



ORDINANCE NO. 2012-03

AN ORDINANCE AMENDING AND RESTATING ORDINANCE 2007-3, AN ORDINANCE REGULATING WIRELESS COMMUNICATIONS FACILITIES, INCLUDING ANTENNAS, TOWERS AND OTHER FACILITIES, PRESCRIBING REGULATIONS FOR LOCATION, PLACEMENT, CONSTRUCTION, APPEARANCE, DESIGN, AND MODIFICATION; REPEALING ORDINANCES IN CONFLICT; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 3-21-1 *et seq.* and Section 4-37-1 *et seq.*, NMSA 1978, and the Telecommunications Act of 1996, §704.47 U.S.C. § 332(c)(7), § 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, the Board of County Commissioners of the County of Lincoln is empowered to enact regulations regarding the location, placement, construction, appearance, design, and modification of **Wireless Telecommunications Antennae, Towers** and other **Wireless Telecommunications Facilities** on lands and properties within the **County**; and

WHEREAS, an ordinance requiring regulations regarding the placement, construction, appearance, design, and modification of **Wireless Telecommunications Antennae, Towers** and other **Wireless Telecommunications Facilities** would serve a valid public purpose and will otherwise serve to promote the prosperity, public health, safety, and welfare of the residents of the County of Lincoln.

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that **Wireless Telecommunications Antennae, Towers** and other **Wireless Telecommunications Facilities** may pose significant concerns to the health, safety, public welfare, character, and environment of the **County** and its inhabitants; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that facilitating the development of wireless service technology can be an economic development asset to the County of Lincoln and of significant benefit to the **County** and its residents; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is desirable to encourage the availability of wireless **Telecommunications** and development if corresponding infrastructure in Lincoln County to ensure that a competitive and broad range of **Telecommunications** services and a high quality **Telecommunications** infrastructure are provided to serve the **County** and its residents; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is desirable to protect the unique and beautiful **Viewshed** in Lincoln County and its rural communities and **Highway Corridors**, maintain the **County's** rural character and discourage unnecessary impacts to the community; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is desirable to encourage and (where appropriate and technically feasible) require carriers to locate their facilities on existing structures in order to limit the number of **"Support Structure"** as necessary; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is beneficial to expedite the approval process and limit the cost to **Applicants** of establishing **Wireless Telecommunications** infrastructure in Lincoln County; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is beneficial to provide a uniform set of standards for the development of commercial **Wireless Telecommunications Facilities**; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is beneficial to facilitate master planning of an overall comprehensive **Telecommunications** network based on encouraging partnerships to determine community, consumer and industry needs; and

WHEREAS, the Board of County Commissioners of the County of Lincoln finds that it is necessary to comply with the **1996 Telecommunications Act**, while retaining local jurisdiction, as permitted by that Act.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF LINCOLN, NEW MEXICO:

Section 1. Short Title.

This Ordinance may be cited as the "County of Lincoln Wireless Telecommunications Facilities Ordinance."

Section 2. Legislative Intent.

The purpose of this Ordinance is:

A. Minimize the adverse impact of **Wireless Telecommunications Facilities** on the health, safety, public welfare of residents of the County of Lincoln;

B. Minimize the adverse impact of **Wireless Telecommunications Facilities** on the environment of Lincoln County and allocate the **County's** aesthetic resources in a fair, logical, consistent and intelligent manner to assure an integrated, comprehensive review of the environmental impacts of such facilities;

C. Encourage the availability of wireless **Telecommunications** and the development of its corresponding infrastructure in the County of Lincoln to ensure that a competitive and broad range of **Telecommunications** services and a high quality **Telecommunications** infrastructure are provided to serve the **County**;

D. Protect the unique and beautiful viewshed in Lincoln County and its rural communities and **Highway Corridors**, maintain the **County's** rural character and discourage unnecessary impact by reducing the need for new **Towers** and facilities;

E. Expedite the **Application** and permit approval process and limit the cost to **Applicants** of establishing a wireless **Telecommunications** infrastructure in Lincoln County

F. Provide a uniform set of standards for development of commercial **Wireless Telecommunications Facilities**;

G. Facilitate master planning of an overall comprehensive **Telecommunications** network based on encouraging partnerships to determine community, consumer and industry needs; and,

H. Comply with the **1996 Telecommunications Act**, while retaining local planning jurisdiction, as permitted by that Act.

Section 3. Definitions.

A. "**1996 Telecommunications Act**" shall mean those aspects of the Act that enable the **County** to protect its rights and insures that the **County** respects the rights of the wireless industries.

B. "**Accessory Facility**" or "**Accessory Structure**" shall mean an **Accessory Facility** or **Accessory Structure** serving or being used in conjunction with **Wireless Telecommunications Facilities**, and located on the same property or lot as the **Wireless Telecommunications Facilities**, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

