

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:** August 22, 2023       **Consent**       **Regular**  
 **Ordinance**       **Public Hearing**

**Department:** Facilities Development & Operations

**I. EXECUTIVE BRIEF**

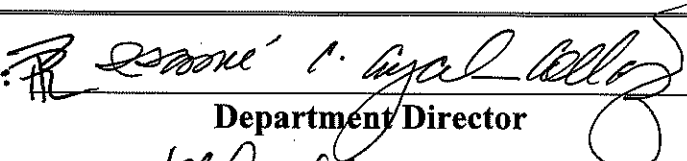
**Motion and Title: Staff recommends motion to approve:** a Third Amendment to Communication Tower Agreement with NCWPCS MLPL 29-Year Sites Tower Holding LLC, a Delaware limited liability company (NCWPCS) for the communication tower located at Fire Station No. 15 in Juno Beach, documenting removal of County equipment, replacing certain exhibits to the agreement, modifying the process for approval of equipment alterations and updating standard County provisions.


**Summary:** On August 22, 2000, the Board of County Commissioners (Board) approved a 30-year Communication Tower Agreement with NCWPCS (f/k/a New Cingular/AT&T) as amended twice (R2002-1175 and R2011-0610) (collectively, the Agreement) to construct a 95' flagpole communication tower at Fire Station No. 15 located at 12870 US Highway 1 in Juno Beach for both the County and AT&T use. This Third Amendment: a) documents the removal of County equipment; b) replaces Exhibit "C" "Tower Antenna and Frequency List" with Exhibit "C" "Antenna Elevation" updating the tower height to 78 feet; c) modifies Exhibit "D" "Tower Antenna and Frequency List"; d) provides for the Facilities Development and Operations department, Electronic Services and Security Division to approve alterations to antenna equipment; e) requires AT&T to continue to be responsible, and perform all modifications to the Tower needed to support said Alterations, at its sole cost and expense; and f) updates and adds County standard provisions. NCWPCS has demonstrated that these modifications will not adversely affect the structural capacity of the Tower. All other terms of the Agreement remain unchanged. There is no fiscal impact associated with approval of this item. The agreement will continue to be administered by Facilities Development and Operations department. **(Property & Real Estate Management) District 1 (HJF)**

**Background and Justification:** The Agreement was initially approved in 2000. The Agreement provided removal of the County's existing 90-foot guyed tower and replacement of same with a 95-foot non-guyed flagpole camouflage tower, which was all done at the sole cost and expense of AT&T(as predecessor in interest to NCWPCS). Upon termination of the Agreement, ownership of the tower and equipment building shall vest with the County. The term of this Agreement expires on August 21, 2030. The modifications for this proposed Third Amendment have been reviewed and approved by the Facilities Development and Operations department, Electronic Security and Services Division. Florida Statutes Section 286.23 requires that a Disclosure of Beneficial Interest be obtained when a property held in a representative capacity is leased to the County, but does not require such Disclosure when the County leases property to a tenant.

**Attachments:**

- 1. Location Map
- 2. Third Amendment to Communication Tower Agreement (2)

**Recommended By:**       7/26/23  
**Department Director**      **Date**

**Approved By:**       8/10/23  
**County Administrator**      **Date**

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>-0-*</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No \_\_\_\_\_

Does this item include the use of federal funds? Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
 Program \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

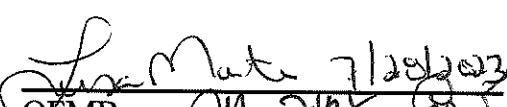
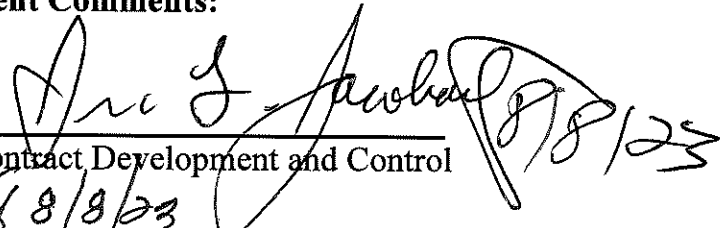
\* No fiscal impact

Fixed Asset Number \_\_\_\_\_


**C. Departmental Fiscal Review:** 

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

<p><u></u> 7/28/23                  OFMB <u>JA 7/28</u> <u>EW</u>                  7-28-23</p>	<p><u></u> 8/8/23                  Contract Development and Control</p>
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**B. Legal Sufficiency:**

