIONS

SECTION 36-37A-1: DEFINITIONS

SECTION 36-37A-2: DISCLOSURE OF FINANCIAL INTERESTS

SECTION 36-37A-3: DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

SECTION 36-37A-4: PENALTIES

Effective Date: This Chapter became effective July 1, 1984.

Cross References: Codes of ethics and conflicts of interest, T. 45, Ch. 10.

Code Commission Notes: Ga. L. 1986, p. 1269, Sec. 1 and Ga. L. 1986, p. 1496, Sec. 1, both enacted as Chapter 85 of Title 36. The chapter enacted by Ga. L. 1986, p. 1269, Sec. 1 was redesignated as Chapter 67A of Title 36 pursuant to Sec. 26-9-3.

SECTION 36-37A-1: DEFINITIONS

As used in this chapter, the term:

- (1) "Applicant" means any individual or business entity applying for rezoning action.
- (2) "Business entity" means any corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust.
- (3) "Financial interest" means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is 10 percent or more.
- (4) "Local government" means any County or municipality of this State.
- (5) "Local government official" means any member of the governing authority of a local government or any member of a planning or zoning commission.
- (6) "Member of the family" means the spouse, mother, father, brother, sister, son, or daughter of a local government official.
- (7) "Property interest" means the direct or indirect ownership of real property and includes any percentage of ownership less than total ownership.
- (8) "Real property" means any tract or parcel of land and, if developed, any buildings or structures located on the land.
- (9) "Rezoning action" means action by local government adopting an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another. (Code 1981, Sec. 36-67A-1, enacted by Ga. L. 1986, p. 1269, Sec. 1.)

SECTION 36-37A-2: DISCLOSURE OF FINANCIAL INTERESTS

A local government official who:

- (1) Has a property interest in any real property affected by a rezoning action upon which that official is authorized to vote;
- (2) Has a financial interest in any business entity which has a property interest in any real property affected by a rezoning action upon which that official is authorized to vote; or
- (3) Has a member of the family having any interest described in paragraph (1) or (2) of this Code Section shall immediately disclose the nature and extent of such interest, in writing of the governing authority of the local government in which the local government official is a member. Such disclosures shall be a public record and available for public inspection at any time during normal working hours. (Code 1981, Section 36-67A-2, enacted by Ga. L. 1986, p. 1269, Sec. 1.)

SECTION 36-37A-3: DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

- (A) When any applicant for rezoning action has made within two years immediately preceding the filing of that applicant's application for the rezoning action, campaign contributions aggregating \$250.00 or more or made gifts having in the aggregate a value of \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the applicant and the attorney representing the applicant to file a disclosure report with the governing authority of the respective local government showing:
- (1) The name of the local government official to whom the campaign contribution or gift was made; and
 - (2) The dollar amount of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution; and
 - (3) An enumeration and description of each gift having a value of \$250.00 or more made by the applicant to the local government official during the two years immediately preceding the filing of the application for the zoning change.
- (B) The disclosure required by subsection (1) of this Code section shall be filed within ten days after the application for the rezoning action is first filed. (Code 1981, Section 36-67A-3, enacted by Ga. L. 1986, p. 1269, Sec. 1.)

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Lester Rodriguez

SECTION 36-37A-4: PENALTIES

Any local government official knowingly failing to make a disclosure required by Code Section 36-85-2 shall be guilty of a misdemeanor. Any applicant for rezoning action knowingly failing to make any disclosures as required by Code Section 36-83-3 shall be guilty of a misdemeanor. (Code 1981, Section 36-67A-4, enacted by Ga. L. 1986, p. 1269, Sec. 1.)

CONFLICT OF INTEREST CERTIFICATION FOR REZONINGS

The undersigned below, making application for rezoning, has complied with the Official Code of Georgia, Section 36-67A-1, et. seq, Conflict of Interest in Zoning Actions, and has submitted or attached the required information on the forms provided.



