July 1, 2026

The Honorable Bob Lynn, Mayor
Petersburg Borough Assembly
12 South Nordic Drive
PO Box 329
Petersburg, AK 99833

VIA EMAIL: assembly@petersburgak.gov; bregula@petersburgak.gov

RE: Proposed Wireless Communication Facility ("WCF") Code
Ordinance No. 2026-14 (A)
July 6, 2026, Public Hearing

Dear Mayor Lynn and Assembly Members:

I write on behalf of New Cingular Wireless PCS, LLC ("AT&T") concerning Petersburg Borough's proposed new WCF code, which we understand you will consider on second reading at your July 6, 2026, meeting.

AT&T appreciates the Borough's work to update its WCF code, but it is concerned that some provisions in the proposed new code are unnecessarily restrictive, without policy justification, and/or contrary to federal law.

As you continue to deliberate, please consider the following suggested amendments to bring the code more in line with typical practice and governing law.

Clarification or Deletion of the Protrusion Limit in Subsection 19.58.050(H)

The proposed 36-inch protrusion limit appears to apply to both towers and non-tower structures to which antennas may be mounted.

Typically, the horizontal extension of antennas from towers is not regulated, and in some commonly used stealth designs, such as a monopine, a protrusion limit such as that proposed would prevent an effective design (monopine branches are designed to taper so that that the structure will appear more natural). In addition, generally, limits on the extension of antennas will reduce the effective operation of the WCF such that more facilities may be needed overall.

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Importantly, under the federal regulation allowing for certain modifications of existing WCFs (Eligible Facilities Requests), horizontal extensions of up to 20 feet from existing towers are considered ***non***-substantial changes. 47 CFR § 1.6100(b)(7)(ii).

AT&T suggests deleting Subsection 19.58.050(H) or revising it as follows:

> H. Protrusion Limit. No part of a WCF shall protrude more than 36 inches from the face of ~~the~~ **a non-tower** support structure, measured to the outer face of the WCF.

Permitted Modifications of Existing WCFs

Existing legally permitted WCFs are listed as exempt from the new code under Subsection 19.58.030(E), with the proviso that "however, that any proposed modification to an existing WCF, including collocation, must comply with this chapter."

This proviso is inconsistent with the federal regulations governing Eligible Facilities Requests for modifications of existing WCFs.[1] Under the federal regulation, so long as any modification of an existing WCF is non-substantial under the criteria in §1.6100(b)(7), it must be approved regardless of any local zoning provision to the contrary.[2]

AT&T suggests that Subsection 19.58.030(E) be revised as follows:

> E. All legally permitted WCFs existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, provided however, that any proposed modification to an existing WCF, including collocation, must comply with this chapter **unless it qualifies as an eligible facilities request under 47 CFR §1.6100**.

Also with respect to Eligible Facilities Requests, the exemption listed next in the proposed code under subsection (F) (for Eligible Facilities Requests) is subject to the proviso "that any existing conditions of approval of the WCF are met," but the relevant federal test is clear that enforcement of prior conditions is limited by the other criteria in the test for substantial change. See 47 CFR §1.6100(b)(7)(vi). In other words, the federal

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[1] 47 CFR §1.6100.

[2] Jurisdictions may still enforce building, electrical, and safety codes. *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014), *aff'd*, *Montgomery Cty. v. FCC*, 811 F.3d 121 (4th Cir. 2015).

test will control the extent to which the modification must comply with prior conditions of approval.

AT&T suggests that Subsection 19.58.030(F) be revised as follows:

> Eligible facility requests, and routine maintenance and repairs, that do not meet the definition of a substantial change~~**, provided that any existing conditions of approval of the WCF are met**~~. These activities may also require approval of the state fire marshal and a borough building permit prior to commencement of development. As a condition of any required building permit, the applicant shall provide documentation certifying that the modification will meet radio frequency emission standards established by the Federal Communications Commission (FCC).

Removal of Criterion Requiring Significant Gap/Least Intrusive Means for Every WCF

According to proposed Subsection 19.58.050(N), Subsections 19.58.070(A)(2)-(3), and Subsection 19.58.080(A) ***every*** WCF application must prove a significant gap and least intrusive means, even when those proposals meet all of Peterburg's stated design and placement preferences.

