



ADA COUNTY DEVELOPMENT SERVICES

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PHONE (208) 287-7900
FAX (208) 287-7909

BUILDING • COMMUNITY PLANNING • ENGINEERING & SURVEYING • PERMITTING

To: Ada County Planning & Zoning Commission

From: Diana Sanders, Associate Planner

Date: March 10, 2022

Re: Project #202102816 CU

Dear Commissioners,

Here are additional exhibits that were submitted after the staff report was published.

ADDITIONAL EXHIBIT LIST

- 29 E-mail from Brad Bently dated March 1, 2022. 4 pages.
- 30 E-mail from Brad Bently dated March 2, 2022. 43 pages.
- 31 E-mail from Brad Bently dated March 3, 2022. 154 pages.
- 32 Letter from Chris and Cyndi Fagan dated March 3, 2022. 1 page.

Diana Sanders

From: Brad Bentley <brad.bentley@gmail.com>
Sent: Tuesday, March 1, 2022 2:09 PM
To: Diana Sanders
Cc: Suzie Dustin; Jordan Miller; millironk@fiberpipe.net; bdecker@hilmktg.com; Decker, Leslie; michael dustin; Brad Bentley
Subject: [EXTERNAL] Project No. 202102816 CU Requested Exhibit
Attachments: Appraisal.pdf

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Diana - Please include the attached letter and study as an exhibit for Project No. 202102816 hearing on Thursday March 10th.

Ada County Commissioners:

Here are the first three pages from a Property Appraisal that shows the negative impact that cell towers have on property values.

The appraisal shows an approximate 9% negative property value impact on adjacent properties.
(\$1,160,000 before cell tower, \$1,045,000 after cell tower = \$115,000 difference / \$1,160,000 = 9%)

This appraisal was submitted in relation to a previous cell tower application in Ada County (#201801311-A), which site is located just 2.51 miles from the current CUP application site.

While property values have changed since the report was issued, it goes to reason that the negative percentage value impact would directionally remain consistent over time.

As desired, this appraisal can be found in full as Exhibit #21A of Ada County Project #201801311-A.

Thank you,

Brad Bentley and Neighbors



Valbridge
PROPERTY ADVISORS

Appraisal Report

Hodge Estate Home - Before and After Valuation
2622 N. Big Sky Place
Eagle, Ada County, Idaho 83616

Report Date: January 2, 2019



RECEIVED

JAN 04 2019

ADA COUNTY
DEVELOPMENT SERVICES

FOR:

Eberle Berlin
c/o Mr. Stanley J. Tharp
1111 W. Jefferson Street, Ste. 530
Boise, ID 83701

Client Number: N/A

**Valbridge Property Advisors |
Mountain States**

1459 Tyrell Lane, Suite B
Boise, ID 83706
208-336-1097 phone
208-345-1175 fax
valbridge.com

Valbridge File Number:
ID02-18-0241-000

EXHIBIT 21 A
Page 1 of 97
Project # 201801311 A



Valbridge

PROPERTY ADVISORS

Mountain States Appraisal &
Consulting, Inc.

Joel Corlett, MAI, SRA
Marc Therrien, MAI
Kevin Ritter, MAI
Derek Newton, CGA
Jeff Vance, MAI
David Pascoe, RT
Paul DeJure, MAI

1459 Tyrell Lane
Suite B
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208-336-1097 phone
208-345-1175 fax
valbridge.com

January 2, 2019

Mr. Stanley J. Tharp
Eberle Berlin
1111 W. Jefferson Street, Ste. 530
Boise, ID 83701

RE: Appraisal Report
Hodge Estate Home - Before and After Valuation
2622 N. Big Sky Place
Eagle, Ada County, Idaho 83616

Dear Mr. Tharp:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The appraisal problem is to estimate current market value in the before condition and hypothetical market value in the after condition (as-if a cellular tower is located on a site adjacent to the subject property).

The subject is improved with a good quality estate home on a 2.295 acre lot. The home was constructed in 2017 and is in excellent condition. It contains 7,104 livable square feet between three levels and a total 4 bedrooms and 5.5 bathrooms. An attached garage features 3 bays and a detached garage has 2 bays. A heated swimming pool flanks the east side of the home. Landscaping is partially complete. In the before condition, the subject provides features and appeal that are commensurate with that of competing estate home properties in the Eagle market.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

The client in this assignment is Eberle Berlin c/o Mr. Stanley J. Tharp. The intended user of this report is the client and any duly appointed representatives of the client, specifically authorized by the client to view or use this appraisal in accordance with the stated purpose or function. The sole intended use is for potential litigation purposes. The value opinions reported herein are subject to the definitions, assumptions, limiting conditions, and certifications contained in this report.

The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions, the use of which might have affected the assignment results:

Extraordinary Assumptions:

- None necessary.

Hypothetical Conditions:

- Our valuation in the after condition is hypothetical given that the cell tower does not exist on the effective date of value.

Based on the analysis contained in the following report, our value conclusions are summarized as follows:

Value Conclusions		
Value Perspective	Current	Hypothetical
Value Type	Market Value	Market Value
Value Premise	In the Before Condition	In the After Condition
Property Rights Appraised	Fee Simple	Fee Simple
Date of Value	December 21, 2018	December 21, 2018
Value Conclusion	\$1,160,000	\$1,045,000

Value Difference	
Market Value in the Before Condition	\$1,160,000
<u>Less: Market Value in the After Condition</u>	<u>\$1,045,000</u>
Value Difference	\$115,000

Respectfully submitted,
 Valbridge Property Advisors | Mountain States



David Pascua, RT
 Appraiser
 Idaho, License #RT-3191
 License Expires 07/21/2019



G. Joseph Corlett, MAI, SRA
 Senior Managing Director
 Idaho, Certification # CGA-7
 Certificate Expires 03/11/19

March 1, 2022

Ada County Commissioners:

Attached is a partial transcript of the Ada County Commissioners hearing on January 30, 2019, in regard to a previous cell tower application in Ada County (#201801311-A), which site is located just 2.51 miles from the current CUP application site.

Please note some of former Commissioner Vlsser's comments:

Pg 3 lines 15 to 23:

"The U.S. Constitution protects Americans' property rights through the Fifth and Fourteenth Amendments. That's the due process clause. There's also the Fifth Amendment's taking clause. Since 1926 the United States Supreme Court has consistently treated one's property rights as a foundational, fundamental right. A 1926 case is Village of Euclid v. Ambler, and it's found at 272 U.S. 365."

Pg 3 line 24 to Pg 4 line 7:

"Article I, Section 1 of the Idaho Constitution declares our inalienable rights. It says, 'All men', they excluded women back then, but we're taking part with that. So I would paraphrase, 'All men and women, by nature free and equal to have certain inalienable rights, among which are enjoying and defending life and liberty' – and I stress this next line – 'acquiring, possessing, and protecting property.'"

Pg 4 line 16 to 24:

"Let's look at the Idaho code and LLUPA. The first stated purpose of LLUPA is that 'This Act shall be - the purpose of it, it shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows.' It has an extensive list. The first item on that list is sentence A. And it says, 'To protect the property rights.' Cities and counties are also directed to follow LLUPA."

Pg 5 lines 4 to 12:

"Next let's consider the Ada County code, and specifically Title 8, which addresses Ada County zoning. In subsection 8-12 we have a purpose. And it states that 'Some of the relevant purposes are' – I added 'some.' Some of the relevant purposes are, '(A), to carry out the intent and purposes of the land use, local Land Use Planning Act, LLUPA; (E), to ensure the most appropriate use of properties; and (F), to protect property rights and enhance property values.'"

Pg 5 line 16 to Pg 6 line 2

"In addition, Section 8-1-9(a) addresses the preservation of property – private property rights. 'This title shall be interpreted to equally protect citizens from undue encroachment' – we heard

that term used tonight. I think we have an idea of what that means, even if it means something different to one another – 'on their private property by their neighbor's use of their private property.' Let me repeat that because I broke it up. 'This title shall be interpreted to equally protect citizens from the undue encroachment on their private property by their neighbor's use of their private property.'"

Pg 6 lines 9 to 12:

"I believe that the evidence from the testimony of the neighborhood residents shows that the tower would be an undue encroachment of their private property rights."

Pg 6 line 22 to 24 and Pg 7 line 3 to line 13:

"In Title 8 of the Ada County zoning, in Chapter 5 we have specific use standards. And Article B addresses conditional uses. Conditional use standards are covered in this section Letter J states, 'The decision-making body may require additional conditions to mitigate impacts. The conditions may include, but are not limited to, any of the following. No. 4 on that list says that 'Other standards necessary to protect public health, safety, and welfare, and to mitigate adverse effects on surrounding property.' For emphasis, I'll repeat that: 'to mitigate adverse effects on surrounding property.' We don't have the word 'undue' there. We have a clear statement."

Commissioners, please note: In this hearing the Commissions overturned the Planning and Zoning Commission's decision and DENIED the conditional use permit for the cell tower. The matter was later heard by the courts. We would request that same consideration be afforded to us as was our neighbors. Please deny the CUP and, if necessary, let us have our day in court.

Thank you,

Brad & Allie Bentley

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K;k 'JIM ,

ti(

B/-an & Leslie Decker

Mike & Suzie Dustin

Thomas Smith

Allie Bentley

Jan Miller

Suzie Dustin

PARTIAL TRANSCRIPT OF ADA COUNTY BOARD OF COMMISSIONERS
RECORDED PUBLIC HEARING
JANUARY 30, 2019

COMMISSIONERS PRESENT:
KENDRA KENYON, CHAIRWOMAN
DIANA LACHIONDO
RICK VISSER

TRANSCRIBED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 (Begin transcription at 38:46 of audio
2 file.)

3 CHAIRWOMAN KENYON: Okay. Seeing that there's
4 no further testimony, we're going to now close the
5 public hearing. And we will -- among the Board we'll
6 ask questions and deliberate. So we'll open that up.

7 Commissioner Visser or
8 Commissioner Lachiondo, whoever wants to start.

9 COMMISSIONER VISSER: I'm ready -- I'm prepared
10 to lead off with the discussion tonight.

11 I think our questions have been adequately
12 addressed, and I applaud my fellow Commissioners for an
13 excellent job of partaking in this hearing tonight,
14 being their first one.

15 So thank you.

16 CHAIRWOMAN KENYON: Thank you.

17 COMMISSIONER VISSER: Congratulations.

18 Ladies and gentlemen, in reviewing local
19 land-use matters, I rely on a legal analysis that I
20 learned over 30 years ago in law school. It's called
21 IRAC. It's an acronym for issue, rule, application,
22 and conclusion.

23 In regard to tonight's hearing, here's my
24 analysis: The issue, that's the "I" in IRAC. Very
25 straightforward. Should a cell tower be placed in the

1 proposed location?

2 Second is "R" for rule or law. The law is
3 clear for County Commissioners considering land-use
4 matters. That law is found in the Idaho code in
5 Section 67 dash -- Title 67, in Idaho Code 67-6501 and
6 following. For short, it's called LLUPA. It's also
7 found in the Ada County code in Title 8, which deals
8 with Ada County zoning. And we are required to follow
9 LLUPA, as are every other local government.

10 It's also found -- the laws that I've also
11 found are in the United States Constitution and the
12 Idaho Constitution. Plus, we have the advantage of
13 established and binding precedent from our own Idaho
14 appellate courts.

15 The U.S. Constitution protects Americans'
16 property rights through the Fifth and Fourteenth
17 Amendments. That's the due process clause. There's
18 also the Fifth Amendment's taking clause.

19 Since 1926 the United States Supreme Court
20 has consistently treated one's property rights as a
21 foundational, fundamental right. A 1926 case is
22 Village of Euclid v. Ambler, and it's found at 272 U.S.
23 365.

24 Article I, Section 1 of the Idaho
25 Constitution declares our inalienable rights. It says,

1 "All men," they excluded women back then, but we're
2 taking part with that. So I would paraphrase, "All men
3 and women, by nature free and equal to have certain
4 inalienable rights, among which are enjoying and
5 defending life and liberty" -- and I stress this next
6 line -- "acquiring, possessing, and protecting
7 property." And it adds, "presume happiness and
8 securing safety."

9 I'm not saying that one's property rights
10 are unlimited. In fact, I believe most of you would be
11 surprised to learn that not a single one of our
12 constitutional rights are unlimited. Every one of our
13 constitutional rights have some limit by statute, by
14 ruling, by regulation. An example of that is zoning
15 ordinances.