Signature of Applicant/Applicant's Attorney or Representative

3-11-19

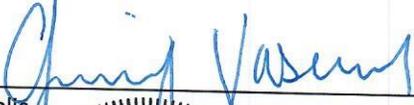
Date

Paul Bulloch Jr.

Type or Print Name

Vice President

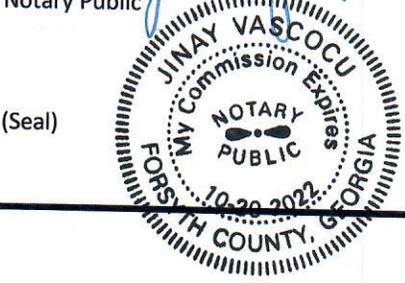
Title



Notary Public

3-11-19

Date

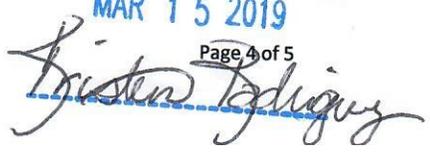


DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND/OR GIFTS

Have you, within the two years immediately preceding the filing of this application, made campaign contributions or gifts of an aggregate value that is \$250.00 or more to the Mayor and Council Members or a member of the Lilburn Planning Commission? YES NO. If the answer is YES, please complete the following section:

NAME OF OFFICIAL	CONTRIBUTION/GIFT	DESCRIPTION	DATE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Attach additional sheets if necessary to disclose or describe all contributions and gifts.

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APPLICANT CERTIFICATION

The undersigned below is authorized to make this application and is aware that no application or reapplication affecting the same property shall be acted upon within twelve (12) months from the date of last action by the Mayor and Council, unless waived by the Mayor and Council. In no case shall an application or reapplication be acted upon in less than six (6) months from the date of last action by the Mayor and Council. Further, no application may be withdrawn once advertised and must receive final action by the Mayor and Council.

[Signature]
Signature of Applicant
Paul Bulloch Jr.

Type or Print Name
Jimmy Vasquez

Notary Public

(Seal)



3-11-19
Date

Vice President

Title

3-11-19
Date

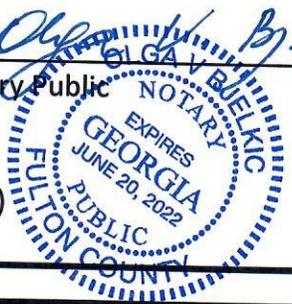
PROPERTY OWNER CERTIFICATION

The undersigned below, or as attached, is the record owner of the property considered in this application and is aware that if an application is denied by the Mayor and Council, no application or reapplication affecting the same land shall be acted upon within twelve (12) months from the date of last action by the Mayor and Council, unless waived by the Mayor and Council. In no case shall an application or reapplication be acted upon in less than six (6) months from the date of last action by the Mayor and Council. Further, no application may be withdrawn once advertised and must receive final action by the Mayor and Council.

[Signature]
Signature of Owner
J. Patrick O'Brien
Type or Print Name

[Signature]
Notary Public
Olga V. Bjelkic
Type or Print Name

(Seal)



FERNANDEZ VAZ
Date 3/15/2019 LLC

owner/member
Title

3/15/2019
Date

ADMINISTRATIVE USE ONLY

CASE NUMBER: SUP-2019-01 DATE COMPLETE: 3/15/19 RECEIVED BY: [Signature]
APPLICATION FEE: \$500.00 PAID BY/RECEIPT#: 144748 HEARING DATES: PC 4/25/19 CC 5/13/19
+ \$250.00 (> 1 acre) Receipt#: 144749

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[Signature]
Kirsten Rodriguez

SUBJECT PROPERTY
TOWERCOM V, LLC & FIRST AMERICAN TITLE INSURANCE COMPANY
I'LL STICK AROUND

All that tract or parcel of land lying and being in Land Lots 132 & 150 of the 6th Land District of Gwinnett County, Georgia, being the lands owned by Fernandez Vaz Trading Company, LLC, as recorded in Deed Book 47689 Page 303, Gwinnett County records, and being more particularly described as follows:

Beginning for the same at a ½-inch rebar found at the Northwest corner of said Trading Company lands along the southern line of the lands of Balenger Consultants, Inc. as recorded in Deed Book 2025 Page 281, said rebar having a Georgia Grid North, NAD 83, West Zone coordinate value of N: 1419839.7170 E: 2312025.2353; Thence running along said common line, North 68°54'04" East, 154.78 feet to a ½-inch rebar found along the western line of the lands of Ernesto Cardenas as recorded in Deed Book 37459 Page 217; Thence leaving said southern line of Balenger Consultants, Inc. and running along said western line of Cardenas, South 21°20'22" East, 135.98 feet to a ½-inch rebar found along the line common to Land Lots 150 and 132; Thence running along said Land Lot line, North 60°33'38" East, 150.51 feet to a 5/8-inch rebar found along the western line of the lands of National Retail Properties, LP as recorded in Deed Book 48839 Page 880; Thence leaving said Land Lot line and running along said western line, South 22°50'47" East, 100.49 feet to a ½-inch capped rebar ("Wolverton") found along the northern line of a 35-foot access easement as recorded in Deed Book 29880 Page 34; Thence running along the north line of said access easement, South 67°09'20" West, 291.72 feet to a point; Thence, 125.99 feet along the arc of a curve to the right, having a radius of 196.00 feet and being scribed by a chord bearing, South 85°26'57" West, 123.83 feet to a point along the eastern line of the lands of National Retail Properties, LP as recorded in Deed Book 55648 Page 831; Thence leaving said access easement and running along said eastern line, North 13°50'04" East, 138.77 feet to a ½-inch rebar found having a Georgia Grid North, NAD83, West Zone coordinate value of N: 1419761.8073, E: 2312030.1251; Thence, North 03°35'29" West, 78.06 feet to a ½-inch rebar found and the true POINT OF BEGINNING.

Bearings are based Georgia Grid North, NAD 83, West Zone.

Said tract contains 1.35 acres (58,658 square feet), more or less, as shown in a survey prepared for TowerCom V, LLC and First American Title Insurance Company by POINT TO POINT LAND SURVEYORS, INC. dated February 14, 2019.

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Kristen Rodriguez

March 15, 2019

Via Hand Delivery

Ms. Joellen M. Wilson
City Planner
City of Lilburn Planning &
Economic Development Department
340 Main St.
Lilburn, GA 30047

Re: Application for Special (a/k/a Conditional) Use (or Tall Structures) Permit (the "**Application**")¹ by TowerCom V, LLC ("**Applicant**") to allow a 175-foot tall monopole wireless telecommunications tower at 306 Luxomni Road, Lilburn, Georgia (the "**Property**")

LETTER OF INTENT

Dear Joellen:

Applicant submits this letter of intent is submitted to the City of Lilburn (the "**City**") in connection with and as support for the Application. Applicant proposes to construct and operate a 175-foot (179 feet overall including 4 foot lightning rod) wireless telecommunications tower and related antennas and equipment (collectively, the "**Facility**") on the Property. This Facility will be an integral part of the wireless network providing telecommunications services for T-Mobile and is the least obtrusive means to satisfy T-Mobile's (and other wireless carriers') radio frequency needs to for coverage and capacity.

Site Selection and The Property

T-Mobile's radio frequency ("**RF**") engineers made a determination as to need for a new wireless facility in this general area to offload LTE traffic from adjacent T-Mobile sites, provide improved coverage and capacity for the Centre at Lilburn, surrounding residential and commercial, as well as service traffic along Lawrenceville Highway and Beaver Ruin Road. T-Mobile's existing network is shown on the RF propagation maps included with this Application.

Applicant has more than twenty years of experience in the wireless infrastructure industry including construction, operation and management of wireless towers throughout the southeast.