The significant gap/least intrusive means standard is the judicial standard under which a federal court will order local approval of a proposed WCF regardless of what a local zoning code provides because a local siting standard or a denial of a proposed WCF would have the effect of prohibiting wireless service under federal law.[3]

The standard is not typically stated in local zoning codes, and when it is, it is usually reserved for instances in which the local jurisdiction would approve an exception or variance to WCF standards. This practice exists because some jurisdictions recognize that in some instances it is appropriate to relieve an applicant from strict compliance with a WCF code in order to avoid the prohibition of wireless service. Consistent with this typical practice, we see that the proposed code's section for waivers includes the significant gap/least intrusive means test as the first potential grounds for a waiver. See proposed Subsection 19.58.090(A)(1).

The proposed code otherwise clearly ranks siting preferences and specifies design and siting standards to guide development of WCFs. There is no reason to require an

[3] *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 988 (9th Cir. 2009).

applicant to make a "federal case" for its proposed WCF unless a waiver of standards is required.

AT&T suggests that Subsection 19.58.050(N) be deleted and references significant gap and least intrusive means in Subsections 19.58.070(A)(2) & (3) and Subsection 19.58.080(A) be revised to apply only to waiver requests.

Reduction or Elimination of Setback from Sensitive Areas

AT&T suggests deleting Subsection 19.58.050(A)(b), which provides for a sensitive area setback.

Local jurisdictions are prohibited from regulating wireless facilities on the basis of concerns about alleged health effects of radio frequency ("RF") emissions.[4] AT&T finds no aesthetic grounds to support a 1,500-foot (or 500-foot) setback when the new code will establish provisions to provide for stealth design when warranted and 110% setbacks from shared property lines. Setbacks in excess of 110% that appear to focus on "protection" of "sensitive" schools and childcare facilities have no independent rationale that can support their adoption. When a court reviewed a similar requirement in a New Jersey case, a 1,000-foot setback from wireless facilities was found to violate federal law.[5]

AT&T believes the Assembly agreed to reduce the proposed 1,500-foot setback to 500 feet at its June 15th meeting, and at a reduced size, the provision is less likely to have the effect of prohibiting wireless service (also prohibited by federal law[6]). But without a justification other than concerns about health effects, any size of setback from "sensitive areas" is contrary to federal law.

Removal of Insurance Requirements in Section 19.58.100

Jurisdictions typically impose insurance requirements when a proposed WCF will be placed in the public right-of-way or on other jurisdiction property.

It is highly unusual to impose an insurance requirement ***on private property sites*** via a ***zoning*** code. We find no example of any other uses in Petersburg for which such a standard is enforced; in fact, uses such as rock quarries with blasting activities are permitted without any proof of insurance. We see no basis for requiring proof of insurance from WCF permit holders under the zoning code.

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[4] 47 U.S.C. § 332(c)(7)(B)(iv).
[5] *Sprint Spectrum L.P. vs. Ringwood Zoning Board*, 898 A.2d 1054 (2005).
[6] 47 U.S.C. § 332(c)(7)(B)(i)(II).

AT&T suggests deleting Section 19.58.100.

Reduction or Elimination of the Performance Guarantee and Removal Bond in Section 19.58.110

For the same reasons discussed above regarding insurance, Section 19.58.110 imposes an atypical financial condition on private-property WCFs through the zoning code by requiring a cash or surety performance guarantee for tower removal. The mandated minimum of $150,000, applicable "in no event less than" that sum regardless of the actual estimated cost of removal, bears no relationship to the actual removal cost of many facilities, such as rooftop, collocated, or non-tower WCFs, and a fixed floor untethered to the actual estimated cost is arbitrary. We are aware of no other private-property land use in Petersburg subject to a comparable removal-bond requirement.

AT&T suggests deleting Section 19.58.110 or, at a minimum, limiting any performance guarantee to the actual estimated cost of removal without a fixed minimum and exempting collocations and non-tower WCFs.

We appreciate your consideration of these comments.

Sincerely,

Meridee Pabst

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cc: Liz Cabrera, Community Development Director