16 Let's look at the Idaho code and LLUPA.
17 The first stated purpose of LLUPA is that "This Act
18 shall be -- the purpose of it, it shall be to promote
19 the health, safety, and general welfare of the people
20 of the state of Idaho as follows." It has an extensive
21 list. The first item on that list is sentence A. And
22 it says, "To protect the property rights."

23 Cities and counties are also directed to
24 follow LLUPA. I mentioned that earlier.

25 In addition, all zoning decisions are to

1 include expressed standards. Those were incorporated
2 through the evidence tonight and also, I hope, in what
3 I share with you.

4 Next let's consider the Ada County code,
5 and specifically Title 8, which addresses Ada County
6 zoning. In subsection 8-12 we have a purpose. And it
7 states that "Some of the relevant purposes are" -- I
8 added "some." "Some of the relevant purposes are, A,
9 to carry out the intent and purposes of the land use --
10 local Land Use Planning Act, LLUPA; E, to ensure the
11 most appropriate use of properties; and F, to protect
12 property rights and enhance property values."

13 Finally, G says that "We are to provide a
14 method of administration, as authorized by the
15 Constitution and the laws of the State of Idaho."

16 In addition, Section 8-1-9(a) addresses the
17 preservation of property -- private property rights.
18 "This title shall be interpreted to equally protect
19 citizens from undue encroachment" -- we heard that term
20 used tonight. I think we have an idea of what that
21 means, even if it means something different to one
22 another -- "on their private property by their
23 neighbor's use of their private property." Let me
24 repeat that because I broke it up. "This title shall
25 be interpreted to equally protect citizens from the

1 undue encroachment on their private property by their
2 neighbor's use of their private property." The second
3 part of it that is equal to that is just vice versa of
4 that.

5 Let's look at section "A" and "C" in my
6 IRAC analysis. So I'm going to apply the law as I see
7 it, and I'm going to provide my conclusion.

8 My findings: Based on the above code
9 section, the preservation of private property rights, I
10 believe that the evidence from the testimony of the
11 neighborhood residents shows that the tower would be an
12 undue encroachment of their private property rights. I
13 believe that the evidence that we heard tonight -- and
14 I accept it -- the appraisal by Mr. Corlett showed that
15 the estimates of property values, not speculative, but
16 an estimate, showed a decrease of 10 percent.

17 I place a high value on the testimony of an
18 expert, and it can only be rebutted, in my opinion, and
19 in some legal circles, quite a few to be exact, by
20 another expert's testimony. No such testimony was
21 provided tonight.

22 In Title 8 of the Ada County zoning, in
23 Chapter 5 we have specific use standards. And
24 Article B addresses conditional uses. Conditional use
25 standards are covered in this section, and it begins

1 with, "In addition to the specific use standards set
2 forth in this chapter, the following standards shall
3 apply," and the list follows. Letter J states, "The
4 decision-making body may require additional conditions
5 to mitigate impacts. The conditions may include, but
6 are not limited to, any of the following."

7 No. 4 on that list says that "Other
8 standards necessary to protect public health, safety,
9 and welfare, and to mitigate adverse effects on
10 surrounding property." For emphasis, I'll repeat that:
11 "to mitigate adverse effects on surrounding property."
12 We don't have the word "undue" there. We have a clear
13 statement.

14 I believe in reviewing the ruling of the
15 Ada County Planning and Zoning Commission in which they
16 approved the conditional-use permit for the
17 installation of this cell tower, they failed on one
18 vital accord. I did not find any adequate standards to
19 mitigate adverse effects on the surrounding property.

20 However, tonight we heard testimony from
21 Mr. AJ Osborne that he is willing to buy parcels, buy
22 property, and provide that to the cell phone company as
23 an alternative location.

24 Also, in subsection 8-5-3114 -- and I'm
25 sure you're all taking notice of that numerous number

1 there -- we have the tower antenna structure section in
2 regard to commercial towers. Subsection 10(f) states
3 that "Towers shall be architecturally and visually
4 compatible with the existing structures, vegetation,
5 and other uses in the area, or likely to exist in the
6 area, under the terms of the applicable base district
7 or Comprehensive Plan. The decision-making body shall
8 consider" -- and I emphasize this next line -- "but
9 shall not be limited to the following factors: Similar
10 height, color, bulk, shape, camouflage techniques,
11 et cetera."

12 My findings of facts on this analysis, this
13 final analysis: Based on the extensive testimony from
14 existing homeowners near the proposed site and the
15 exhibits that we received, which were a lot, over 100,
16 I find that this tower is not architecturally and
17 visually compatible with the existing homes or
18 structures; hence, I believe that there was substantial
19 evidence presented that there was an adverse and undue
20 impact.

21 Therefore, I would approve and grant
22 tonight's appeal.

23 Thank you.

24 CHAIRWOMAN KENYON: Thank you, Commissioner.

25 Commissioner Lachiondo, would you like to

1 weigh in?

2 COMMISSIONER LACHIONDO: Thank you for the
3 opportunity. And this is my first time weighing in.
4 And I am not an attorney, so I will not be citing code.

5 But I have had the opportunity to work with
6 our staff and review obviously the thousands of pages,
7 as well as consult with attorneys. And based on both
8 the testimony presented tonight, as well as the
9 evidence presented leading up to tonight, I have some
10 concerns with regard to the conditional-use permit
11 approval, and specifically section B, the section on
12 "The proposed use shall not create undue, adverse
13 impacts on surrounding properties."

14 As Mr. Leonard noted when I specifically
15 asked, that is a subjective decision, and there's not
16 necessarily a standard set out by code. It is
17 determined on how we perceive those undue impacts to be
18 occurring and certainly how people in the area do.

19 And so I'd like to note that I don't
20 believe that the cell phone tower is compatible with
21 surrounding properties, and this area is zoned rural
22 residential zoning, and this is a private commercial
23 use. I do consider the proposed cell tower to be
24 obtrusive and imposing into surrounding properties.

25 And I'm not satisfied that the applicant

1 has exhausted all other available options for leasing
2 land, based on the testimony tonight.

3 And finally, I'm not convinced that
4 construction of this cell tower will -- or I am
5 convinced that construction of this cell tower will
6 diminish property values.

7 A couple other things that I want to note:
8 While I do not believe this is a compatible use in this
9 area, one of the arguments that was made was because of
10 million-dollar homes in the area. And I'd like to
11 note, we don't take into consideration, and nor should
12 we, the valuation of anyone's particular home. Whether
13 it was a \$50,000 home or a million-dollar home, each
14 applicant or appellant would have the right to come up
15 and talk about this.

16 And finally, not as it relates to findings
17 on this particular application, although it was brought
18 up during the course of this application -- and again,
19 bear with me. I've been here for two-and-a-half
20 weeks -- my understanding, Mayor and Councilmembers and
21 Community, is that over time or in the past few years
22 there has been some attempts to restart the
23 incorporation of Eagle's Comprehensive Plan into Ada
24 County's Comprehensive Plan, and that as things happen
25 people get busy, and maybe there are some other matters

1 that needed to put that on pause. And so it's
2 unfortunate, but this has maybe brought this back to
3 our attention.

4 But I would like to note that I will be
5 encouraging our staff to work with Eagle to look at
6 adopting their most updated Eagle Comprehensive Plan
7 into our Comprehensive Plan.

8 CHAIRWOMAN KENYON: Any additional comments?

9 COMMISSIONER LACHIONDO: Thank you.

10 CHAIRWOMAN KENYON: Before we entertain a
11 motion, I'm not going to repeat what the two
12 Commissioners have just said. I'll be very, very
13 brief.

14 I, too, believe that there's not been an
15 exhaustive search for a more appropriate location. I
16 also believe that the tower is not architecturally or
17 visibly compatible with a rural neighborhood in a
18 commercial use.

19 I also believe that the construction and
20 maintenance of the tower does invade the privacy of the
21 home, as seen with the photograph that it's literally
22 60 steps away.

23 And I also find that there could possibly
24 be a safety issue with it being this close. It looks
25 like it's being placed in a field with weeds. It could

1 easily catch fire. If that tower of 70-foot fell over,
2 it would be literally right in the back yard of the
3 neighbor's house. And so I also believe that the use
4 would create an undue, adverse impact on the
5 surrounding neighbors and their surrounding properties.

6 So with that, I will entertain a motion,
7 unless there's further deliberation.

8 COMMISSIONER VISSER: I'm prepared to make a
9 motion, the discussion warrants such a motion, so here
10 goes.

11 And this is a little legalese, but I didn't
12 draft it, so here goes.

13 Madam Chair, I move to approve Appeal
14 Application No. 2018-01311-A, i.e., the Eberle Berlin
15 appeal, and overturn the Planning and Zoning
16 Commission's decision -- I see some people crying in
17 the audience, and it kind of brings me to tears. I'm
18 sorry. I apologize for that.

19 CHAIRWOMAN KENYON: I could read it for you.

20 COMMISSIONER VISSER: No, I can do it,
21 Commissioner.

22 -- and overturn the Planning and Zoning
23 Commission's decision to grant the conditional-use
24 permit for construction of a cell phone tower, to
25 direct staff to prepare findings of fact and

1 conclusions of law consistent with our decision based
2 upon the substantial record and the testimony presented
3 tonight.

4 I don't believe -- and we have to table it
5 to a certain date because there will be revised
6 findings.

7 Do we have a date available at this time,
8 or will that be determined?

9 CHAIRWOMAN KENYON: Yeah, we have to get a
10 second. We have to second this, so...

11 COMMISSIONER VISSER: Okay. So pending a
12 second.

13 Development Services meeting to adopt the
14 revised findings of fact and conclusions of law.

15 COMMISSIONER LACHIONDO: Second.

16 CHAIRWOMAN KENYON: Okay. We have a motion and
17 a second.

18 All those in favor state "aye."

19 COMMISSIONER VISSER: Aye.

20 COMMISSIONER LACHIONDO: Aye.

21 CHAIRWOMAN KENYON: Aye.

22 The ayes have it. The motion carries.

23 Okay. We'd like to -- we'll go ahead and
24 pick a date now before we close.

25 UNIDENTIFIED SPEAKER: Yes. Yes.

1 CHAIRWOMAN KENYON: Uh-huh. So if you'll hang
2 in there one more minute with us.

3 UNIDENTIFIED SPEAKER: Madam Chair,
4 Commissioners, the next scheduled meeting is
5 February 6th, there's a scheduled public hearing.
6 March 6th there's a public hearing. And then there is
7 a February 20th follow-up meeting, which currently we
8 don't have, which may be an option as well.

9 UNIDENTIFIED SPEAKER: [Unintelligible.]

10 UNIDENTIFIED SPEAKER: [Unintelligible.]

11 CHAIRWOMAN KENYON: February 6th? Okay. So
12 we're going to table -- table this to February 6th, and
13 then come back with the revisions of the findings of
14 fact and conclusions of law and order. Okay?

15 All right. We'll now close the public
16 hearing and -- or I'm sorry. We'll now recess and be
17 off the record.

18 And again, we thank you all very much for
19 your patience and helping.

20 (End of audio file at 55:48.)

21 -oOo-
22
23
24
25

Audio Transcription

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings were transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 16th day of January, 2020.