- C. **“Antenna” or “Antennae” (pl.) or “Antennas” (pl.)** shall mean a system or systems of electrical conductors that transmits or receives electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, **Personal Telecommunications Services (PCS)**, microwave **Telecommunications**, and services not licensed by the **FCC**, but not expressly exempt from the **County’s** siting, building and permitting authority.
- D. **“Antenna Array”** shall mean one or more rods, panels, discs or similar devices used for transmission or reception of radio frequency signals, which may include omnidirectional **Antennas** (whip or rod), directional **Antennas** (panel) and parabolic **Antennas** (dish). The **“Antenna Array”** does not include the **“Support Structure”**, defined below, or **Existing Vertical Infrastructure** to which it is attached.
- E. **“Applicant”** shall mean any Wireless service provider submitting an **“Application”** for a **Special Use Permit for Wireless Telecommunications Facilities**.
- F. **“Application”** shall mean all necessary and appropriate documentation that an **“Applicant”** submits in order to receive a **Special Use Permit for Wireless Telecommunications Facilities**.
- G. **“Architecturally Integrated”** shall mean a facility which is visually integrated into the landscape or **Existing Vertical Infrastructure** by means of **Height**, texturing, architecture, treatment, massing, placement, size, design, and/or shape so as not to appear as a **WCF** to the naked eye.
- H. **“Attached Wireless Telecommunications Facility (AWTF)”** shall mean an **“Antenna Array”** that is attached to **Existing Vertical Infrastructure** along with any accompanying device for attaching the **“Antenna Array”** to the **Existing Vertical Infrastructure**, and Equipment Facility, which may be located either inside or outside of the **Existing Vertical Infrastructure**. A typical example would be an **“Antenna Array”** located on an existing building.
- I. **“Co-location”** shall mean the use of a **Tower** or structure to support **Antennae** for the provision of Wireless services without increasing the **Height** of the **Tower** or structure.
- J. **“Commercial Impracticability” or Commercially Impracticable”** shall mean the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that

jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”

- K. **“Commission”** shall mean the Board of County Commissioners of the County of Lincoln, New Mexico.
- L. **“Completed Application”** shall mean an **“Application”** that contains all information and/or data necessary to enable an informed decision to be made with respect to an **“Application”**.
- M. **“County”** shall mean the County of Lincoln, New Mexico.
- N. **“Eligible Facilities”** shall mean facilities that do not require a public hearing, i.e. involve **co-location** of (a) new transmission equipment; (b) removal of transmission equipment; (c) replacement of transmission equipment, or do not increase the **Height** of the **Tower**.
- O. **“Equipment Facility”** shall mean An **Equipment Facility** is any structure used to contain equipment for a **WCF** including, but not limited to cabinets, shelters, and expansion of **Existing Vertical Infrastructure**, ice bridges, pedestals or any other similar structures.
- P. **“Existing Vertical Infrastructure”** shall mean any vertical infrastructure in existence at the time of **“Application”**, including, but not limited to buildings, utility poles, signs, **Towers, Monopoles**, water towers and tanks, any structure for which a permit has been issued by the **County** but has not been constructed, as long as approval by the **County** has not expired and any legal nonconforming structure.
- Q. **“FCC”** shall mean the **Federal Communications Commission**.
- R. **“Height”** shall mean the distance measured from pre-existing grade at the base of the **Existing Vertical Infrastructure** or **“Support Structure”** to the highest point on the **WCF**, including the **“Antenna Array”**, except when referring to a building, in which case it shall mean the distance from pre-existing grade to the top of the main structure (generally the roof), and shall not include chimneys, pipes or vents.
- S. **“Highway Corridor”** shall include and mean the following:

1. U.S. Highway 380 from the Socorro County line southeast to the Town of Carrizozo, from the Town of Carrizozo southeast to the Village of Capitan limits and from the Village of Capitan limits to the Chaves County line;
2. The entire length of N.M. Highway 37, from its inception at Highway 380 south to the Townsite of Nogal limits, and from the southern limits of Nogal to its intersection with N.M. Highway 48;
3. U.S. Highway 54 from Corona south to the Town of Carrizozo limits, from the Town of Carrizozo limits south to the Otero County line;
4. The entire length of N.M. Highway 48 from its northerly inception at the southern limits of the Village of Capitan south to the Village of Ruidoso limits.
5. From the southerly limits of the Village of Ruidoso on Highway 70 east to the Mescalero Indian Reservation.
6. Highway 70 from the limits of the City of Ruidoso Downs east to the Chaves County line; and
7. N.M. Highway 220 from its easterly inception at Highway 48 east to Fort Stanton where it merges with Highway 380.

These **Highway Corridors** are not bound by Lincoln County zoning regulations and therefore are deemed to be “unzoned industrial or commercial areas” pursuant to New Mexico Administrative Code § 18.21.5, AB.

- T. **“Lattice Tower”** shall mean a **“Support Structure”** constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.
- U. **“Modification” or “Modify”** shall mean the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility,

such as **Antennae**, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out or equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a **Telecommunications Tower** or **Telecommunications Site** is a modification. A Modification shall not include the replacement of any components of a **Wireless Telecommunications Facility** where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

- V. **“Monopole”** shall mean a **“Support Structure”** constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- W. **“NIER”** shall mean **Non-Ionizing Electromagnetic Radiation**.
- X. **“Open Space”** shall mean land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped (may be specified on a zoning map).
- Y. **“Person”** shall mean any individual, corporation, estate, trust, partnership, joint stock company, association or two (2) or more **Persons** having a joint common interest, or any other entity.
- Z. **“Personal Wireless Facility”** or **“Private Wireless Facility”** or **“PWF”** See definition for **“Wireless Telecommunications Facilities.”**
- AA. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PCS”** shall have the same meaning as defined and used in the **1996 Telecommunications Act**.
- BB. **“Residential Subdivision”** shall mean and include: Type I, Type II, Type III, Type IV and Type V as defined in the Lincoln County Subdivision Ordinance.
- CC. **“Ridgetop”** shall mean a long narrow land form with slope less than fifteen percent (15%) that includes the prominently visible portion of a hill or mountain that sits above an area having an average slope greater than twenty percent (20%) on one or more sides.