 8/9/23  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

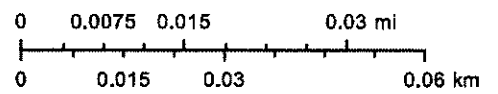
# LOCATION MAP

28-43-41-33-00-002-0030



July 20, 2023

1:1,128



ATTACHMENT #1

Attachment #2  
Third Amendment to Communication Tower Agreement (2 @ 9 pages)

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**THIRD AMENDMENT TO  
COMMUNICATION TOWER AGREEMENT**

**between**

**PALM BEACH COUNTY, FLORIDA**

**and**

**NCWPCS MPL 29 - YEAR SITES TOWER HOLDINGS LLC, a  
Delaware limited liability company, by CCATT LLC, a Delaware  
limited liability company, its Attorney in Fact**

\*\*\*\*\*

**AT&T Tower @ Fire Station No. 15 Juno Beach**

**Exhibits:**

- Exhibit "C" - Antenna Elevation**
- Exhibit "D" - Tower Antenna and Frequency List**

**THIRD AMENDMENT TO  
COMMUNICATION TOWER AGREEMENT**

**THIS THIRD AMENDMENT TO COMMUNICATION TOWER AGREEMENT** (the "Third Amendment") is made and entered into \_\_\_\_\_ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, ("County"), and **NCWPCS MPL 29 – YEAR SITES TOWER HOLDINGS LLC**, a Delaware limited liability company, by **CCATT LLC**, a Delaware limited liability company, its Attorney in Fact successor in interest to AT&T Wireless Services of Florida, Inc., a Florida corporation, ("AT&T").

**WITNESSETH:**

**WHEREAS**, County is the owner of certain real property in Palm Beach County, Florida, located at the Juno Beach Fire Station No.15 (the "Property"); and

**WHEREAS**, County and AT&T Wireless Services of Florida, Inc., entered into a Communication Tower Agreement on August 22, 2000 (R2000-1165) (the "Agreement") which allowed AT&T Wireless Services of Florida, Inc., to construct a 95 foot free-standing monopole camouflage flagpole antenna tower (the "Tower") on the Property and allowed both parties to install, operate, and maintain communication equipment on the Tower; and

**WHEREAS**, the Agreement identified the communication equipment that would be installed and the frequencies that would be utilized; and

**WHEREAS**, AT&T Wireless Services of Florida, Inc., merged into New Cingular Wireless Services of Florida, LLC, which subsequently merged into New Cingular Wireless PCS, LLC, the surviving entity; and

**WHEREAS**, New Cingular Wireless PCS, LLC transferred their interest to NCWPCS MLPL 29 – Year Sites Tower Holdings LLC, another AT &T entity; and

**WHEREAS**, the First Amendment to Communication Tower Agreement (R2002-1175) ("First Amendment") allowed AT&T to make additions and improvements to its antennas and equipment; and

**WHEREAS**, the Second Amendment to Communication Tower Agreement (R2011-0610) ("Second Amendment") allowed AT&T to make additions and improvements to its antennas and equipment; and

**WHEREAS**, COUNTY has removed all its equipment and no longer occupies the Tower and County wishes to incorporate certain language into the Agreement; and

**WHEREAS**, AT&T wishes to (i) update the height of the Tower to 78 feet, (ii) update its antennas and frequencies; and

**WHEREAS**, in order to document removal of COUNTY equipment and to accommodate AT&T's request it is necessary to modify the Tower and Frequency exhibits; and

**WHEREAS**, County and AT&T acknowledge and agree that the changes contemplated herein will not adversely affect the structural capacity of the Tower or interfere with the frequencies of users on the Tower.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them

in the Agreement, as amended.

2. Exhibit "C" of the Agreement, as amended, (Tower Loading Diagram) shall be replaced with Exhibit "C" (Antenna Elevation) attached hereto and made a part hereof.
3. Exhibit "D" of the Agreement, as amended, (Tower Antenna and Frequency List dated December 16, 2010) shall be replaced with Exhibit "D" dated February 17, 2023, attached hereto and made a part hereof.
4. Section 3.01(c) of the Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