JEFF LaMAR, CSR NO. 640

Notary Public

Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 30, 2023

	7:23	audio (2) 2:1;14:20	5:9
\$	although (1) 10:17	authorized (1) 5:14	case (1) 3:21
\$50,000 (1) 10:13	Ambler (1) 3:22	available (2) 10:1;13:7	catch (1) 12:1
[Amendments (1) 3:17	away (1) 11:22	cell (8) 2:25;7:17,22;9:20,23;10:4, 5;12:24
[Unintelligible] (2) 14:9,10	Amendment's (1) 3:18	aye (4) 13:18,19,20,21	certain (2) 4:3;13:5
A	Americans' (1) 3:15	ayes (1) 13:22	certainly (1) 9:18
above (1) 6:8	among (2) 2:5;4:4	B	cetera (1) 8:11
accept (1) 6:14	analysis (5) 2:19,24;6:6;8:12,13	back (4) 4:1;11:2;12:2;14:13	Chair (2) 12:13;14:3
accord (1) 7:18	antenna (1) 8:1	base (1) 8:6	CHAIRWOMAN (11) 2:3,16;8:24;11:8,10;12:19; 13:9,16,21;14:1,11
acquiring (1) 4:6	apologize (1) 12:18	Based (5) 6:8;8:13;9:7;10:2;13:1	Chapter (2) 6:23;7:2
acronym (1) 2:21	appeal (3) 8:22;12:13,15	bear (1) 10:19	circles (1) 6:19
Act (2) 4:17;5:10	appellant (1) 10:14	Begin (1) 2:1	Cities (1) 4:23
Ada (7) 3:7,8;5:4,5;6:22;7:15; 10:23	appellate (1) 3:14	begins (1) 6:25	citing (1) 9:4
added (1) 5:8	applaud (1) 2:12	Berlin (1) 12:14	citizens (2) 5:19,25
addition (3) 4:25;5:16;7:1	applicable (1) 8:6	binding (1) 3:13	clause (2) 3:17,18
additional (2) 7:4;11:8	applicant (2) 9:25;10:14	Board (1) 2:5	clear (2) 3:3;7:12
addressed (1) 2:12	application (4) 2:21;10:17,18;12:14	body (2) 7:4;8:7	close (4) 2:4;11:24;13:24;14:15
addresses (3) 5:5,16;6:24	apply (2) 6:6;7:3	both (1) 9:7	code (8) 3:4,5,7,4;16;5:4;6:8;9:4,16
adds (1) 4:7	appraisal (1) 6:14	brief (1) 11:13	color (1) 8:10
adequate (1) 7:18	appropriate (2) 5:11;11:15	brings (1) 12:17	comments (1) 11:8
adequately (1) 2:11	approval (1) 9:11	broke (1) 5:24	commercial (3) 8:2;9:22;11:18
administration (1) 5:14	approve (2) 8:21;12:13	brought (2) 10:17;11:2	Commission (1) 7:15
adopt (1) 13:13	approved (1) 7:16	bulk (1) 8:10	Commissioner (15) 2:7,8,9,17;8:24,25;9:2; 11:9;12:8,20,21;13:11,15,19, 20
adopting (1) 11:6	architecturally (3) 8:3,16;11:16	busy (1) 10:25	Commissioners (4) 2:12;3:3;11:12;14:4
advantage (1) 3:12	area (6) 8:5,6;9:18,21;10:9,10	buy (2) 7:21,21	Commission's (2) 12:16,23
adverse (6) 7:9,11,19;8:19;9:12;12:4	arguments (1) 10:9	C	Community (1) 10:21
again (2) 10:18;14:18	Article (2) 3:24;6:24	called (2) 2:20;3:6	company (1) 7:22
ago (1) 2:20	attempts (1) 10:22	camouflage (1) 8:10	compatible (5) 8:4,17;9:20;10:8;11:17
ahead (1) 13:23	attention (1) 11:3	can (2) 6:18;12:20	Comprehensive (5) 8:7;10:23,24;11:6,7
AJ (1) 7:21	attorney (1) 9:4	carries (1) 13:22	concerns (1) 9:10
alternative (1)	attorneys (1) 9:7	carry (1)	
	audience (1) 12:17		

conclusion (2) 2:22;6:7 conclusions (3) 13:1,14;14:14 conditional (2) 6:24,24 conditional-use (3) 7:16;9:10;12:23 conditions (2) 7:4,5 Congratulations (1) 2:17 consider (3) 5:4;8:8;9:23 consideration (1) 10:11 considering (1) 3:3 consistent (1) 13:1 consistently (1) 3:20 Constitution (5) 3:11,12,15,25;5:15 constitutional (2) 4:12,13 construction (4) 10:4,5;11:19;12:24 consult (1) 9:7 convinced (2) 10:3,5 Corlett (1) 6:14 Councilmembers (1) 10:20 counties (1) 4:23 County (7) 3:3,7,8;5:4,5;6:22;7:15 County's (1) 10:24 couple (1) 10:7 course (1) 10:18 Court (1) 3:19 courts (1) 3:14 covered (1) 6:25 create (2) 9:12;12:4 crying (1) 12:16 currently (1) 14:7	date (3) 13:5,7,24 deals (1) 3:7 decision (4) 9:15;12:16,23;13:1 decision-making (2) 7:4;8:7 decisions (1) 4:25 declares (1) 3:25 decrease (1) 6:16 defending (1) 4:5 deliberate (1) 2:6 deliberation (1) 12:7 determined (2) 9:17;13:8 Development (1) 13:13 different (1) 5:21 diminish (1) 10:6 direct (1) 12:25 directed (1) 4:23 discussion (2) 2:10;12:9 district (1) 8:6 draft (1) 12:12 due (1) 3:17 during (1) 10:18	encroachment (3) 5:19;6:1,12 End (1) 14:20 enhance (1) 5:12 enjoying (1) 4:4 ensure (1) 5:10 entertain (2) 11:10;12:6 equal (2) 4:3;6:3 equally (2) 5:18,25 established (1) 3:13 estimate (1) 6:16 estimates (1) 6:15 et (1) 8:11 Euclid (1) 3:22 even (1) 5:21 evidence (5) 5:2;6:10,13;8:19;9:9 exact (1) 6:19 example (1) 4:14 excellent (1) 2:13 excluded (1) 4:1 exhausted (1) 10:1 exhaustive (1) 11:15 exhibits (1) 8:15 exist (1) 8:5 existing (3) 8:4,14,17 expert (1) 6:18 expert's (1) 6:20 expressed (1) 5:1 extensive (2) 4:20;8:13	facts (1) 8:12 failed (1) 7:17 favor (1) 13:18 February (4) 14:5,7,11,12 fell (1) 12:1 fellow (1) 2:12 few (2) 6:19;10:21 field (1) 11:25 Fifth (2) 3:16,18 file (2) 2:2;14:20 final (1) 8:13 Finally (3) 5:13;10:3,16 find (3) 7:18;8:16;11:23 findings (7) 6:8;8:12;10:16;12:25; 13:6,14;14:13 fire (1) 12:1 first (4) 2:14;4:17,21;9:3 follow (2) 3:8;4:24 following (4) 3:6;7:2,6;8:9 follows (2) 4:20;7:3 follow-up (1) 14:7 forth (1) 7:2 found (5) 3:4,7,10,11,22 foundational (1) 3:21 Fourteenth (1) 3:16 free (1) 4:3 fundamental (1) 3:21 further (2) 2:4;12:7
	E		G
	Eagle (2) 11:5,6 Eagle's (1) 10:23 earlier (1) 4:24 easily (1) 12:1 Eberle (1) 12:14 effects (3) 7:9,11,19 emphasis (1) 7:10 emphasize (1) 8:8 encouraging (1) 11:5	F	
D		fact (4) 4:10;12:25;13:14;14:14 factors (1) 8:9	general (1) 4:19 gentlemen (1) 2:18 goes (2)
dash (1) 3:5			

12:10,12 government (1) 3:9 grant (2) 8:21;12:23	10:23 installation (1) 7:17 intent (1) 5:9 interpreted (2) 5:18,25 into (4) 9:24;10:11,23;11:7 invade (1) 11:20 IRAC (3) 2:21,24;6:6 issue (3) 2:21,24;11:24 item (1) 4:21	Letter (1) 7:3 liberty (1) 4:5 life (1) 4:5 likely (1) 8:5 limit (1) 4:13 limited (2) 7:6;8:9 line (2) 4:6;8:8 list (4) 4:21,21;7:3,7 literally (2) 11:21;12:2 little (1) 12:11 LLUPA (6) 3:6,9;4:16,17,24;5:10 local (3) 2:18;3:9;5:10 location (3) 3:1;7:23;11:15 look (3) 4:16;6:5;11:5 looks (1) 11:24 lot (1) 8:15	mitigate (4) 7:5,9,11,19 more (2) 11:15;14:2 most (3) 4:10;5:11;11:6 motion (6) 11:11;12:6,9,9;13:16,22 move (1) 12:13 much (1) 14:18
H	J	M	N
hang (1) 14:1 happen (1) 10:24 happiness (1) 4:7 health (2) 4:19;7:8 heard (3) 5:19;6:13;7:20 hearing (6) 2:5,13,23;14:5,6,16 height (1) 8:10 helping (1) 14:19 hence (1) 8:18 here's (1) 2:23 high (1) 6:17 home (4) 10:12,13,13;11:21 homeowners (1) 8:14 homes (2) 8:17;10:10 hope (1) 5:2 house (1) 12:3	job (1) 2:13		nature (1) 4:3 near (1) 8:14 necessarily (1) 9:16 necessary (1) 7:8 needed (1) 11:1 neighborhood (2) 6:11;11:17 neighbors (1) 12:5 neighbor's (3) 5:23;6:2;12:3 next (4) 4:5;5:4;8:8;14:4 nor (1) 10:11 note (4) 9:19;10:7,11;11:4 noted (1) 9:14 notice (1) 7:25 number (1) 7:25 numerous (1) 7:25
I	K		O
Idaho (8) 3:4,5,12,13,24;4:16,20; 5:15 idea (1) 5:20 ie (1) 12:14 impact (2) 8:20;12:4 impacts (3) 7:5;9:13,17 imposing (1) 9:24 inalienable (2) 3:25;4:4 include (2) 5:1;7:5 incorporated (1) 5:1 incorporation (1)	KENYON (11) 2:3,16;8:24;11:8,10;12:19; 13:9,16,21;14:1,11 kind (1) 12:17		
	L	Lachiondo (6) 2:8;8:25;9:2;11:9;13:15, 20 Ladies (1) 2:18 land (3) 5:9,10;10:2 land-use (2) 2:19;3:3 law (8) 2:20;3:2,2,4;6:6;13:1,14; 14:14 laws (2) 3:10;5:15 lead (1) 2:10 leading (1) 9:9 learn (1) 4:11 learned (1) 2:20 leasing (1) 10:1 legal (2) 2:19;6:19 legalese (1) 12:11 Leonard (1) 9:14	obtrusive (1) 9:24 obviously (1) 9:6 occurring (1) 9:18 off (2) 2:10;14:17 one (7) 2:14;4:11,12;5:21;7:17; 10:9;14:2 one's (2) 3:20;4:9 only (1) 6:18

oOo- (1) 14:21	place (1) 6:17	quite (1) 6:19	satisfied (1) 9:25
open (1) 2:6	placed (2) 2:25;11:25	R	saying (1) 4:9
opinion (1) 6:18	Plan (5) 8:7;10:23,24;11:6,7		scheduled (2) 14:4,5
opportunity (2) 9:3,5	Planning (4) 5:10;7:15;12:15,22	read (1) 12:19	school (1) 2:20
option (1) 14:8	Plus (1) 3:12	ready (1) 2:9	search (1) 11:15
options (1) 10:1	possessing (1) 4:6	rebutted (1) 6:18	Second (7) 3:2;6:2;13:10,10,12,15,17
order (1) 14:14	possibly (1) 11:23	received (1) 8:15	Section (9) 3:5,24;5:16;6:5,9,25;8:1; 9:11,11
ordinances (1) 4:15	precedent (1) 3:13	recess (1) 14:16	securing (1) 4:8
Osborne (1) 7:21	prepare (1) 12:25	record (2) 13:2;14:17	Seeing (1) 2:3
out (2) 5:9;9:16	prepared (2) 2:9;12:8	regard (3) 2:23;8:2;9:10	sentence (1) 4:21
over (4) 2:20;8:15;10:21;12:1	presented (4) 8:19;9:8,9;13:2	regulation (1) 4:14	Services (1) 13:13
overturn (2) 12:15,22	preservation (2) 5:17;6:9	relates (1) 10:16	set (2) 7:1;9:16
own (1) 3:13	presume (1) 4:7	relevant (2) 5:7,8	shall (9) 4:18,18;5:18,24;7:2;8:3,7, 9:9;12
P	privacy (1) 11:20	rely (1) 2:19	shape (1) 8:10
	private (8) 5:17,22,23;6:1,2,9,12;9:22	repeat (3) 5:24;7:10;11:11	share (1) 5:3
pages (1) 9:6	process (1) 3:17	require (1) 7:4	short (1) 3:6
paraphrase (1) 4:2	promote (1) 4:18	required (1) 3:8	showed (2) 6:14,16
parcels (1) 7:21	properties (5) 5:11;9:13,21,24;12:5	residential (1) 9:22	shows (1) 6:11
part (2) 4:2;6:3	property (21) 3:16,20;4:7,9,22;5:12,12, 17,17,22,23;6:1,2,9,12,15; 7:10,11,19,22;10:6	residents (1) 6:11	Similar (1) 8:9
partaking (1) 2:13	proposed (4) 3:1;8:14;9:12,23	restart (1) 10:22	single (1) 4:11
particular (2) 10:12,17	protect (5) 4:22;5:11,18,25;7:8	review (1) 9:6	site (1) 8:14
past (1) 10:21	protecting (1) 4:6	reviewing (2) 2:18;7:14	sorry (2) 12:18;14:16
patience (1) 14:19	protects (1) 3:15	revised (2) 13:5,14	SPEAKER (4) 13:25;14:3,9,10
pause (1) 11:1	provide (3) 5:13;6:7;7:22	revisions (1) 14:13	specific (2) 6:23;7:1
pending (1) 13:11	provided (1) 6:21	right (4) 3:21;10:14;12:2;14:15	specifically (3) 5:5;9:11,14
people (4) 4:19;9:18;10:25;12:16	public (5) 2:5;7:8;14:5,6,15	rights (12) 3:16,20,25;4:4,9,12,13,22; 5:12,17;6:9,12	speculative (1) 6:15
perceive (1) 9:17	purpose (3) 4:17,18;5:6	rule (2) 2:21;3:2	staff (3) 9:6;11:5;12:25
percent (1) 6:16	purposes (3) 5:7,8,9	ruling (2) 4:14;7:14	standard (1) 9:16
permit (3) 7:16;9:10;12:24	put (1) 11:1	rural (2) 9:21;11:17	standards (7) 5:1;6:23,25;7:1,2,8,18
phone (3) 7:22;9:20;12:24	Q	S	start (1) 2:8
photograph (1) 11:21			safety (4) 4:8,19;7:8;11:24
pick (1) 13:24			