- DD. **“Special Use Permit”** shall mean the official document or permit by which an **“Applicant”** is allowed to construct and use **Wireless Telecommunications Facilities** as granted or issued by the **County**.
- EE. **“State”** shall mean the **State of New Mexico**.
- FF. **“Stealth” or “Stealth Technology”** shall mean to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such **Wireless Telecommunications Facilities**, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- GG. **“Support Structure”** shall mean a structure designed and constructed primarily to support one or more **“Antenna Arrays”**, e.g. a **Tower** .
- HH. **“Telecommunications”** shall mean the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- II. **“Telecommunications Structure”** shall mean a structure used in the provision of services described in the definition of **Wireless Telecommunications Facilities**.
- JJ. **“Temporary”** shall mean temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
- KK. **“Viewshed”** shall mean an area of land, water, and other natural environmental elements that is visible from one or more vantage points. e.g. **Viewsheds** tend to be areas of particular scenic or historic value that are deemed worthy of preservation against development or other change. The preservation of **Viewsheds** is a goal in the designation of **Open Space**.
- LL. **“Wireless Telecommunications Facilities”** or **“Wireless Communications Facilities”** includes a **“Wireless Telecommunications Antenna,” “Wireless Telecommunications Tower,” “Tower,” “Telecommunications Site,” “Antenna Array,”** and **“Personal Wireless Facility”** and shall mean a structure, facility or location designed, or intended to be used as, or used to support, **Antennae** or other transmitting or receiving devices, This includes without limit, **Towers** of all types and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower,

sign or other structures that can be used to mitigate the visual impact of an **Antenna** or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal **Telecommunications** services, commercial satellite services, microwave services and services not licensed by the **FCC**.

Section 4. **Applicability.**

- A. This ordinance applies to any new **WCF**, new **ACWF**, **Co-location** of a **WCF**, or new **“Support Structure”**. This ordinance does not apply to routine maintenance and replacement of existing equipment approved by the **County** with equipment of substantially similar or lesser size, weight and quantity, but it does apply to more substantial changes and upgrades of the **WCF** or **AWCF**.

- B. This ordinance applies to all land located in the **County** but outside areas within the territorial limits of a municipality, unless an area is zoned pursuant to the provisions of NMSA 1978, Sections 3-21-3 and 4 (Exterritorial Zoning) and as agreed to by an incorporated municipality and the County of Lincoln in a joint City/County Extraterritorial Zoning and/or Subdivision Agreement. This ordinance shall apply to lands owned by the Federal, **State**, Municipal, and Tribal governments to the full extent permitted by law unless the **Commission** and such government agree otherwise. All regulations under this ordinance that would otherwise apply to lands owned by the Federal, **State**, Municipal, and Tribal governments, except for their status as such, shall apply to those lands immediately upon their passing into private ownership.

- C. The following shall be exempt from this Ordinance:
 - 1. Utility line transmission and distribution poles or **Towers**, except to the extent that those poles or **Towers** are used for siting of **WCFs**.
 - 2. The **County’s** fire, police, department of transportation or other public service facilities owned and operated by the local government.
 - 3. Any facilities expressly exempt from the **County’s** siting, building and permitting authority.
 - 4. Over-the-Air reception Devices including the reception antennas for direct broadcast satellites (DBS), multi-channel multipoint distribution (wireless

cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.

5. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.
6. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

Section 5. Permitting Wireless Telecommunications Facilities

In order to ensure that the placement, construction, and modification of **Wireless Telecommunications Facilities** protects the **County's** health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the **County** hereby adopts an overall policy with respect to a **Special Use Permit** for **Wireless Telecommunications Facilities** for the express purpose of achieving the following goals:

1. Implementing an Application process for **Person(s)** seeking a **Special Use Permit** for **Wireless Telecommunications Facilities**;
2. Establishing a policy for examining an **Application** for and issuing a **Special Use Permit** for **Wireless Telecommunications Facilities** that is both fair and consistent;
3. Promoting and encouraging, wherever possible, the sharing and/or **Co-location** of **Wireless Telecommunications Facilities** among service providers;
4. Promoting and encouraging, wherever possible, the placement, **Height** and quantity of **Wireless Telecommunications Facilities** in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such **Wireless Telecommunications Facilities**, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

Section 6. Special Use Permit Application and Other Requirements

A. All **Applicants** for a **Special Use Permit** for **Wireless Telecommunications Facilities** or any modification of such facility shall comply with the requirements set forth in this Ordinance. The Board of County Commissioners is the officially designated agency or body of the **County** to whom **Applications** for a **Special Use Permit** for **Wireless Telecommunications Facilities** must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, or revoking special use permits for **Wireless Telecommunications Facilities**. The **County** may, at its discretion, delegate or designate other official agencies of the **County** to accept, review, analyze, evaluate and make recommendations to the Board of County Commissioners with respect to the granting or not granting, re-certifying or not re-certifying or revoking **Special Use Permits** for **Wireless Telecommunications Facilities**.

B. An **Application** for a **Special Use Permit** for **Wireless Telecommunications Facilities** shall be signed on behalf of the **Applicant** by the **Person** preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the **Applicant**, shall also sign the **Application**. At the discretion of the **County**, any false or misleading statement in the **Application** may subject the **Applicant** to denial of the **Application** without further consideration or opportunity for correction.

C. The **County** may reject **Applications** not meeting the requirements stated herein or which are otherwise incomplete.