**(c) Alterations.** AT&T shall not install any additional antennas or equipment upon the Tower, nor construct any additional improvements not specifically identified in Exhibits "B" and "C" attached hereto without County's prior written consent. County shall not unreasonably withhold its consent to the installation of additional antennas or equipment. In the event AT&T proposes to construct any installation, alteration, improvement, or modification of its antennas or equipment other than that which is described in the Antenna Elevation attached hereto as Exhibit "C" (hereinafter collectively referred to as "Alterations"), AT&T shall submit to the County's Electronic Services and Security Division detailed plans and specifications for the proposed Alterations. In the event County proposes to conduct any installation, alteration, improvement, or modification of its antennas on the Tower other than that which is described in the Antenna Elevation attached hereto as Exhibit "C", County shall submit to AT&T detailed plans and specifications for the proposed Alterations. The plans and specifications of the proposing party must describe the proposed Alterations in reasonable detail and include a structural analysis of the Tower performed by a licensed engineer specializing in tower elevation or loading. The purpose of the structural analysis is to allow the parties to determine whether the proposed Alterations will affect the structural integrity of the Tower. In the event that the structural analysis indicates that the Tower cannot support the addition of the Alterations proposed to be performed, said Alterations shall not be permitted unless County and AT&T can agree to structural modifications to the Tower which would enable the Tower to support the Alterations. In the event the parties agree upon the required structural modifications, the party proposing to conduct said Alterations shall perform all modifications to the Tower required to support said Alterations, all at such party's sole cost and expense.

Upon approval of the Alterations by the other party, Exhibit "C" of this Agreement will be revised to include the details of the Alterations. The revised document will be sent to all parties as set forth on Article XII section 12.03 and it will be automatically incorporated into this Agreement on the effective date of said notice.

5. ARTICLE XII, MISCELLANEOUS PROVISIONS, is hereby amended to add the following:

**Section 12.12 Independent Contractor Relationship.**

AT&T is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to AT&T's sole direction, supervision, and control. AT&T shall exercise control over the means and manner in which it and its employees perform the work, and in all respects AT&T's relationship, and the relationship of its employees, to the County shall be that of an independent contractor and not as employees or agents of the County.

AT&T does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

**Section 12.13 No Third Party Beneficiary.**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of County or AT&T.

**Section 12.14 Criminal History Records Check.**

AT&T, AT&T's employees, subcontractor of AT&T and employees of subcontractor shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R2013-1470 and R2015-0572, as amended. AT&T is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. AT&T shall bear any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

This Agreement may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and above reference Resolutions. County staff representing the Department of Facilities, Development and Operations will contact AT&T(s) and provide specific instructions for meeting the requirements of this Ordinance, if applicable. Individuals passing the background check will be issued a badge. AT&T shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the County. If AT&T or its subcontractor(s) terminates an employee who has been issued a badge, AT&T must notify the County within forty- eight (48) hours. At the time of termination, AT&T shall retrieve the badge and shall return it to the County in a timely manner.

The County reserves the right to suspend AT&T if AT&T 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the County regarding a terminated AT&T employee or sub employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy

**Section 12.15 Public Records.**

Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if AT&T: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) Florida Statutes, AT&T shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time AT&T is specifically required to:

A. Keep and maintain public records required by the County to perform services as provided under this Agreement.

B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. AT&T further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.



C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement, if AT&T does not transfer the records to the public agency.

D. Upon completion of this Agreement AT&T shall transfer, at no cost to the County, all public records in possession of AT&T unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If AT&T transfers all public records to the County upon completion of this Agreement, AT&T shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If AT&T keeps and maintains public records upon completion of this Agreement, AT&T shall meet all applicable requirements for retaining public records. All records stored electronically by AT&T must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of AT&T to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. AT&T acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF AT&T HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AT&T'S DUTY TO PROVIDE PUBLIC RECORDS IN ACCORDANCE WITH THIS SECTION 16.25, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@pbcgov.org OR BY TELEPHONE AT 561-355-6680.

6. **ARTICLE XIII, INSURANCE** Section 13.05 of the Agreement is hereby amended to add the following:

**Section 13.05 Certificate of Insurance.**

Tenant will deliver to EBIX, the County's authorized insurance tenant, a certificate of insurance with respect to each required policy to be provided by the Tenant under this Section. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

Submit certificates of insurance to:

Palm Beach County Board of County Commissioners  
Insurance Compliance  
c/o EBIX, Inc.  
PO Box 100085- DX  
Duluth, GA 30096  
[pbccounty@ebix.com](mailto:pbccounty@ebix.com)

Subsequently, Tenant shall, during the term of the Lease, and prior to each renewal thereof, provide such evidence to EBIX which is Palm Beach County's insurance management system. The certificate of insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. In the event coverage is cancelled or not renewed during the life of this Lease, Tenant shall furnish thirty (30) days prior to, but in no case later than the expiration of such insurance, a new certificate of insurance evidencing replacement coverage. Should Tenant fail to maintain the insurance required herein, the County shall have the right, but not the obligation, to purchase or maintain said insurance, and Tenant shall promptly pay as Additional Rent, upon demand from County, all premiums and

expenses incurred by County.