4:20;5:15;13:18 stated (1) 4:17 statement (1) 7:13 States (5) 3:11,19;5:7;7:3;8:2 statute (1) 4:13 steps (1) 11:22 straightforward (1) 2:25 stress (1) 4:5 structure (1) 8:1 structures (2) 8:4,18 subjective (1) 9:15 subsection (3) 5:6;7:24;8:2 substantial (2) 8:18;13:2 Supreme (1) 3:19 sure (1) 7:25 surprised (1) 4:11 surrounding (8) 7:10,11,19;9:13,21,24; 12:5,5	tower (13) 2:25;6:11;7:17;8:1,16; 9:20,23;10:4,5;11:16,20; 12:1,24 towers (2) 8:2,3 transcription (1) 2:1 treated (1) 3:20 two (1) 11:11 two-and-a-half (1) 10:19	11:17 Visser (7) 2:7,9,17;12:8,20;13:11,19 visually (2) 8:3,17 vital (1) 7:18	2018-01311-A (1) 12:14 20th (1) 14:7 272 (1) 3:22
	U	W	3
	under (1) 8:6 undue (8) 5:19;6:1,12;7:12;8:19; 9:12,17;12:4 unfortunate (1) 11:2 UNIDENTIFIED (4) 13:25;14:3,9,10 United (2) 3:11,19 unless (1) 12:7 unlimited (2) 4:10,12 up (5) 2:6;5:24;9:9;10:14,18 updated (1) 11:6 upon (1) 13:2 use (13) 5:9,10,11,23;6:2,23,24; 7:1;9:12,23;10:8;11:18;12:3 used (1) 5:20 uses (2) 6:24;8:5	wants (1) 2:8 warrants (1) 12:9 weeds (1) 11:25 weeks (1) 10:20 weigh (1) 9:1 weighing (1) 9:3 welfare (2) 4:19;7:9 willing (1) 7:21 women (2) 4:1,3 word (1) 7:12 work (2) 9:5;11:5	30 (1) 2:20 365 (1) 3:23 38:46 (1) 2:1
	V	Y	4
	valuation (1) 10:12 value (1) 6:17 values (3) 5:12;6:15;10:6 vegetation (1) 8:4 versa (1) 6:3 vice (1) 6:3 Village (1) 3:22 visibly (1)	yard (1) 12:2 years (2) 2:20;10:21	4 (1) 7:7
T		Z	5
table (3) 13:4;14:12,12 talk (1) 10:15 tears (1) 12:17 techniques (1) 8:10 term (1) 5:19 terms (1) 8:6 testimony (10) 2:4;6:10,17,20,20;7:20; 8:13;9:8;10:2;13:2 Therefore (1) 8:21 thousands (1) 9:6 Title (6) 3:5,7;5:5,18,24;6:22 tonight (11) 2:10,13;5:2,20;6:13,21; 7:20;9:8,9;10:2;13:3 tonight's (2) 2:23;8:22	zoned (1) 9:21 zoning (9) 3:8;4:14,25;5:6;6:22;7:15; 9:22;12:15,22	5 (1) 6:23 55:48 (1) 14:20	
	1		6
	1 (1) 3:24 10 (1) 6:16 100 (1) 8:15 10f (1) 8:2 1926 (2) 3:19,21	60 (1) 11:22 67 (2) 3:5,5 67-6501 (1) 3:5 6th (4) 14:5,6,11,12	
	2		7
			70-foot (1) 12:1
			8
			8 (3) 3:7;5:5;6:22 8-12 (1) 5:6 8-1-9a (1) 5:16 8-5-3114 (1) 7:24

PARTIAL TRANSCRIPT OF ADA COUNTY BOARD OF COMMISSIONERS
RECORDED PUBLIC HEARING
JANUARY 30, 2019

COMMISSIONERS PRESENT:
KENDRA KENYON, CHAIRWOMAN
DIANA LACHIONDO
RICK VISSER

TRANSCRIBED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 (Begin transcription at 38:46 of audio
2 file.)

3 CHAIRWOMAN KENYON: Okay. Seeing that there's
4 no further testimony, we're going to now close the
5 public hearing. And we will -- among the Board we'll
6 ask questions and deliberate. So we'll open that up.

7 Commissioner Visser or
8 Commissioner Lachiondo, whoever wants to start.

9 COMMISSIONER VISSER: I'm ready -- I'm prepared
10 to lead off with the discussion tonight.

11 I think our questions have been adequately
12 addressed, and I applaud my fellow Commissioners for an
13 excellent job of partaking in this hearing tonight,
14 being their first one.

15 So thank you.

16 CHAIRWOMAN KENYON: Thank you.

17 COMMISSIONER VISSER: Congratulations.

18 Ladies and gentlemen, in reviewing local
19 land-use matters, I rely on a legal analysis that I
20 learned over 30 years ago in law school. It's called
21 IRAC. It's an acronym for issue, rule, application,
22 and conclusion.

23 In regard to tonight's hearing, here's my
24 analysis: The issue, that's the "I" in IRAC. Very
25 straightforward. Should a cell tower be placed in the

1 proposed location?

2 Second is "R" for rule or law. The law is
3 clear for County Commissioners considering land-use
4 matters. That law is found in the Idaho code in
5 Section 67 dash -- Title 67, in Idaho Code 67-6501 and
6 following. For short, it's called LLUPA. It's also
7 found in the Ada County code in Title 8, which deals
8 with Ada County zoning. And we are required to follow
9 LLUPA, as are every other local government.

10 It's also found -- the laws that I've also
11 found are in the United States Constitution and the
12 Idaho Constitution. Plus, we have the advantage of
13 established and binding precedent from our own Idaho
14 appellate courts.

15 The U.S. Constitution protects Americans'
16 property rights through the Fifth and Fourteenth
17 Amendments. That's the due process clause. There's
18 also the Fifth Amendment's taking clause.

19 Since 1926 the United States Supreme Court
20 has consistently treated one's property rights as a
21 foundational, fundamental right. A 1926 case is
22 Village of Euclid v. Ambler, and it's found at 272 U.S.
23 365.

24 Article I, Section 1 of the Idaho
25 Constitution declares our inalienable rights. It says,

1 "All men," they excluded women back then, but we're
2 taking part with that. So I would paraphrase, "All men
3 and women, by nature free and equal to have certain
4 inalienable rights, among which are enjoying and
5 defending life and liberty" -- and I stress this next
6 line -- "acquiring, possessing, and protecting
7 property." And it adds, "presume happiness and
8 securing safety."

9 I'm not saying that one's property rights
10 are unlimited. In fact, I believe most of you would be
11 surprised to learn that not a single one of our
12 constitutional rights are unlimited. Every one of our
13 constitutional rights have some limit by statute, by
14 ruling, by regulation. An example of that is zoning
15 ordinances.

16 Let's look at the Idaho code and LLUPA.
17 The first stated purpose of LLUPA is that "This Act
18 shall be -- the purpose of it, it shall be to promote
19 the health, safety, and general welfare of the people
20 of the state of Idaho as follows." It has an extensive
21 list. The first item on that list is sentence A. And
22 it says, "To protect the property rights."

23 Cities and counties are also directed to
24 follow LLUPA. I mentioned that earlier.

25 In addition, all zoning decisions are to

1 include expressed standards. Those were incorporated
2 through the evidence tonight and also, I hope, in what
3 I share with you.

4 Next let's consider the Ada County code,
5 and specifically Title 8, which addresses Ada County
6 zoning. In subsection 8-12 we have a purpose. And it
7 states that "Some of the relevant purposes are" -- I
8 added "some." "Some of the relevant purposes are, A,
9 to carry out the intent and purposes of the land use --
10 local Land Use Planning Act, LLUPA; E, to ensure the
11 most appropriate use of properties; and F, to protect
12 property rights and enhance property values."

13 Finally, G says that "We are to provide a
14 method of administration, as authorized by the
15 Constitution and the laws of the State of Idaho."

16 In addition, Section 8-1-9(a) addresses the
17 preservation of property -- private property rights.
18 "This title shall be interpreted to equally protect
19 citizens from undue encroachment" -- we heard that term
20 used tonight. I think we have an idea of what that
21 means, even if it means something different to one
22 another -- "on their private property by their
23 neighbor's use of their private property." Let me
24 repeat that because I broke it up. "This title shall
25 be interpreted to equally protect citizens from the

1 undue encroachment on their private property by their
2 neighbor's use of their private property." The second
3 part of it that is equal to that is just vice versa of
4 that.

5 Let's look at section "A" and "C" in my
6 IRAC analysis. So I'm going to apply the law as I see
7 it, and I'm going to provide my conclusion.

8 My findings: Based on the above code
9 section, the preservation of private property rights, I
10 believe that the evidence from the testimony of the
11 neighborhood residents shows that the tower would be an
12 undue encroachment of their private property rights. I
13 believe that the evidence that we heard tonight -- and
14 I accept it -- the appraisal by Mr. Corlett showed that
15 the estimates of property values, not speculative, but
16 an estimate, showed a decrease of 10 percent.

17 I place a high value on the testimony of an
18 expert, and it can only be rebutted, in my opinion, and
19 in some legal circles, quite a few to be exact, by
20 another expert's testimony. No such testimony was
21 provided tonight.

22 In Title 8 of the Ada County zoning, in
23 Chapter 5 we have specific use standards. And
24 Article B addresses conditional uses. Conditional use
25 standards are covered in this section, and it begins

1 with, "In addition to the specific use standards set
2 forth in this chapter, the following standards shall
3 apply," and the list follows. Letter J states, "The
4 decision-making body may require additional conditions
5 to mitigate impacts. The conditions may include, but
6 are not limited to, any of the following."

7 No. 4 on that list says that "Other
8 standards necessary to protect public health, safety,
9 and welfare, and to mitigate adverse effects on
10 surrounding property." For emphasis, I'll repeat that:
11 "to mitigate adverse effects on surrounding property."
12 We don't have the word "undue" there. We have a clear
13 statement.

14 I believe in reviewing the ruling of the
15 Ada County Planning and Zoning Commission in which they
16 approved the conditional-use permit for the
17 installation of this cell tower, they failed on one
18 vital accord. I did not find any adequate standards to
19 mitigate adverse effects on the surrounding property.

20 However, tonight we heard testimony from
21 Mr. AJ Osborne that he is willing to buy parcels, buy
22 property, and provide that to the cell phone company as
23 an alternative location.

24 Also, in subsection 8-5-3114 -- and I'm
25 sure you're all taking notice of that numerous number

1 there -- we have the tower antenna structure section in
2 regard to commercial towers. Subsection 10(f) states
3 that "Towers shall be architecturally and visually
4 compatible with the existing structures, vegetation,
5 and other uses in the area, or likely to exist in the
6 area, under the terms of the applicable base district
7 or Comprehensive Plan. The decision-making body shall
8 consider" -- and I emphasize this next line -- "but
9 shall not be limited to the following factors: Similar
10 height, color, bulk, shape, camouflage techniques,
11 et cetera."

12 My findings of facts on this analysis, this
13 final analysis: Based on the extensive testimony from
14 existing homeowners near the proposed site and the
15 exhibits that we received, which were a lot, over 100,
16 I find that this tower is not architecturally and
17 visually compatible with the existing homes or
18 structures; hence, I believe that there was substantial
19 evidence presented that there was an adverse and undue
20 impact.