D. The **Applicant** shall include a statement in writing:

1. That the **Applicant's** proposed **Wireless Telecommunications Facilities** shall be maintained in a safe manner, and in compliance with all conditions of the **Special Use Permit**, without exception, unless specifically granted relief by the **County** in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, **State** and Federal laws, rules, and regulations.
2. That the construction of the **Wireless Telecommunications Facilities** is legally permissible, including, but not limited to the fact that the **Applicant** is authorized to do business in the **State**.

E. No **Wireless Telecommunications Facilities** shall be installed or constructed until the **Application** is reviewed and approved by the **County** and the **Special Use Permit** has been issued.

F. All **Applications** for the construction or installation of new **Wireless Telecommunications Facilities** shall contain the information hereinafter set forth. Where certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the **State**. The **Application** shall include the following information:

1. A descriptive statement of the objective(s) from the new facility or modification including and expanding on a need for coverage and/or capacity requirements.
2. Documentation that demonstrates the need for the **Wireless Telecommunications Facility** to provide service primarily and essentially within the **County**. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage;
3. The name, address and phone number of the **Person** preparing the report;
4. The name, address and phone number of the property owner, operator, and **Applicant**, and to include the legal form of the **Applicant**;
5. The postal address and tax map parcel number of the property;
6. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
7. The location of nearest residential structure;
8. The location, size and **Height** of all structures on the property which is the subject of the **Application**;
9. The location, size and **Height** of all proposed and existing **Antennae** and all appurtenant structures;
10. The type, locations and dimensions of all proposed and existing landscaping, and fencing;

11. The azimuth, size and center line height location of all existing and proposed **antenna**(-ae) on the proposed structure and notification of any proposed changes in azimuth, 5 business days prior to implementation;
12. The make, model and manufacturer of the **Tower** and **Antenna**(-ae);
13. A description of the proposed **Tower** and **Antenna**(-ae) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
14. the frequency, modulation and class of service of radio or other transmitting equipment;
15. The actual intended transmission and the maximum effective radiated power of the **Antenna**(-ae);
16. Direction of maximum lobes and associated radiation of the **Antenna**(-ae);
17. A site plan describing the proposed **Tower** and **Antenna**(-ae) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, material, color, and lighting. Size of the property stated in both square feet and lot line dimensions, and a survey showing the location of all lot lines along with a footprint of the facility in Geographic Information System (GIS) Format (shaped file NM Plane West;)
18. Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the **Wireless Telecommunications Facility** with the proposed installation will be in full compliance with the current **FCC RF Emissions** guidelines (**NIER**.) If not categorically excluded, a complete **RF Emission** study is required to provide verifications;
19. A signed statement that the proposed **Antenna**(-ae) will not cause physical or **RF** interference with other **Telecommunications** devices;
20. A copy of the **FCC** license applicable for the intended use of the **Wireless Telecommunications Facilities**;
21. Certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and

the proposed drainage plan, that the site is adequate to assure the stability of the proposed **Wireless Telecommunications Facilities** on the proposed site.

G. In the case of a new **Tower**, the **Applicant** shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing **Tower(s)** or the use of alternative buildings or other structures within the **County**. Copies of written requests and responses for shared use shall be provided to the **County** in the **Application**, along with any letters of rejection stating the reason for rejection.

H. The **Applicant** shall provide certification with documentation (structural analysis) including calculations that the **Telecommunications Facility Tower** and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, **County**, **State** and Federal structural requirements for loads, including wind and ice loads.

I. The **Applicant** shall certify that the **Wireless Telecommunications Facilities** will be effectively grounded and bonded so as to protect **Persons** and property and installed with appropriate surge protectors.

J. The **Applicant** shall furnish a Visual Impact Assessment, which shall include:

1. A "Zone of Visibility Map" which shall be provided in order to determine locations from which the Tower may be seen;
2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the **County** as may be appropriate, including but not limited to state highways and other major roads; **State** and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
3. An assessment of the visual impact of the **Tower** base, guy wires and accessory buildings from abutting and adjacent properties and streets or highways as relate to the need or appropriateness of screening.

K. The **Applicant** shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed **Wireless Telecommunications Facilities**.

L. Any and all representations made by the **Applicant** to the **County** on the record during the **Application** process, whether written or verbal, shall be deemed a part of the **Application** and may be relied upon in good faith by the **County**.

M. All utilities at a **Wireless Telecommunications Facilities** site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the **County**, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

N. All **Wireless Telecommunications Facilities** shall contain a demonstration that the Facility be sited so as to be stealth in nature, having the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the **Wireless Telecommunications Facility**.

O. Both the **Wireless Telecommunications Facility** and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the **County**.

P. At a **Telecommunications Site**, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

Q. All **Wireless Telecommunications Facilities** shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the **County, State**, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

R. A holder of a **Special Use Permit** granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the **County** or other governmental entity or agency having jurisdiction over the **Applicant**.

S. An **Applicant** shall submit to the **County** the number of completed **Applications** determined to be needed at the pre-application meeting. Written notification of the **Application** shall be provided to the legislative bodies of all adjacent municipalities.

T. The **Applicant** shall examine the feasibility of designing a proposed **Tower** to accommodate future demand for at least four (4) additional commercial applications, for example, future **Co-locations**. The **Tower** shall be structurally designed to accommodate at least four (4) additional **Antenna Array** equal to those of the **Applicant**, and located as close to the **Applicant's Antenna** as possible without causing interference. This requirement may be waived, provided that the **Applicant**, in writing, demonstrates that the provisions of future shared usage of the **Tower** is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

1. The foreseeable number of **FCC** licenses available for the area;
2. The kind of **Wireless Telecommunications Facilities** site and structure proposed;
3. The number of existing and potential licenses without **Wireless Telecommunications Facilities** spaces/sites;
4. Available space on existing and approved **Towers**.