7. This Third Amendment shall become effective when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

8. Except as modified by this Third Amendment and previous amendments, the Agreement remains unmodified and in full force and effect and the parties hereby ratify, confirm and adopt the Agreement, as amended, in accordance with the terms thereof

**(The remainder of this page intentionally left blank)**

IN WITNESS WHEREOF, County and AT&T have executed this Third Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

WITNESS:

Vicky Davis  
Signature

Vicky Davis  
Print Witness Name

Wendy Burkholder  
Signature

Wendy Burkholder  
Print Witness Name

NCWPCS MPL 29 – YEAR SITES  
TOWER HOLDINGS LLC,  
a Delaware limited liability  
company

CCATT LLC, a Delaware  
limited liability company  
Its: Attorney in Fact

By: Alicia Hildebrand  
Name: Alicia Hildebrand  
Title: Real Estate Supervisor

Date: 3/29/23

(SEAL)

ATTEST:  
JOSEPH ABRUZZO  
CLERK OF THE CIRCUIT COURT  
& COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

Signed and delivered  
in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Name

GRANTOR:  
PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Gregg K. Weiss, Mayor

SEAL

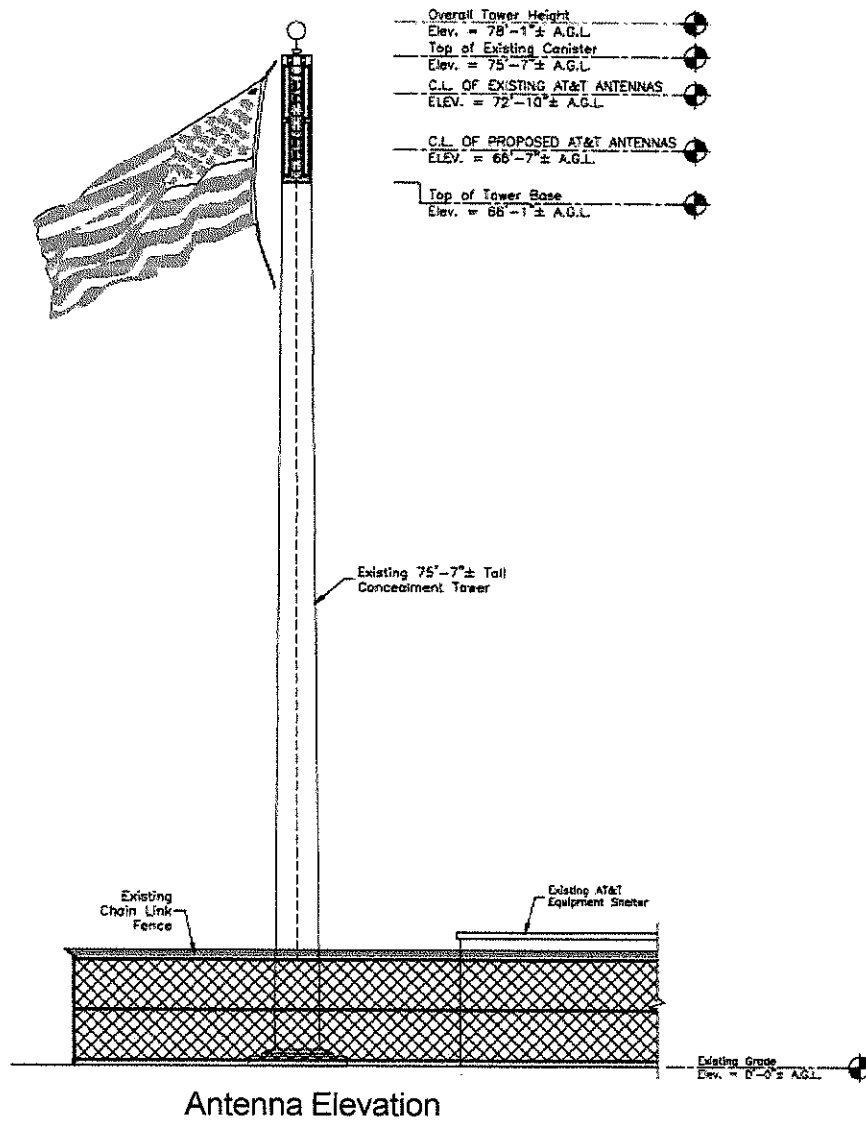
APPROVED AS TO  
LEGAL SUFFICIENCY

By: [Signature]  
Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By: [Signature]  
Department Director