21 Therefore, I would approve and grant
22 tonight's appeal.

23 Thank you.

24 CHAIRWOMAN KENYON: Thank you, Commissioner.

25 Commissioner Lachiondo, would you like to

1 weigh in?

2 COMMISSIONER LACHIONDO: Thank you for the
3 opportunity. And this is my first time weighing in.
4 And I am not an attorney, so I will not be citing code.

5 But I have had the opportunity to work with
6 our staff and review obviously the thousands of pages,
7 as well as consult with attorneys. And based on both
8 the testimony presented tonight, as well as the
9 evidence presented leading up to tonight, I have some
10 concerns with regard to the conditional-use permit
11 approval, and specifically section B, the section on
12 "The proposed use shall not create undue, adverse
13 impacts on surrounding properties."

14 As Mr. Leonard noted when I specifically
15 asked, that is a subjective decision, and there's not
16 necessarily a standard set out by code. It is
17 determined on how we perceive those undue impacts to be
18 occurring and certainly how people in the area do.

19 And so I'd like to note that I don't
20 believe that the cell phone tower is compatible with
21 surrounding properties, and this area is zoned rural
22 residential zoning, and this is a private commercial
23 use. I do consider the proposed cell tower to be
24 obtrusive and imposing into surrounding properties.

25 And I'm not satisfied that the applicant

1 has exhausted all other available options for leasing
2 land, based on the testimony tonight.

3 And finally, I'm not convinced that
4 construction of this cell tower will -- or I am
5 convinced that construction of this cell tower will
6 diminish property values.

7 A couple other things that I want to note:
8 While I do not believe this is a compatible use in this
9 area, one of the arguments that was made was because of
10 million-dollar homes in the area. And I'd like to
11 note, we don't take into consideration, and nor should
12 we, the valuation of anyone's particular home. Whether
13 it was a \$50,000 home or a million-dollar home, each
14 applicant or appellant would have the right to come up
15 and talk about this.

16 And finally, not as it relates to findings
17 on this particular application, although it was brought
18 up during the course of this application -- and again,
19 bear with me. I've been here for two-and-a-half
20 weeks -- my understanding, Mayor and Councilmembers and
21 Community, is that over time or in the past few years
22 there has been some attempts to restart the
23 incorporation of Eagle's Comprehensive Plan into Ada
24 County's Comprehensive Plan, and that as things happen
25 people get busy, and maybe there are some other matters

1 that needed to put that on pause. And so it's
2 unfortunate, but this has maybe brought this back to
3 our attention.

4 But I would like to note that I will be
5 encouraging our staff to work with Eagle to look at
6 adopting their most updated Eagle Comprehensive Plan
7 into our Comprehensive Plan.

8 CHAIRWOMAN KENYON: Any additional comments?

9 COMMISSIONER LACHIONDO: Thank you.

10 CHAIRWOMAN KENYON: Before we entertain a
11 motion, I'm not going to repeat what the two
12 Commissioners have just said. I'll be very, very
13 brief.

14 I, too, believe that there's not been an
15 exhaustive search for a more appropriate location. I
16 also believe that the tower is not architecturally or
17 visibly compatible with a rural neighborhood in a
18 commercial use.

19 I also believe that the construction and
20 maintenance of the tower does invade the privacy of the
21 home, as seen with the photograph that it's literally
22 60 steps away.

23 And I also find that there could possibly
24 be a safety issue with it being this close. It looks
25 like it's being placed in a field with weeds. It could

1 easily catch fire. If that tower of 70-foot fell over,
2 it would be literally right in the back yard of the
3 neighbor's house. And so I also believe that the use
4 would create an undue, adverse impact on the
5 surrounding neighbors and their surrounding properties.

6 So with that, I will entertain a motion,
7 unless there's further deliberation.

8 COMMISSIONER VISSER: I'm prepared to make a
9 motion, the discussion warrants such a motion, so here
10 goes.

11 And this is a little legalese, but I didn't
12 draft it, so here goes.

13 Madam Chair, I move to approve Appeal
14 Application No. 2018-01311-A, i.e., the Eberle Berlin
15 appeal, and overturn the Planning and Zoning
16 Commission's decision -- I see some people crying in
17 the audience, and it kind of brings me to tears. I'm
18 sorry. I apologize for that.

19 CHAIRWOMAN KENYON: I could read it for you.

20 COMMISSIONER VISSER: No, I can do it,
21 Commissioner.

22 -- and overturn the Planning and Zoning
23 Commission's decision to grant the conditional-use
24 permit for construction of a cell phone tower, to
25 direct staff to prepare findings of fact and

1 conclusions of law consistent with our decision based
2 upon the substantial record and the testimony presented
3 tonight.

4 I don't believe -- and we have to table it
5 to a certain date because there will be revised
6 findings.

7 Do we have a date available at this time,
8 or will that be determined?

9 CHAIRWOMAN KENYON: Yeah, we have to get a
10 second. We have to second this, so...

11 COMMISSIONER VISSER: Okay. So pending a
12 second.

13 Development Services meeting to adopt the
14 revised findings of fact and conclusions of law.

15 COMMISSIONER LACHIONDO: Second.

16 CHAIRWOMAN KENYON: Okay. We have a motion and
17 a second.

18 All those in favor state "aye."

19 COMMISSIONER VISSER: Aye.

20 COMMISSIONER LACHIONDO: Aye.

21 CHAIRWOMAN KENYON: Aye.

22 The ayes have it. The motion carries.

23 Okay. We'd like to -- we'll go ahead and
24 pick a date now before we close.

25 UNIDENTIFIED SPEAKER: Yes. Yes.

1 CHAIRWOMAN KENYON: Uh-huh. So if you'll hang
2 in there one more minute with us.

3 UNIDENTIFIED SPEAKER: Madam Chair,
4 Commissioners, the next scheduled meeting is
5 February 6th, there's a scheduled public hearing.
6 March 6th there's a public hearing. And then there is
7 a February 20th follow-up meeting, which currently we
8 don't have, which may be an option as well.

9 UNIDENTIFIED SPEAKER: [Unintelligible.]

10 UNIDENTIFIED SPEAKER: [Unintelligible.]

11 CHAIRWOMAN KENYON: February 6th? Okay. So
12 we're going to table -- table this to February 6th, and
13 then come back with the revisions of the findings of
14 fact and conclusions of law and order. Okay?

15 All right. We'll now close the public
16 hearing and -- or I'm sorry. We'll now recess and be
17 off the record.

18 And again, we thank you all very much for
19 your patience and helping.

20 (End of audio file at 55:48.)

21 -oOo-

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25

Audio Transcription

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings were transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 16th day of January, 2020.



JEFF LaMAR, CSR NO. 640

Notary Public

Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 30, 2023

	7:23	audio (2) 2:1;14:20	5:9
\$	although (1) 10:17	authorized (1) 5:14	case (1) 3:21
\$50,000 (1) 10:13	Ambler (1) 3:22	available (2) 10:1;13:7	catch (1) 12:1
[Amendments (1) 3:17	away (1) 11:22	cell (8) 2:25;7:17,22;9:20,23;10:4, 5;12:24
[Unintelligible] (2) 14:9,10	Amendment's (1) 3:18	aye (4) 13:18,19,20,21	certain (2) 4:3;13:5
A	Americans' (1) 3:15	ayes (1) 13:22	certainly (1) 9:18
above (1) 6:8	among (2) 2:5;4:4	B	cetera (1) 8:11
accept (1) 6:14	analysis (5) 2:19,24;6:6;8:12,13	back (4) 4:1;11:2;12:2;14:13	Chair (2) 12:13;14:3
accord (1) 7:18	antenna (1) 8:1	base (1) 8:6	CHAIRWOMAN (11) 2:3,16;8:24;11:8,10;12:19; 13:9,16,21;14:1,11
acquiring (1) 4:6	apologize (1) 12:18	Based (5) 6:8;8:13;9:7;10:2;13:1	Chapter (2) 6:23;7:2
acronym (1) 2:21	appeal (3) 8:22;12:13,15	bear (1) 10:19	circles (1) 6:19
Act (2) 4:17;5:10	appellant (1) 10:14	Begin (1) 2:1	Cities (1) 4:23
Ada (7) 3:7,8;5:4,5;6:22;7:15; 10:23	appellate (1) 3:14	begins (1) 6:25	citing (1) 9:4
added (1) 5:8	applaud (1) 2:12	Berlin (1) 12:14	citizens (2) 5:19,25
addition (3) 4:25;5:16;7:1	applicable (1) 8:6	binding (1) 3:13	clause (2) 3:17,18
additional (2) 7:4;11:8	applicant (2) 9:25;10:14	Board (1) 2:5	clear (2) 3:3;7:12
addressed (1) 2:12	application (4) 2:21;10:17,18;12:14	body (2) 7:4;8:7	close (4) 2:4;11:24;13:24;14:15
addresses (3) 5:5,16;6:24	apply (2) 6:6;7:3	both (1) 9:7	code (8) 3:4,5,7,4;16;5:4;6:8;9:4,16
adds (1) 4:7	appraisal (1) 6:14	brief (1) 11:13	color (1) 8:10
adequate (1) 7:18	appropriate (2) 5:11;11:15	brings (1) 12:17	comments (1) 11:8
adequately (1) 2:11	approval (1) 9:11	broke (1) 5:24	commercial (3) 8:2;9:22;11:18
administration (1) 5:14	approve (2) 8:21;12:13	brought (2) 10:17;11:2	Commission (1) 7:15
adopt (1) 13:13	approved (1) 7:16	bulk (1) 8:10	Commissioner (15) 2:7,8,9,17;8:24,25;9:2; 11:9;12:8,20,21;13:11,15,19, 20
adopting (1) 11:6	architecturally (3) 8:3,16;11:16	busy (1) 10:25	Commissioners (4) 2:12;3:3;11:12;14:4
advantage (1) 3:12	area (6) 8:5,6;9:18,21;10:9,10	buy (2) 7:21,21	Commission's (2) 12:16,23
adverse (6) 7:9,11,19;8:19;9:12;12:4	arguments (1) 10:9	C	Community (1) 10:21
again (2) 10:18;14:18	Article (2) 3:24;6:24	called (2) 2:20;3:6	company (1) 7:22
ago (1) 2:20	attempts (1) 10:22	camouflage (1) 8:10	compatible (5) 8:4,17;9:20;10:8;11:17
ahead (1) 13:23	attention (1) 11:3	can (2) 6:18;12:20	Comprehensive (5) 8:7;10:23,24;11:6,7
AJ (1) 7:21	attorney (1) 9:4	carries (1) 13:22	concerns (1) 9:10
alternative (1)	attorneys (1) 9:7	carry (1)	
	audience (1) 12:17		

conclusion (2) 2:22;6:7	date (3) 13:5,7,24	encroachment (3) 5:19;6:1,12	facts (1) 8:12
conclusions (3) 13:1,14;14:14	deals (1) 3:7	End (1) 14:20	failed (1) 7:17
conditional (2) 6:24,24	decision (4) 9:15;12:16,23;13:1	enhance (1) 5:12	favor (1) 13:18
conditional-use (3) 7:16;9:10;12:23	decision-making (2) 7:4;8:7	enjoying (1) 4:4	February (4) 14:5,7,11,12
conditions (2) 7:4,5	decisions (1) 4:25	ensure (1) 5:10	fell (1) 12:1
Congratulations (1) 2:17	declares (1) 3:25	entertain (2) 11:10;12:6	fellow (1) 2:12
consider (3) 5:4;8:8;9:23	decrease (1) 6:16	equal (2) 4:3;6:3	few (2) 6:19;10:21
consideration (1) 10:11	defending (1) 4:5	equally (2) 5:18,25	field (1) 11:25
considering (1) 3:3	deliberate (1) 2:6	established (1) 3:13	Fifth (2) 3:16,18
consistent (1) 13:1	deliberation (1) 12:7	estimate (1) 6:16	file (2) 2:2;14:20
consistently (1) 3:20	determined (2) 9:17;13:8	estimates (1) 6:15	final (1) 8:13
Constitution (5) 3:11,12,15,25;5:15	Development (1) 13:13	et (1) 8:11	Finally (3) 5:13;10:3,16
constitutional (2) 4:12,13	different (1) 5:21	Euclid (1) 3:22	find (3) 7:18;8:16;11:23
construction (4) 10:4,5;11:19;12:24	diminish (1) 10:6	even (1) 5:21	findings (7) 6:8;8:12;10:16;12:25; 13:6,14;14:13
consult (1) 9:7	direct (1) 12:25	evidence (5) 5:2;6:10,13;8:19;9:9	fire (1) 12:1
convinced (2) 10:3,5	directed (1) 4:23	exact (1) 6:19	first (4) 2:14;4:17,21;9:3
Corlett (1) 6:14	discussion (2) 2:10;12:9	example (1) 4:14	follow (2) 3:8;4:24
Councilmembers (1) 10:20	district (1) 8:6	excellent (1) 2:13	following (4) 3:6;7:2,6;8:9
counties (1) 4:23	draft (1) 12:12	excluded (1) 4:1	follows (2) 4:20;7:3
County (7) 3:3,7,8;5:4,5;6:22;7:15	due (1) 3:17	exhausted (1) 10:1	follow-up (1) 14:7
County's (1) 10:24	during (1) 10:18	exhaustive (1) 11:15	forth (1) 7:2
couple (1) 10:7	E	exhibits (1) 8:15	found (5) 3:4,7,10,11,22
course (1) 10:18	Eagle (2) 11:5,6	exist (1) 8:5	foundational (1) 3:21
Court (1) 3:19	Eagle's (1) 10:23	existing (3) 8:4,14,17	Fourteenth (1) 3:16
courts (1) 3:14	earlier (1) 4:24	expert (1) 6:18	free (1) 4:3
covered (1) 6:25	easily (1) 12:1	expert's (1) 6:20	fundamental (1) 3:21
create (2) 9:12;12:4	Eberle (1) 12:14	expressed (1) 5:1	further (2) 2:4;12:7
crying (1) 12:16	effects (3) 7:9,11,19	extensive (2) 4:20;8:13	G
currently (1) 14:7	emphasis (1) 7:10	F	general (1) 4:19
D	emphasize (1) 8:8	fact (4) 4:10;12:25;13:14;14:14	gentlemen (1) 2:18
dash (1) 3:5	encouraging (1) 11:5	factors (1) 8:9	goes (2)