¹Pursuant to the use table in Section 602 of The Lilburn Zoning Ordinance (the "**Ordinance**"), communications towers are to be approved as conditional uses according to the Telecommunications Towers and Antennas Code, which is Chapter 117 of the City's Code (the "**Tower Code**"). The Tower Code requires applicants to obtain administrative approvals (where available) or a Tall Structures Permit. Applicant's proposal complies with all requirements of the Ordinance and the Tower Code. Because the City does not publish a conditional use or tall structures permit application form, Applicant has used the City's Special Use Permit Application and intends for the term Special Use Permit or SUP to mean the conditional use or tall structures permit as allowed under the Ordinance and Code.

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T-Mobile engaged Applicant to help identify an opportunity (whether by collocation, new tower or otherwise) to fill the need identified by its RF engineers. As always in evaluating a carrier's needs, Applicant considered the following, in order of carrier preference:

*Collocation of the carrier's antennas on existing communication towers or structures that will meet the coverage objective and also be able to support the additional loading of the carrier's equipment.

*Pursue the construction of a new tower by administrative approval.

*If an existing structure is not available, and if the Ordinance and Code would not allow for the construction of a new tower by administrative approval, then pursue the construction of a new tower that meets the coverage objective and have the least amount of impact on the surrounding area by obtaining land use entitlements as may be needed (and, within this preference, avoid if possible rezoning or variance).

Using these preferences information and based on cross-references with several tower companies' inventories, and a physical assessment of the search area, no existing towers or structures were found in or near the search area. See Code Sec. 117-10.² Instead, Applicant was forced to search for properties that would allow for application to the City for conditional use for a tower.³

The Property is an approximately 1.34 acre parcel that is north of and adjacent to the access drive to the Home Depot off Lawrenceville Highway. The Property is zoned CB and is entirely surrounded by properties zoned CB. The Property is within the Lawrenceville Highway (U.S. 29) Corridor Overlay District. The Property is currently unimproved. Applicant's proposal to locate the Facility on the Property requires no rezoning or variance; instead, it merely requires approval of the Facility as a conditional use.

The Facility and Code Requirements

Applicant seeks to construct a 175' monopole facility (overall height 179') on the Property. In accordance with Code Section 117-9, the Facility will be designed to accommodate five antenna arrays or providers' antennas. The Facility will be designed to meet the aesthetic requirements of Code Section 117-11 including maintaining a galvanized steel finish and it will not be required to be lighted except in compliance with FAA requirements. The Facility will meet the setbacks, including the tower separation setback of 1,500 feet from any other tower, as

² Per Code Section 117-7, Applicant confirms that it has no existing facilities within the City limits or within ¼ mile of the City limits. Existing T-Mobile facilities within the City and in the near vicinity of the Property are shown on the RF propagation maps submitted herewith. Upon request, Applicant and T-Mobile can provide an inventory of all T-Mobile facilities within the City and ¼ mile thereof.

³ Applicant notes that pursuant to Section 117-19 and 117-21, there may be an opportunity for Applicant to obtain administrative approval of this request. Specifically, Section 117-21(1) allows for administrative approval if an applicant adequately demonstrates that antenna collocation is not possible for a general geographic area and if properties are zoned in certain districts. The challenge is that the City has changed zoning district classifications since adoption of the Code. That said, it seems clear to Applicant that the CB zoning district is synonymous with the C-1 through C-3 districts and that an interpretation could be so made (or an amendment to the Code could be appropriate). Nevertheless, Applicant submits this Application. If, upon review, the Department determines that this request could be approved administratively, Applicant so requests the administrative approval.