U. The owner of the proposed new **Tower**, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed **Tower** by other **Wireless** service providers in the future, and shall:

1. Respond within sixty (60) days to a request for information from a potential shared-use **Applicant**;
2. Negotiate in good faith concerning future requests for shared use of the new **Tower** by other **Telecommunications** providers;
3. Allow shared use of the new **Tower** if another **Telecommunications** provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs

of adapting the **Tower** or equipment to accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined above may be grounds for revocation of the **Special Use Permit** for the **Tower**.

V. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the **County's** consultants to prepare for and attend the pre-application meeting will be borne by the **Applicant**.

W. The holder of a **Special Use Permit** shall notify the **County** of any intended Modification of a **Wireless Telecommunications Facility** and shall apply to the **County** to modify, relocate or rebuild a **Wireless Telecommunications Facility**.

X. The **Applicant** will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the **Tower** or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the **Application** increases the **Height** of the structure or building. If this analysis determines that the **FAA** must be contacted, then all filings with the **FAA**, all responses from the **FAA** and any related correspondence shall be provided in a timely manner.

Y. The **Applicant** shall protect cultural properties, archaeological sites and unmarked burials as required by the Cultural Properties Act (18-6-1 to 18-6-1 NMSA 1978.). A Cultural Properties Study shall be submitted as part of the **Application**.

Z. All applicants for **Special Use Permit** for **Wireless Telecommunications Facilities** or any modification of such facility should develop their plans to allow reasonable requests from the **County** to use space on its tower and space within the existing or planned compound for deploying and operating public service radio facilities (e.g. police, fire, emergency, homeland security, etc.) The **County** will require access to its equipment on a 24X7 basis for maintenance and operating requirements. However, the **County** will work with the respective applicant to insure they received adequate advance notice for routine activities (excluding emergencies.)

Section 7. Location of Wireless Telecommunications Facilities

A. **Applicants for Wireless Telecommunications Facilities** shall locate, site and erect said **Wireless Telecommunications Facilities** in accordance with the following priorities, one (1) being the highest priority and eight (8) being the lowest priority:

1. On existing **Towers** or other structures without increasing the **Height** of the **Tower** or **Structure**;
2. On **County**-owned properties;
3. On properties in areas characterized predominately by Heavy Industrial use;
4. On properties in areas zoned or, if not zoned, characterized predominately by Commercial use;
5. On properties in areas zoned or, if not zoned, characterized predominately by Commercial use;
6. On properties in areas zoned or, if not zoned, characterized predominately by Agricultural use;
7. On properties in areas zoned or, if not zoned, characterized predominately by Residential use.
8. On **Highway Corridors**.

B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The **Person** seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the **Applicant** if the permit were not granted for the proposed site.

C. An **Applicant** may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An **Application** shall address **Co-location** as an option. If such option is not proposed, the **Applicant** must explain to the reasonable satisfaction of the **County** why **Co-location** is **Commercially** or otherwise Impracticable. Agreements between providers limiting or prohibiting **Co-location** shall not be a valid basis for any claim of Commercial Impracticability or hardship.

D. Notwithstanding the above, the **County** may approve any site located within an area in the above list of priorities, provided that the **County** finds that the proposed site is in the best interest of the health, safety and welfare of the **County** and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

E. The **Applicant** shall submit a written report demonstrating the **Applicant's** review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation of why sites of a higher priority were not selected shall be included with the **Application**.

F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the **County** may disapprove an **Application** for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with the historic nature or character of a neighborhood or historical district;
3. The use or construction of On properties in areas zoned or, if not zoned, characterized predominately by Commercial use; which is contrary to an already stated purpose of a specific zoning or land use designation;
4. The placement and location of On properties in areas zoned or, if not zoned, characterized predominately by Commercial use; which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the **County**, or employees of the service provider or other service providers;
5. Conflicts with the provisions of this Ordinance.

Section 8. Shared Wireless Telecommunications Facilities

A. The **County**, as opposed to the construction of a new **Tower**, shall prefer locating on existing **Towers** or other structures without increasing the **Height**. The **Applicant** shall submit a comprehensive report inventorying existing **Towers** and other suitable structures within two (2) miles of the location of any proposed new **Tower**, unless the **Applicant** can show that some other distance is more reasonable and demonstrate conclusively why an existing **Tower** or other suitable structure cannot be used.

B. An **Applicant** intending to locate on an existing **Tower** or other suitable structure shall be required to document the intent of the existing owner to permit its use by the **Applicant**.

D. Such shared use shall consist only of the minimum **Antenna Array** technologically required to provide service primarily and essentially within the **County**, to the extent practicable, unless good cause is shown.

Section 9. Height of Telecommunications Tower(s)

A. The **Applicant** shall submit documentation justifying the total **Height** of any **Tower, Facility** and/or **Antenna** and the basis therefore. Such documentation will be analyzed in the context of the justification of the **Height** needed to provide service primarily and essentially within the **County**, to the extent practicable, unless good cause is shown.

B. No **Tower** constructed after the effective date of this Ordinance, to include allowing for all attachments, shall exceed that **Height** which shall permit operation, without required artificial lighting of any kind in accordance with municipal, **County, State**, and/or any Federal statute, law, local law, **County** ordinance, code, rule, or regulation.