12:10,12 government (1) 3:9 grant (2) 8:21;12:23	10:23 installation (1) 7:17 intent (1) 5:9 interpreted (2) 5:18,25 into (4) 9:24;10:11,23;11:7 invade (1) 11:20 IRAC (3) 2:21,24;6:6 issue (3) 2:21,24;11:24 item (1) 4:21	Letter (1) 7:3 liberty (1) 4:5 life (1) 4:5 likely (1) 8:5 limit (1) 4:13 limited (2) 7:6;8:9 line (2) 4:6;8:8 list (4) 4:21,21;7:3,7 literally (2) 11:21;12:2 little (1) 12:11 LLUPA (6) 3:6,9;4:16,17,24;5:10 local (3) 2:18;3:9;5:10 location (3) 3:1;7:23;11:15 look (3) 4:16;6:5;11:5 looks (1) 11:24 lot (1) 8:15	mitigate (4) 7:5,9,11,19 more (2) 11:15;14:2 most (3) 4:10;5:11;11:6 motion (6) 11:11;12:6,9,9;13:16,22 move (1) 12:13 much (1) 14:18
H	J	K	N
hang (1) 14:1 happen (1) 10:24 happiness (1) 4:7 health (2) 4:19;7:8 heard (3) 5:19;6:13;7:20 hearing (6) 2:5,13,23;14:5,6,16 height (1) 8:10 helping (1) 14:19 hence (1) 8:18 here's (1) 2:23 high (1) 6:17 home (4) 10:12,13,13;11:21 homeowners (1) 8:14 homes (2) 8:17;10:10 hope (1) 5:2 house (1) 12:3	job (1) 2:13	L	nature (1) 4:3 near (1) 8:14 necessarily (1) 9:16 necessary (1) 7:8 needed (1) 11:1 neighborhood (2) 6:11;11:17 neighbors (1) 12:5 neighbor's (3) 5:23;6:2;12:3 next (4) 4:5;5:4;8:8;14:4 nor (1) 10:11 note (4) 9:19;10:7,11;11:4 noted (1) 9:14 notice (1) 7:25 number (1) 7:25 numerous (1) 7:25
I	Lachiondo (6) 2:8;8:25;9:2;11:9;13:15, 20 Ladies (1) 2:18 land (3) 5:9,10;10:2 land-use (2) 2:19;3:3 law (8) 2:20;3:2,2,4;6:6;13:1,14; 14:14 laws (2) 3:10;5:15 lead (1) 2:10 leading (1) 9:9 learn (1) 4:11 learned (1) 2:20 leasing (1) 10:1 legal (2) 2:19;6:19 legalese (1) 12:11 Leonard (1) 9:14	M	O
Idaho (8) 3:4,5,12,13,24;4:16,20; 5:15 idea (1) 5:20 ie (1) 12:14 impact (2) 8:20;12:4 impacts (3) 7:5;9:13,17 imposing (1) 9:24 inalienable (2) 3:25;4:4 include (2) 5:1;7:5 incorporated (1) 5:1 incorporation (1)		Madam (2) 12:13;14:3 maintenance (1) 11:20 March (1) 14:6 matters (3) 2:19;3:4;10:25 may (3) 7:4,5;14:8 maybe (2) 10:25;11:2 Mayor (1) 10:20 means (2) 5:21,21 meeting (3) 13:13;14:4,7 men (2) 4:1,2 mentioned (1) 4:24 method (1) 5:14 million-dollar (2) 10:10,13 minute (1) 14:2	obtrusive (1) 9:24 obviously (1) 9:6 occurring (1) 9:18 off (2) 2:10;14:17 one (7) 2:14;4:11,12;5:21;7:17; 10:9;14:2 one's (2) 3:20;4:9 only (1) 6:18

oOo- (1) 14:21	place (1) 6:17	quite (1) 6:19	satisfied (1) 9:25
open (1) 2:6	placed (2) 2:25;11:25	R	saying (1) 4:9
opinion (1) 6:18	Plan (5) 8:7;10:23,24;11:6,7		scheduled (2) 14:4,5
opportunity (2) 9:3,5	Planning (4) 5:10;7:15;12:15,22	read (1) 12:19	school (1) 2:20
option (1) 14:8	Plus (1) 3:12	ready (1) 2:9	search (1) 11:15
options (1) 10:1	possessing (1) 4:6	rebutted (1) 6:18	Second (7) 3:2;6:2;13:10,10,12,15,17
order (1) 14:14	possibly (1) 11:23	received (1) 8:15	Section (9) 3:5,24;5:16;6:5,9,25;8:1; 9:11,11
ordinances (1) 4:15	precedent (1) 3:13	recess (1) 14:16	securing (1) 4:8
Osborne (1) 7:21	prepare (1) 12:25	record (2) 13:2;14:17	Seeing (1) 2:3
out (2) 5:9;9:16	prepared (2) 2:9;12:8	regard (3) 2:23;8:2;9:10	sentence (1) 4:21
over (4) 2:20;8:15;10:21;12:1	presented (4) 8:19;9:8,9;13:2	regulation (1) 4:14	Services (1) 13:13
overturn (2) 12:15,22	preservation (2) 5:17;6:9	relates (1) 10:16	set (2) 7:1;9:16
own (1) 3:13	presume (1) 4:7	relevant (2) 5:7,8	shall (9) 4:18,18;5:18,24;7:2;8:3,7, 9:9;12
P	privacy (1) 11:20	rely (1) 2:19	shape (1) 8:10
	private (8) 5:17,22,23;6:1,2,9,12;9:22	repeat (3) 5:24;7:10;11:11	share (1) 5:3
pages (1) 9:6	process (1) 3:17	require (1) 7:4	short (1) 3:6
paraphrase (1) 4:2	promote (1) 4:18	required (1) 3:8	showed (2) 6:14,16
parcels (1) 7:21	properties (5) 5:11;9:13,21,24;12:5	residential (1) 9:22	shows (1) 6:11
part (2) 4:2;6:3	property (21) 3:16,20;4:7,9,22;5:12,12, 17,17,22,23;6:1,2,9,12,15; 7:10,11,19,22;10:6	residents (1) 6:11	Similar (1) 8:9
partaking (1) 2:13	proposed (4) 3:1;8:14;9:12,23	restart (1) 10:22	single (1) 4:11
particular (2) 10:12,17	protect (5) 4:22;5:11,18,25;7:8	review (1) 9:6	site (1) 8:14
past (1) 10:21	protecting (1) 4:6	reviewing (2) 2:18;7:14	sorry (2) 12:18;14:16
patience (1) 14:19	protects (1) 3:15	revised (2) 13:5,14	SPEAKER (4) 13:25;14:3,9,10
pause (1) 11:1	provide (3) 5:13;6:7;7:22	revisions (1) 14:13	specific (2) 6:23;7:1
pending (1) 13:11	provided (1) 6:21	right (4) 3:21;10:14;12:2;14:15	specifically (3) 5:5;9:11,14
people (4) 4:19;9:18;10:25;12:16	public (5) 2:5;7:8;14:5,6,15	rights (12) 3:16,20,25;4:4,9,12,13,22; 5:12,17;6:9,12	speculative (1) 6:15
perceive (1) 9:17	purpose (3) 4:17,18;5:6	rule (2) 2:21;3:2	staff (3) 9:6;11:5;12:25
percent (1) 6:16	purposes (3) 5:7,8,9	ruling (2) 4:14;7:14	standard (1) 9:16
permit (3) 7:16;9:10;12:24	put (1) 11:1	rural (2) 9:21;11:17	standards (7) 5:1;6:23,25;7:1,2,8,18
phone (3) 7:22;9:20;12:24	Q	S	start (1) 2:8
			state (3)
photograph (1) 11:21		safety (4) 4:8,19;7:8;11:24	
pick (1) 13:24			

4:20;5:15;13:18 stated (1) 4:17 statement (1) 7:13 States (5) 3:11,19;5:7;7:3;8:2 statute (1) 4:13 steps (1) 11:22 straightforward (1) 2:25 stress (1) 4:5 structure (1) 8:1 structures (2) 8:4,18 subjective (1) 9:15 subsection (3) 5:6;7:24;8:2 substantial (2) 8:18;13:2 Supreme (1) 3:19 sure (1) 7:25 surprised (1) 4:11 surrounding (8) 7:10,11,19;9:13,21,24; 12:5,5	tower (13) 2:25;6:11;7:17;8:1,16; 9:20,23;10:4,5;11:16,20; 12:1,24 towers (2) 8:2,3 transcription (1) 2:1 treated (1) 3:20 two (1) 11:11 two-and-a-half (1) 10:19	11:17 Visser (7) 2:7,9,17;12:8,20;13:11,19 visually (2) 8:3,17 vital (1) 7:18	2018-01311-A (1) 12:14 20th (1) 14:7 272 (1) 3:22
		W	3
		wants (1) 2:8 warrants (1) 12:9 weeds (1) 11:25 weeks (1) 10:20 weigh (1) 9:1 weighing (1) 9:3 welfare (2) 4:19;7:9 willing (1) 7:21 women (2) 4:1,3 word (1) 7:12 work (2) 9:5;11:5	30 (1) 2:20 365 (1) 3:23 38:46 (1) 2:1
	U		4
	under (1) 8:6 undue (8) 5:19;6:1,12;7:12;8:19; 9:12,17;12:4 unfortunate (1) 11:2 UNIDENTIFIED (4) 13:25;14:3,9,10 United (2) 3:11,19 unless (1) 12:7 unlimited (2) 4:10,12 up (5) 2:6;5:24;9:9;10:14,18 updated (1) 11:6 upon (1) 13:2 use (13) 5:9,10,11,23;6:2,23,24; 7:1,9;12,23;10:8;11:18;12:3 used (1) 5:20 uses (2) 6:24;8:5		4 (1) 7:7
		Y	5
T		yard (1) 12:2 years (2) 2:20;10:21	5 (1) 6:23 55:48 (1) 14:20
		Z	6
table (3) 13:4;14:12,12 talk (1) 10:15 tears (1) 12:17 techniques (1) 8:10 term (1) 5:19 terms (1) 8:6 testimony (10) 2:4;6:10,17,20,20;7:20; 8:13;9:8;10:2;13:2 Therefore (1) 8:21 thousands (1) 9:6 Title (6) 3:5,7;5:5,18,24;6:22 tonight (11) 2:10,13;5:2,20;6:13,21; 7:20;9:8,9;10:2;13:3 tonight's (2) 2:23;8:22	valuation (1) 10:12 value (1) 6:17 values (3) 5:12;6:15;10:6 vegetation (1) 8:4 versa (1) 6:3 vice (1) 6:3 Village (1) 3:22 visibly (1)	yard (1) 12:2 years (2) 2:20;10:21	60 (1) 11:22 67 (2) 3:5,5 67-6501 (1) 3:5 6th (4) 14:5,6,11,12
	V		7
		zoned (1) 9:21 zoning (9) 3:8;4:14,25;5:6;6:22;7:15; 9:22;12:15,22	70-foot (1) 12:1
		1	8
		1 (1) 3:24 10 (1) 6:16 100 (1) 8:15 10f (1) 8:2 1926 (2) 3:19,21	8 (3) 3:7;5:5;6:22 8-12 (1) 5:6 8-1-9a (1) 5:16 8-5-3114 (1) 7:24
		2	