# EXHIBIT "C"



12870 US Highway 1  
Juno Beach, FL 33408  
PBC FS 15

**EXHIBIT "D"**  
**TOWER ANTENNA AND FREQUENCY**  
**LIST**

CURRENT Frequency List FR#15 Juno Beach  
ATT W-110 Fixed Asset Number 10070052

**JUNO BEACH AT&T WP110 TOWER ANTENNA AND FREQUENCY LIST**  
February 17, 2023

ANTENNA #	ANTENNA MODEL	HEIGHT	ANTENNA LOCATION	ERP (W)	FREQUENCIES TX/ RX
1	SBNHH-1D85A	72'-10"	North	100.0000	NOTE 1 & 2
2	OCT4-1A1G2U-RD85	68'-7"	North	100.0000	NOTE 1 & 2
3	SBNHH-1D85A	72'-10"	Southeast	100.0000	NOTE 1 & 2
4	OCT4-1A1G2U-RD85	68'-7"	Southeast	100.0000	NOTE 1 & 2
5	SBNHH-1D85A	72'-10"	Southwest	100.0000	NOTE 1 & 2
6	OCT4-1A1G2U-RD85	68'-7"	Southwest	100.0000	NOTE 1 & 2

**NOTE 1**

AT&T FREQUENCY INFORMATION IS LISTED BELOW

**TRANSMIT    RECEIVE    CHANNELS    USE**

AT&T Frequency Band	Base Transmit/Receive Frequency Range
Band 12 & 17 Lower 700	740-746MHz
Band 5 850	824-894MHz
Band 2 & 25 1900/2100	1900 -2100MHz
C-Band	3.3-4.2GHz

**NOTE 2**

AT&T 3G FREQUENCY INFORMATION IS LISTED BELOW

**TRANSMIT    RECEIVE    CHANNELS    USE**

1934.0700	1851.7800	1	VOICE/CONTROL
1934.5200	1854.0300	1	VOICE/CONTROL
1934.9700	1854.4800	1	VOICE/CONTROL
1935.4200	1854.9300	1	VOICE/CONTROL
1935.8700	1855.3800	1	VOICE/CONTROL
1936.3200	1855.8300	1	VOICE/CONTROL
1938.0900	1856.2800	1	VOICE/CONTROL
1938.7200	1858.0500	1	VOICE/CONTROL
1939.9800	1858.6800	1	VOICE/CONTROL
1930.3200	1859.9400	1	VOICE/CONTROL
1930.7700	1850.2800	1	VOICE/CONTROL
1931.2200	1850.7300	1	VOICE/CONTROL
1932.1200	1851.1800	1	VOICE/CONTROL
1937.8800	1852.0800	1	VOICE/CONTROL
1938.5100	1857.8400	1	VOICE/CONTROL
1939.7700	185.84700	1	VOICE/CONTROL
1960.1100	1859.7300	1	VOICE/CONTROL
1960.5600	1880.0700	1	VOICE/CONTROL
1931.5200	1880.5200	1	VOICE/CONTROL
1933.3200	1851.4800	1	VOICE/CONTROL
1933.7700	1853.2800	1	VOICE/CONTROL
1934.2200	1853.7300	1	VOICE/CONTROL
1934.6700	1854.1800	1	VOICE/CONTROL
1935.1200	1854.6300	1	VOICE/CONTROL
1935.5700	1855.0800	1	VOICE/CONTROL
1936.0200	1855.5300	1	VOICE/CONTROL
1936.4700	1855.9800	1	VOICE/CONTROL
1937.6700	1856.4300	1	VOICE/CONTROL
1938.3000	1857.6300	1	VOICE/CONTROL
1939.5600	1858.2600	1	VOICE/CONTROL
1930.0200	1859.5200	1	VOICE/CONTROL

\* These changes were approved administratively after Amend No 2, (R2011-0610)