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required by Code Section 117-12, and it will include the security fencing and landscaping as required by Code Sections 117-13 and 117-14.⁴

Applicant will meet or exceed all FAA, FCC and other governmental regulations with respect to the construction and operation of the Facility, and shall maintain the Facility, if approved, in accordance with all applicable building codes and safety regulations. *See Code Sections 117-15 – 117-18.*

In support of its Application, Applicant files:

1. the Special Use Permit Application;
2. the Standards Governing Exercise of the Zoning Power
3. Conflict of Interest Certification / Disclosure of Campaign Contributions;
4. Applicant / Property Owner Notarized Certifications
5. Typed Metes and Bounds Legal description of the Property;
6. this Letter of Intent;
7. Zoning Drawings (per Section 117-29), including site plan and boundary survey, tower elevations, and details regarding Facility, fencing and landscaping;
8. List of Adjoining Property Owners; and
9. RF Support Documentation including engineered plots describing RF needs and objectives;
10. Application Fee in the amount of \$500.00.

The Ordinance and Code require the City consider various factors with respect to applications for special (or conditional) and tall structures permits. In this instance, consideration of those factors weigh in favor of approving the Application. In short, the Application and the accompanying documents support Applicant's request for approval of the Facility.⁵

⁴ Because the Property is located within the Lawrenceville Highway (U.S. 29) Corridor Overlay District, if the Department determines that Ordinance Section 501-10(6) applies, Applicant is happy to install an opaque fence that is brick, stone or wood around the perimeter of the Facility equipment compound (an area that is 60 feet x 60 feet as more particularly shown in the zoning drawings submitted herewith).

⁵ Applicant notifies the City of Marietta (the "City") of its constitutional concerns. If the City denies the Application in whole or in part, then the Property does not have a reasonable economic use under the Zoning Ordinance. If the City denies the Application in whole or in part, such an action will deprive Applicant and Owner of the ability to use the Property in accordance with its highest and best use. Similarly, if the City limits its approval of the Application by attaching conditions thereto affecting any portion of the Property or the use thereof, either of such actions being taken without Applicant's consent, then such action would deprive Applicant and Owner of any reasonable use and development of the Property. Any such action is unconstitutional and will result in a taking of property rights in violation of the just compensation clause of the Constitution of the State of Georgia (*see Ga. Const. 1983, Art. I, § 3, para. 1(a)*), and the just compensation clause of the Fifth Amendment to the United States Constitution (*see U.S. Const. Amend. 5*). To the extent the Ordinance allows such an action, the Ordinance is unconstitutional. Any such denial or conditional approval would discriminate between Applicant and Owner and owners of similarly situated property in an arbitrary, capricious, unreasonable and unconstitutional manner in violation of Article I, Section I, Paragraph 2 of the Georgia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Finally, a denial or a conditional approval of the Application (with conditions not expressly approved by Applicant or without approval of a variance or the SLUP required to construct the Facility) would constitute a gross abuse of discretion and an unconstitutional violation Applicant's rights to substantive and procedural due process as guaranteed by the Georgia Constitution (*see Ga. Const. 1983, Art. I, § 1, para. 1*) and the Fifth and Fourteenth Amendments of the United States Constitution (*see U.S. Const. Amend. 5 and 14*).

Furthermore, the Telecommunications Act of 1996, codified at 47 U.S.C. § 332(c) (the "1996 TCA") was intended to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." *Preamble to 1996 TCA*. The primary mechanisms used by the 1996 TCA to "promote competition and reduce regulation" are prohibitions against local regulations that (i) "unreasonably discriminate among providers of functionally equivalent services" or (ii) "prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B). Also, section 253 of the

Ms. Joellen M. Wilson
City Planner
March 15, 2019
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Applicant respectfully requests that the Department recommend the approval of the Application to the Planning Commission and the Mayor and City Council for consideration at the next available public hearings.

We are happy to answer any questions or provide any information that the Department or the City may have with regard to the Application.

Respectfully submitted,



Chip Bulloch

entity to provide any interstate or intrastate telecommunications service.” The City may violate the 1996 TCA on all three grounds if the Application is denied. Nevertheless, Applicant remains optimistic that the City’s consideration of the Application will be conducted in a constitutional and legal manner.

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Kustin Pachauer