TOWN OF EAGLE
STATE OF IDAHO, COUNTY OF ADA

-----X
In the Matter of the Application of:

INTERMAX TOWERS, LLC

Application for Conditional Use Permit

**MEMORANDUM
IN OPPOSITION**

Premises: 5410 W. Beacon Light Road
Eagle, Idaho
Parcel ID: S0335433650

-----X
MEMORANDUM IN OPPOSITION

Respectfully submitted:

Brad Bentley
Brian Decker
Leslie Decker
Kirk Miller
Jan Miller
Mike Dustin
Suzie Dustin
Thomas Smith
Jordan Miller

Table of Contents

Preliminary Statement	1
POINT I	
Granting <i>Intermax</i> Permission to Construct a 100' Tower at the Proposed Location Violates the Requirements Under Both the ACC and the Comp. Plan and Legislative Intent Based Upon Which Those Requirements Were Enacted by the Town	2
A. <i>Intermax's</i> Application Does Not Comply With the Requirements of the ACC.....	3
B. The Proposed Cell Tower Will Inflict Dramatic, Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area	5
(i) Evidence of the Actual Adverse Aesthetic Impacts Which The Proposed Tower Would Inflict Upon the Nearby Homes ...	5
(ii) <i>Intermax</i> Has Not Provided a Visual Assessment Or Photo Simulation	7
C. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of the Adjacent and Nearby Residential Properties	8
POINT II	
§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow <i>Intermax</i> to Increase the Height of the Proposed Cell Tower Without Further or Prior Zoning Approval	11
POINT III	
<i>Intermax</i> Has Failed To Proffer Probative Evidence Sufficient to Establish a Need For the Proposed Tower at the Location and Height Proposed, or That the Granting of its Application Would be Consistent With the Smart Planning Requirements of the Zoning Code	12
A. <i>Intermax</i> Has Failed to Submit Probative Evidence to Establish The Need for The Proposed Tower at The Height and Location Proposed	13
(i) The Applicable Evidentiary Standard	13
(ii) <i>Intermax</i> Has Failed to Meets Its Burdens	14
(iii) The FCC Recognizes the Inadequacy of Propagation Maps.....	16
(iv) Hard Data and The Lack Thereof	18

POINT IV To Comply With the Telecommunications Act of 1996 (TCA), *Intermax's*
Application Should Be Denied in a Written Decision Which
Cites the Evidence Provided Herewith 21

A. The Written Decision Requirement 21

B. The Substantial Evidence Requirement 21

Conclusion 22

Preliminary Statement

Intermax Towers, LLC ("*Intermax*") has filed an application for a Conditional Use Permit ("CUP") to install a one-hundred-foot (100') (the equivalent of ten (10) stories) wireless communication facility on the property known as 5410 W. Beacon Light Road, Eagle, Idaho.

It is important to note that *Intermax* is a site developer, and does not provide personal wireless services. *Intermax* builds cell towers and leases space upon its cell towers to wireless carriers. A copy of the home page on *Intermax's* website is attached as Exhibit "A."

This Memorandum is submitted in opposition to *Intermax's* application.

As set forth below, *Intermax's* application should be denied because:

- (a) *Intermax* has failed to establish that granting the application would be consistent with the requirements of the Ada County Code ("ACC"), specifically, Title 8, Chapter 5;
- (b) granting the application violates both ACC, the Comprehensive Plan ("Comp. Plan") and the legislative intent of both;
- (c) the irresponsible placement of a ten-story tower at the proposed location would inflict upon the nearby homes and community the precise types of adverse impacts which the ACC and the Comp. Plan were intended to prevent;
- (d) there are far less intrusive alternative locations where the desired facility could be built, in greater conformity with the requirements of the ACC and the Comp. Plan; and

As such, we respectfully submit that *Intermax's* application be denied in a manner that does not violate the Telecommunications Act of 1996.

POINT I

Granting *Intermax* a Conditional Use Permit to Construct a 100' Tower at the Proposed Location Violates the Requirements Under Both the ACC, the Comp. Plan and the Legislative Intent Upon Which Those Requirements Were Enacted by the County

Intermax is a privately owned, for-profit site development company. It does not provide personal wireless services as a wireless carrier does. Instead, *Intermax* generates its revenue by building cell towers and then leasing space on such towers to wireless carriers. See Exhibit "A" is the home page from *Intermax's* website which evidences same.

As set forth below, *Intermax's* application should be denied because granting the application violates the *requirements* of the ACC and the Comp. Plan, as well as the *legislative intent* behind those requirements.

The ACC's legislative intent is set forth in §8-1-2: PURPOSE:

A. Carry out the intent and purposes of the "Local Land Use Planning Act", Idaho Code section 67-6501 et seq., as amended;

B. Carry out the policies of the applicable Comprehensive Plan by classifying and regulating the uses of property and structures within the unincorporated areas of Ada County;

C. Establish zoning districts within Ada County in accord with the adopted applicable Comprehensive Plan in conformance with Idaho Code section 67-6511;

D. Provide standards for the orderly growth and development of Ada County and to avoid undue concentration of population and overcrowding of land. As required by Idaho Code section 67-6511, such standards include, but are not limited to, those regulating:

1. The height, number of stories, size, construction, reconstruction, alteration, repair or location of structures.
2. Percentage of coverage, size of required yards, and density of residential dwellings.
3. The use of structures and property.

E. Ensure the most appropriate use of properties;

F. Protect property rights and enhance property values; and

G. Provide a method of administration and prescribe penalties for the violations of regulations hereafter described as authorized by the Constitution and laws of the State of Idaho. (Ord. 389, 6-14-2000)

The legislative intent of the Comp. Plan is set forth in the “Introduction” to the Comp.

Plan. under the heading “Purpose of Plan,” which states:

In reviewing and applying Comprehensive Plan policies, the County’s Zoning Ordinance, and other requirements, the County must balance its responsibility to provide for the good of all County residents with individual property rights protected by the Idaho State Constitution and Laws.

The intent of the Comp. Plan is further spelled out in the section called “Focus Area 2: Coordinated Growth.” There, the plan provides a vision for the future of Ada County that seeks to “protect[] the quality of life of existing residents” by mitigating the “impacts associated with development ... outside of the ACIs.”¹

A. Intermax’s Application Does Not Comply With the Requirements of the ACC

In its “Detailed Narrative Letter,” *Intermax* makes bald assertions of compliance with the ACC.² Instead, *Intermax*’s Detailed Narrative Letter is rife with misstatements and carefully manipulated facts. For example, *Intermax* attempts to categorize its proposed one-hundred-foot tower as merely a “replacement” of the existing silo facility, but never mentions the height of the silo facility it claims it will replace. Without this information, the Board cannot know if the height currently proposed by *Intermax* is the minimum height necessary to replace the silo facility. Upon information and belief, the existing silo facility is only fifty

¹ Areas of City Impact

² *Intermax* mis-cites the applicable section of the ACC as § 8-6-3-114. The correct section is § 8-5-3-114.

(50) feet high. Surely if the proposed tower is merely a “replacement,” it would not need to be any higher than the facility it is replacing, in this case the fifty-foot high silo.

Further, at the very end of the Detailed Narrative Letter (page 17), *Intermax* states that *there are no carriers currently interested* in locating their equipment on the proposed one-hundred-foot tower. This undermines the credibility of *Intermax*’s assertion that the proposed facility is “necessary to replace the Silo Facility.”

As stated above, *Intermax* is not a provider of personal wireless services, but is rather a site developer. (See Exhibit “A.”) Therefore, the truth of the claim that *Intermax*’s proposed tower will remedy a not-yet-existing gap in wireless services is wholly dependent on the willingness of actual providers of personal wireless services to locate on *Intermax*’s tower. Based on *Intermax*’s own admission that there are no carriers interested in locating their equipment on its proposed tower, *Intermax* is not in a position to “replace” the services currently provided by the Silo Facility, as it misleadingly claims.

As set forth below in Point III, *Intermax* has failed to provide any *probative evidence* sufficient to establish: (a) the existence of a *significant* gap in personal wireless coverage, much less the size and extent of such gap or (b) the existence of any geographical area, and the size and extent of same, wherein there exists a *capacity deficiency* which would render it “necessary” to build the ten-story tower for which *Intermax* seeks approval. See Point III, below.

B. The Proposed Cell Tower Would Inflict Dramatic, Wholly Unnecessary
Adverse Impacts Upon the Aesthetics and Character of the Area

Recognizing the likely adverse aesthetic impacts which an irresponsibly placed cell tower would inflict upon nearby homes and residential communities, the County of Ada enacted §8-5-3-114 of the ACC to regulate the placement of tower structures – like the one proposed by *Intermax* – to prevent unnecessary adverse aesthetic impacts on the community.

It is beyond argument that the irresponsible placement of *Intermax*'s massive ten (10) story tower in a residential neighborhood where no other structures stand more than two (2) stories in height, would cause the massive tower to *stand out like a sore thumb*, to dominate the skyline, and to inflict substantial adverse aesthetic impacts upon the nearby homes.

Moreover, as has been held by federal courts, including the United States Court of Appeals for the Second Circuit, significant and/or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for the construction of a cell tower. *See Omnipoint, infra*.

(i) Evidence of the Actual Adverse Aesthetic Impacts
Which the Proposed Tower Would Inflict
Upon the Nearby Homes

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts which an irresponsibly placed cell tower would inflict upon homes in close proximity to the proposed tower, are the homeowners themselves.

Consistent with this logic, the United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed tower would inflict upon nearby homes, statements and letters from the actual homeowners. This is because those

homeowners are in the best position to know and understand the actual extent of the impact they stand to suffer. *See e.g. Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529, 534 (2nd Cir. 2005).

Federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed wireless facilities. *See Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d at 533 (2nd Cir. 2005); and *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (2012).

Annexed as “substantial evidence” of the wholly unnecessary and substantial adverse aesthetic impacts which the irresponsible placement of *Intermax’s ten-story* tower would inflict upon the nearby homes are letters from the owners of those homes who detail, from their personal perspective, the specific adverse aesthetic impacts their homes and residential properties would suffer if the massive tower proposed by *Intermax* were permitted to be built so close to their respective homes.

Annexed collectively herein as Exhibit “B,” are letters signed by adjacent property owners, Brad Bentley, Brian Decker, Leslie Decker, Kirk Miller, Jan Miller, Mike Dustin, Suzie Dustin, Thomas Smith and Jordan Miller.

In the letters, the homeowners personally detail the adverse aesthetic impacts that the proposed tower would inflict upon their respective properties. They have provided detailed and compelling descriptions of the dramatic adverse impacts their properties would suffer if the proposed installation of a massive cell tower were permitted to proceed.

The specific and detailed impacts described by the adjacent and nearby property owners constitute “substantial evidence” of the adverse aesthetic impacts they stand to suffer, because

they are not limited to “generalized concerns.” Rather, they contain specific, detailed descriptions of how the proposed tower would “dominate the sky” from every part of the properties, the backyard and deck where they enjoy the natural beauty of the surrounding landscape with their morning coffee. It would destroy the serenity provided by the surrounding mountains. It would destroy the rural and agricultural character of the entire area.

As detailed therein, the substantial adverse aesthetic impacts which the irresponsible placement of the proposed tower would inflict upon the nearby properties are the precise type of injurious impacts which §8-5-3-114 of the ACC was specifically intended to prevent.

(ii) *Intermax* Has Not Provided a Visual
Assessment or Photo Simulation

Most applicants provide photo-simulations of a proposed cell tower in order to convince the reviewing authority that there will be no aesthetic impact on the properties surrounding a proposed cell tower. Indeed, municipalities around the country require such a photo simulation so that they can get a clear visual image of the *actual* aesthetic impacts which a proposed installation is going to inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by *deliberately omitting* from any such photo-simulations, any images actually taken from the nearby homes which would sustain the most severe adverse aesthetic impacts. Here, however, *Intermax* has not even bothered to submit any photo simulations. Nevertheless, the case law discussed below can still be applied, given the importance of visual assessments in giving the reviewing authority all the information it needs to render a decision that complies with its own Zoning Code. Here, *Intermax* has not even bothered to offer such a presentation. Without the context provided by a proper visual assessment, *Intermax*’s application is incomplete, at best.