Section 10. Visibility of Wireless Telecommunications Facilities

A. **Wireless Telecommunications Facilities** shall not be artificially lighted or marked, except as required by law.

B. **Towers** shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.

C. If lighting is required, **Applicant** shall provide a detailed plan for sufficient lighting, of as unobtrusive and inoffensive an effect as is permissible under **State** and Federal regulations.

Section 11. Security of Wireless Telecommunications Facilities

All **Wireless Telecommunications Facilities** and **Antennae** shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

A. All **Antennae, Towers** and other **Supporting Structures**, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

B. Transmitters and **Telecommunications** control points shall be installed in such a manner that they are readily accessible only to **Persons** authorized to operate or service them.

Section 12. Signage

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to **Persons** in the immediate area of the presence of an **Antenna** that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the **Antenna(-ae)**, as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the **Applicant** and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 13. Lot Size and Setbacks

All proposed **Towers** and any other proposed **Wireless Telecommunications Facility Structures** shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances:

A. A distance equal to the **Height** of the proposed **Tower** or **Wireless Telecommunications Facility** structure, plus ten percent (10%) of the **Height** of the **Tower** or structure; or

B. The existing setback requirement of the underlying zoning district, whichever is greater.

Any **Accessory Structure** shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

Section 14. Retention of Expert Assistance and Reimbursement by Applicant

A. The **County** may hire any consultant and/or expert necessary to assist the **County** in reviewing and evaluating the **Application**, including the construction and modification of the site, once permitted, and any requests of re-certification.

B. An **Applicant** shall deposit with the **County** funds sufficient to reimburse the **County** for all reasonable costs of consultant and expert evaluation and consultation to the **County** for all reasonable costs of consultant and expert evaluation and consultation to the **County** in

connection with the review of any **Application** including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500 with the **County** shall precede the pre-application meeting. The **County** will maintain a separate escrow account for all such funds. The **County's** consultant(s)/expert(s) shall invoice the **County** for their services in reviewing the **Application**, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the **Applicant** shall immediately, upon notification by the **County**, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the **County** before any further action or consideration is taken on the **Application**. In the event that the amount held in escrow by the **County** is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance, upon request of the applicant, shall be promptly refunded to the **Applicant**.

C. The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the **Application** and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Section 15. Exceptions from a Special Use Permit

A. No **Person** shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of **Wireless Telecommunications Facilities** as of the effective date of this Ordinance, without having first obtained a **Special Use Permit** for **Wireless Telecommunications Facilities**. Notwithstanding anything to the contrary in this section, no **Special Use Permit** shall be required for those non-commercial exceptions noted in the definition of **Wireless Telecommunications Facilities**.

B. All legally permitted **Wireless Telecommunications Facilities** constructed as permitted existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided, however, that any visible **Modification** of an existing **Wireless Telecommunications Facility** must comply with this Ordinance.

Section 16. Public Hearing and Notification Requirements

A. Prior to the approval of any **Application** for a **Special Use Permit** for **Wireless Telecommunications Facilities**, a public hearing shall be held by the **County**, notice of which shall be published in the official newspaper of the **County** no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order that the **County** may notify nearby landowners, the **Application** shall contain the names and addresses of all landowners whose property is located

within fifteen hundred (1500) feet of any property line of the lot or parcel on which the new **Wireless Telecommunications Facilities** are proposed to be located.

B. There shall be no public hearing required for an **Application** to co-locate on an existing **Tower** or other structure, as long as there is no proposed increase in the **Height** of the **Tower** or structure, including attachments thereto.

C. The **County** shall schedule the public hearing referred to in Subsection (A) of this section once it finds the **Application** is complete, the **County**, at any stage prior to issuing a **Special Use Permit**, may require such additional information as it deems necessary.

Section 17. Application for a Special Use Permit

A. The **County** will undertake a review of an **Application** pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the **Application** and the circumstances, with due regard for the public's interest and need to be involved, and the **Applicant's** desire for a timely resolution.

B. The **County** may refer any **Application** or part thereof to any advisory or other committee for non-binding recommendation.

C. After the public hearing and after formally considering the **Application**, the **County** may approve, approve with conditions, or deny a **Special Use Permit**. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the **Applicant**.

D. If the **County** approves the **Special Use Permit** for **Wireless Telecommunications Facilities**, then the **Applicant** shall be notified of such approval in writing within ten (10) calendar days of the **County's** action, and the **Special Use Permit** shall be issued within thirty (30) days after such approval. Except of necessary building permits, and subsequent Certificates of Compliance, once a **Special Use Permit** has been granted hereunder, no additional permits or approvals from the **County**, such as site plan or zoning approvals, shall be required by the **County** for the **Wireless Telecommunications Facilities** covered by the **Special Use Permit**.

E. If the **County** denies the **Special Use Permit** for **Wireless Telecommunications Facilities**, then the **Applicant** shall be notified of such denial in writing within ten (10) calendar days of the **County's** action.

Section 18. Extent and Parameters of Special Use Permit.

The extent and parameters of a **Special Use Permit** for **Wireless Telecommunications Facilities** shall be as follows:

1. Such **Special Use Permit** shall be non-exclusive;
2. Such **Special Use Permit** shall not be assigned, transferred or conveyed without the express prior written notification to the **County**;
3. Such **Special Use Permit** may, following a hearing upon due prior notice to the **Applicant**, be revoked, canceled, or terminated for a violation of the conditions and provisions of the **Special Use Permit**, or for a material violation of this Ordinance after prior written notice to the holder of the **Special Use Permit**.

Section 19. Application Fee.

A. At the time that a **Person** submits an **Application** for a **Special Use Permit** for a new Tower, such **Person** shall pay a non-refundable application fee of \$5,000.00 to the **County**. If the **Application** is for a **Special Use Permit** for co-locating or modifying on an existing **Tower** or other suitable structure, where no increase in **Height** of the **Tower** or structure is required, the non-refundable fee shall be \$2,500.00.

B. An Application fee is required in order to rectify a **Special Use Permit** for **Wireless Telecommunications Facilities** unless there has been no visible modification of the **Wireless Telecommunications Facility** since the date of the issuance of the existing **Special Use Permit** for which the conditions of the **Special Use Permit** have previously been met. In the case of any modification, the fees provided in Subsection A of this section shall apply.

Section 20. Performance Security.

The **Applicant** and the owner of record of any proposed **Wireless Telecommunications Facilities** property site shall, at its cost and expense, be jointly required to execute and file with the **County** a bond or other form of security acceptable to the **County** as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the **County** to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any **Special Use Permit** issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the **Special Use Permit**

and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior

Section 21. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a **Special Use Permit for Wireless Telecommunications Facilities** and any and all lessees, renter, and/or licensees of **Wireless Telecommunications Facilities** place and construct such facilities, including **Towers** and **Antennae**, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances, and regulations, as well as other applicable requirements, the **County** may inspect all facets of said permit holder's, renter's, lessee's, or licensee's placement, construction, modification, and maintenance of such facilities, including, but not limited to **Towers**, **Antennae** and buildings or other structures constructed or located on the permitted site.

Section 22. Liability Insurance.

A A holder of a **Special Use Permit for Wireless Telecommunications Facilities** shall secure and at all times maintain (1) public liability insurance for personal injuries, death and property damage, and (2) umbrella insurance coverage for the duration of the **Special Use Permit** in amounts as set forth below:

1. Commercial General Liability covering personal injuries, death and property damage – \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
2. Automobile Coverage – \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate;
3. Workers Compensation and Disability – Statutory amounts.

B. The Commercial General liability insurance policy shall specifically include the **County** and its officers, councils, employees, committee members, attorneys, agents, and consultants as additional named insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the **State** and with a Best's rating of at least A.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the **County** with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the **County** at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

F. Before construction of permitted **Wireless Telecommunications Facilities** is initiated, but in no case later than fifteen (15) days after the grant of the **Special Use Permit**, the holder of the **Special Use Permit** shall deliver to the **County** a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 23. Indemnification.

A. Any **Application** for **Wireless Telecommunications Facilities** that is proposed for **County** property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the **Applicant**, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the **County** and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the **County** or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorney's fees, consultant's fees, and expert witness fees are included in those costs that are recoverable by the **County**.

B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the **County** itself applies for and secures a **Special Use Permit** for **Wireless Telecommunications Facilities**.

Section 24. Penalties.

A. In the event of a violation of this Ordinance or any **Special Use Permit** issued pursuant to this Ordinance, the **County** may imposed and collect, and the holder of the **Special Use Permit** for **Wireless Telecommunications Facilities**, shall be subject to the penalties as set forth below.

B. Any **Person** who violates any of the provisions of this Ordinance shall be punished by a fine of up to three hundred dollars (\$300) and/or imprisonment of no more than ninety (90) days, or both, upon conviction.

C. Each week's continued violation shall constitute a separate, additional violation.

D. Notwithstanding anything in this ordinance, the holder of the **Special Use Permit** for **Wireless Telecommunications Facilities** may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this ordinance or any section of this ordinance. An attempt to do so shall subject the holder of the **Special Use Permit** to termination and revocation of the **Special Use Permit**. The **County** may also seek injunctive relief to prevent the continued violation of this ordinance, without limiting other remedies available to the **County**.

Section 25. Default or Revocation.

If **Wireless Telecommunications Facilities** are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the **Special Use Permit**, then the **County** shall notify the holder of the **Special Use Permit** in writing of such violation.

Section 26. Removal of Wireless Telecommunications Facilities.

A. Under the following circumstances, the **County** may determine that the health, safety, and welfare interests of the **County** warrant and require the removal of **Wireless Telecommunications Facilities**:

1. **Wireless Telecommunications Facilities** with a permit have not been abandoned (i.e. not used as **Wireless Telecommunications Facilities**) for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any three hundred sixty-five (365) day period, except for periods caused by force majeure or Acts of God, in which case repair or removal shall commence within ninety (90) days;
2. Permitted **Wireless Telecommunications Facilities** fall into such a state of disrepair that it creates a health or safety hazard;
3. **Wireless Telecommunications Facilities** have been located, constructed, or modified without first obtaining, or in a manner not authorized by the required **Special Use Permit**, or any other necessary authorization.

B. If the **County** makes such a determination as noted in subsection A. of this section, then the **County** shall notify the holder of the **Special Use Permit** for the **Wireless Telecommunications Facilities** within forty-eight (48) hours that said **Wireless**

Telecommunications Facilities are to be removed, the **County** may approve an interim temporary use agreement/permit, such as to enable the sale of the **Wireless Telecommunications Facilities**.

C. The holder of the **Special Use Permit** or its successors or assigns shall dismantle and remove such **Wireless Telecommunications Facilities** and all associated structures and facilities from the site and restore the site to as close to its original condition as possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the **County**; however, if the owner of the property upon which the **Wireless Telecommunications Facilities** are located wishes to retain any access roadway to the **Wireless Telecommunications Facilities** the owner may do so with the approval of the **County**.

D. If **Wireless Telecommunications Facilities** are not removed or substantial progress has not been made to remove the **Wireless Telecommunications Facilities** within ninety (90) days after the permit holder has received notice, then the **County** may order officials or representatives of the **County** to remove the **Wireless Telecommunications Facilities** at the sole expense of the owner or **Special Use Permit** holder.

E. If the **County** removes or cause to be removed the **Wireless Telecommunications Facilities** and the owner of the **Wireless Telecommunications Facilities** does not claim and remove it from the site to a lawful location within ten (10) days, then the **County** may take steps to declare the **Wireless Telecommunications Facilities** abandoned and sell them and their components.

F. Notwithstanding anything in this Section to the contrary, the **County** may approve a temporary use permit/agreement for the **Wireless Telecommunications Facilities**, for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected **Wireless Telecommunications Facilities** shall be developed by the holder of the **Special Use Permit**, subject to the approval of the **County**, and an agreement to such plan shall be executed by the holder of the **Special Use Permit** and the **County**. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the **County** may take possession of the and dispose of the affected **Wireless Telecommunications Facilities** in the manner provided for in this section.

Section 27. Relief.

Any **Applicant** desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such at the Pre-Application meeting, provided that the relief or exemption is contained in the original **Application** for either a **Special Use Permit** or, in the case of an existing or previously granted **Special Use Permit**, a request for modification of its **Tower** and/or facilities. Such relief may be temporary or permanent, partial or complete; However, the burden of proving the need for the requested relief, waiver or exemption is solely on the **Applicant** to prove. The

Applicant shall bear all costs of the **County** in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the **Applicant** demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the **County**, its residents and other service providers.

Section 28. Administrative Review for **Eligible Facilities**.

The County of Lincoln hereby provides for administrative review of **Wireless Telecommunications Facilities Applications** involving **Eligible Facilities**. **Applications** for **Wireless Telecommunications Facilities** pertaining to **Eligible Facilities** shall be subject to an administrative review by the Lincoln County Manager, or his/her designee. The administrative review provided for **Eligible Facilities** shall restrict and apply Lincoln County Ordinance No. 2012-03, to the extent necessary to ensure that the health, safety, and welfare of the citizens of Lincoln County are not adversely impacted by the **Application** for **Wireless Telecommunications Facilities** deemed to be an **Eligible Facility**.

Wireless Telecommunications Facilities Applications involving **Eligible Facilities** that meet the requirements of Lincoln County Ordinance 2012-03, and as such do not pose a danger to the health, safety, or welfare of the citizens of Lincoln County shall be administratively approved in an expeditious manner.

Section 29. Periodic Regulatory Review by the County.

A. The **County** may at any time conduct a review and examination of this entire Ordinance.

B. If after such a periodic review and examination of this Ordinance, the **County** determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted; then the **County** may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the **County**, the **County** may repeal this entire Ordinance at any time.

C. Notwithstanding the provisions of subsections A and B of this Section, the **County** may at any time and in any manner (to the extent permitted by Federal, **State**, or local law) amend, add, repeal, and/or delete one or more provisions of this Ordinance.

Section 30. Adherence to State and/or Federal Rules and Regulations.

A. To the extent that the holder of a **Special Use Permit** for **Wireless Telecommunications Facilities** has not received relief or is otherwise exempt from appropriate

State and/or Federal agency rules or regulations, then the holder of such a **Special Use Permit** shall adhere to and comply with all applicable rules, regulations, standards, and provisions of any **State** or Federal agency, including, but not limited to, the **FAA** and the **FCC**. Specifically included in this requirement are any rules and regulations regarding **Height**, lighting, security, electrical, and RF emission standards.

B. To the extent that applicable rules, regulations, standards, and provisions of any **State** or Federal agency, including but not limited to, the **FAA** and the **FCC**, and specifically including any rules and regulations regarding **Height**, lighting, and security are changed and/or are modified during the duration of a **Special Use Permit** for **Wireless Telecommunications Facilities**, then the holder of such a **Special Use Permit** shall conform the permitted **Wireless Telecommunications Facilities** to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 31. Severability.

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 32. Conflict Clause.

Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 33. Effective Date and Repeal of Ordinance No. 2007-3.

In accordance with NMSA 4-37-9 C, the Board of County Commissioners declares that this Ordinance is necessary for the public peace, health, and safety, and that this Ordinance take effect immediately when it is properly recorded by the County Clerk, at which time Lincoln County Ordinance No. 2007-3 shall be repealed.

PASSED, APPROVED, and ADOPTED this 16th day of October 2012.

**BOARD OF COUNTY COMMISSIONERS
OF LINCOLN COUNTY, NEW MEXICO**

Jackie Powell

Jackie Powell, Chairwoman

Tom Battin, Member

Mark Doth

Mark Doth, Member

Kathryn L. Minter

Kathryn Minter, Member

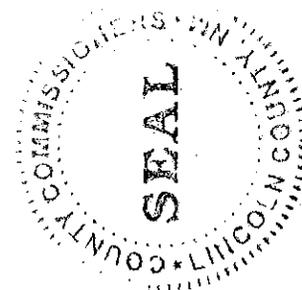
Eileen M Sedillo

Eileen Sedillo, Member

ATTEST:

Rhonda Burrows

Rhonda Burrows
Lincoln County Clerk



CountyAtty/Ordinances/WirelessTelecommunicationsFacilities/10/16/12

LINCOLN COUNTY-NM
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