In *Omnipoint, Supra*, the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions wherein they “omit” any images from the actual perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective, and should be disregarded by the respective government entity that received it.

Specifically, the Court stated:

“the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . ***the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows***” *Id.*

The fact that *Intermax*’s application does not include any images at all, never mind any images taken from any of the nearby homes renders the application wholly defective.

This application is akin to the type of “presentation” which the federal court explicitly ruled to be defective in *Omnipoint*.

As such, in accord with the federal court’s holding in *Omnipoint*, *Intermax*’s application should be recognized as inherently defective.

C. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and rural character of the area at issue, the irresponsible placement of such a massive cell tower in such close proximity to nearby residential homes would inflict upon such homes a severe adverse impact upon the actual value of those residential properties.

Across the entire United States, both real estate appraisers³ and real estate brokers have rendered professional opinions which simply support what common sense dictates: When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.⁴

In the worst cases, cell towers built near existing homes have caused the homes to be rendered wholly unsaleable.⁵

As has been recognized by federal courts, it is perfectly proper for a local zoning authority to consider, as direct evidence, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who provide their professional opinions as to the adverse impact upon the specific property values which would be inflicted on neighboring properties by the installation of the proposed cell tower. *See Omnipoint Communications Inc. v. The City*

³ See e.g. a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a Cell Tower in close proximity to a home had reduced the value of the home by more than 10%, go to <http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values>

⁴ In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Cell Tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced price by 10% on average.

The Bond and Wang - *Transaction Based Market Study*
The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*
The Bond and Beamish study involved surveying whether people who lived within 100' of a Cell Tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

⁵ Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. See HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. See, e.g. October 2, 2012 Article "...Cell Tower is Real Estate Roadblock" at <http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho-me--172366931.html>.

of White Plains, 430 F3d at 534-535 (2nd Cir. 2005). This is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed cell tower would have upon the property values of the homes which would be adjacent and/or in close proximity to it, annexed hereto as Exhibit “C” is a letter from a real estate broker and an appraisal report from Valbridge Property Advisors showing a reduction in value of property in close proximity to a cell tower. Exhibit “D” is a copy of an actual offer for a lot in the adjacent subdivision which is *contingent upon the proposed tower not being built*.

It is clear that the installation of the proposed *ten-story* tower would cause property values of the affected properties to be reduced by nine (9%) to *fifteen* percent (15%) (or more), and would make those homes more difficult to sell, even at reduced purchase prices.

Protecting property rights and enhancing property values are among the purposes of the ACC. *See* §8-1-2 Purpose. Specifically, *see* §8-1-2(F), “Protect property rights and enhance property values.”

Accordingly, *Intermax’s* application should be denied.

POINT II

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow *Intermax* to Increase the Height of the Proposed Tower Without Further or Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities would be if the proposed cell tower were constructed at the one hundred (100) foot height currently proposed by *Intermax*, if such tower were built, *Intermax* could unilaterally choose to increase the height of the tower to as much as *one hundred twenty (120) feet*. Due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012, the Town would be legally prohibited from stopping such expansion, regardless of the Zoning Ordinance's requirements.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding §704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government *may not deny*, and *shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a) (Emphasis added).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are *prohibited from denying modifications to wireless facilities* unless the modifications will "substantially change" the physical dimensions of the facility, pole or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent of the height of the tower, *plus* the height of an additional antenna, *plus* a distance of ten (10) feet to separate a new antenna from the pre-existing top antenna, up to a *maximum height increase of twenty (20) feet*.

Considering the even more substantial adverse impacts which an increase in the height of the cell tower to twelve (12) stories would inflict upon the homes and communities nearby, *Intermax's* application should be denied.

Once again, this is especially true since, as set forth in Point III hereinbelow, *Intermax* has not even established that the proposed tower is actually needed to provide wireless coverage within the Town.

POINT III

Intermax Has Failed To Proffer Probative Evidence Sufficient to Establish a Need For the Proposed Tower at the Location and Height Proposed, or That the Granting of its Application Would be Consistent With the Smart Planning Requirements of the Zoning Code

The obvious intent behind the provisions of §8-5-3-114 of the Zoning Ordinance, was to promote “smart planning” of wireless infrastructure within the County.

“Smart planning” involves the adoption and enforcement of zoning provisions which require that cell towers be *strategically placed*, so that they minimize the number of towers needed to saturate the County with complete wireless coverage, while avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated in close proximity to such towers.

Entirely consistent with that intent, §8-5-3-114 was adopted as a smart planning provision which was specifically enacted to regulate the “placement” of cell towers to minimize their potential negative impacts.

To enable them to determine if a proposed cell tower would be consistent with smart planning requirements, sophisticated zoning and planning boards require site developers to

provide direct evidentiary proof of:

(a) the precise locations, size, and extent of any geographic gaps in personal wireless services which are being provided by a specifically-identified wireless carrier, which provides personal wireless services within the respective jurisdiction; and

(b) the precise locations, size, and extent of any geographic areas within which that identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason that local zoning boards invariably require such information is that, without it, the Board is incapable of knowing: (a) if, and to what extent a proposed tower will remedy any actual gaps or deficiencies which may exist, (b) if the proposed height for a tower is the minimum height needed to remedy such gaps, and (c) if the proposed placement is in such a poor location that it would not actually remedy a real gap, and would require that more towers be built, thus causing an unnecessary redundancy in cell towers within the municipality.

In the present case, *Intermax* has wholly failed to provide any hard data to establish that the proposed placement of its tower would, in any way, be consistent with smart planning. Therefore, *Intermax* has failed to provide actual probative evidence to establish: (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the municipality, and (b) why or how their proposed massive cell tower would be the best and/or least intrusive means of remedying those gaps.

A. *Intermax* Has Failed to Submit Probative Evidence to Establish
The Need for The Proposed Tower at The Height and Location Proposed

(i) The Applicable Evidentiary Standard

To the extent that applicants seeking to build cell towers seek to have their applications reviewed under the “Public Necessity” standard established in *Consolidated Edison Co. v.*

Hoffman, 43 N.Y.2d 598 (1978), the applicant must prove that the new cell tower it proposes is “a public necessity that is required to render safe and adequate service” and that there are compelling reasons why their proposed installation is more feasible than at other locations. See *T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp.2d. 338 (2012).

Within the context of zoning applications such as *Intermax*’s application, the applicant is required to prove “[1] that there are gaps in a specific wireless carrier’s service, [2] that the location of the proposed facility will remedy those gaps, and [3] that the facility presents a “minimal intrusion on the community.” *Id.*

As logic would dictate, it is critical that the Planning Board make factual determinations regarding these specific issues, and issue a written decision setting forth those determinations, citing the evidence based upon which it made its factual determinations.

Without this, any determination which the Board ultimately makes could easily be challenged in federal court by the applicant.

As has been clearly enunciated by the Court in *T-Mobile*, where a local zoning board denies a cell tower application in a written decision which sets forth both its factual determinations, and the evidence upon which those determinations were based, where “[E]ven one reason given for the denial is based upon substantial evidence, the decision of the local zoning body cannot be disturbed [by a federal court],” *T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp.2d. 338, 354 (2012).

(ii) *Intermax* Has Failed To Meet Its Burdens

Intermax has failed to meet its burdens of proving that: (a) its proposed tower is a Public Necessity, (b) as proposed, its tower would present a minimal adverse impact on the

community, (c) its proposed placement would minimize its “visual impact” within the meaning of the Zoning Ordinance, or (d) denial of its applications would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Further, *Intermax* has wholly failed to comply with the requirements of the Zoning Ordinance §8-5-3-114(D)(1)(b) which explicitly requires that an applicant seeking to build a wireless telecommunications facility must provide, among other things, “Propagation charts showing existing and proposed transmission coverage at the subject site and within an area large enough to provide an understanding of *why the facility needs to be placed* at the chosen location.” (Emphasis added.)

Intermax has submitted so-called “propagation charts” purporting to show an alleged deficiency in service in the area around the proposed tower site. Nevertheless, glaringly absent from *Intermax*’s application is any “*hard data*,” which would support the conclusions reflected in the propagation charts. Such hard data could easily be submitted by the applicant as *probative evidence* to establish that: (a) there is an actual Public Necessity for the tower being proposed, which (b) necessitates the installation of a new tower, (c) requires it to be built at the specifically chosen location, (d) on the specifically chosen site (as opposed to being built upon alternative less-intrusive locations), and (e) requires that it be built at an elevation no lower than the height now being proposed by *Intermax*.

(iii) The FCC Recognizes the Inadequacy of Propagation Maps

Recently, the FCC recognized the absolute need for *hard data* rather than the commonly submitted propagation maps (such as those submitted by *Intermax* here), which can be, and often are, easily manipulated to create exaggerated need and significant gaps. A copy of the FCC Mobility Fund Phase II Coverage Maps Investigation Staff Report is attached as Exhibit “F.”

As is discussed within the FCC’s July 17, 2020, proposed order, FCC-20-94⁶, “[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (*i.e.*, both mobile and stationary drive-test data) as an additional method to verify mobile providers’ coverage maps.”⁷ The FCC defines drive tests as “tests analyzing network coverage for mobile services in a given area, *i.e.*, measurements taken from vehicles traveling on roads in the area.”⁸ Further within the FCC’s proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) “City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers’ coverage data...;”⁹

Proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data.

Specifically, the FCC states:

“The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund

⁶ The proposed order can be accessed here: file:///C:/Users/pc/Downloads/FCC-20-94A1_Rcd.pdf

⁷ See page 44 paragraph 104 of proposed order FCC-20-94.

⁸ See page 44 fn. 298 of proposed order FCC-20-94.

⁹ See page 45 fn. 306 of proposed order FCC-20-94.

Phase II Investigation Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.”

Most importantly, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on the ground testing and/or other real-world measurements completed by the providers or its vendor.”¹⁰

The mandate requiring more accurate coverage maps has been set forth by Congress. “As a result, the U.S. in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹¹ “The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹²

However, despite Congress’ clear intent to “improve the quality of the data,”¹³ several wireless carriers, have opposed the drive test/real-world data requirement as too costly.

“The project – required by Congress under the Broadband DATA Act – is an effort to improve the FCC’s current broadband maps. Those maps, supplied by the operators

¹⁰ The Rule can be accessed here: <https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-V#1.7004>

¹¹ <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

¹² *Id.*

¹³ *Id.*

themselves, have been widely criticized as inaccurate.”¹⁴

If the FCC is requiring further validation and more accurate coverage models, there is no reason the County of Ada should not do the same. For the foregoing reasons, dropped call records and drive test data are crucial for verifying the accuracy of *Intermax*’s propagation maps.

(iv) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install large cell towers provide local governments with *hard data*, as both: (a) actual evidence that the tower they seek to build is actually necessary, and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive form of *hard data* which can be used as evidence to establish the location, size, and extent of *significant gaps* in personal wireless services is drive test data.

The most accurate and least expensive form of *hard data* which can be used as evidence to establish the location, size, and extent of a geographic area suffering from a *deficiency in capacity* in personal wireless services, is dropped call records.

Unlike “Specialist’s Reports,” RF modeling and propagation maps, all of which can be easily manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and much less likely to be subject to manipulation, unintentional error or inaccuracy.

¹⁴ <https://www.lightreading.com/test-and-measurement/verizon-t-mobile-atandt-balk-at-drive-testing-their-networks/d/d-id/763329>

Drive Test Data

Actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in “computer modeling” the creation of hypothetical propagation maps, or “expert interpretations” of actual data, all of which are so easily manipulated, that they are essentially rendered worthless as a form of probative evidence.

To obtain drive test data, all that is required is performance of a drive test. This involves attaching a recording device to a cell phone, and driving through any given area to test for gaps in wireless service. The device records wireless signal strength every few milliseconds, so that in a two-hour drive test, the device can record several hundred thousand recorded signal strengths, which collectively depict a complete and accurate record of the existence, or lack, of any significant gap in wireless service.

Hard drive test data consists of the actual records of the actual recorded strengths of a carrier’s wireless signal at precise geographic locations.

Dropped Call Record

Dropped call records are generated by a carrier’s computer systems. They are typically extremely accurate because they are generated by a computer which already possesses all of the data pertaining to dropped calls, including the number, date, time and location of all dropped calls experienced by a wireless carrier at any geographic location, and for any chronological period.

With the ease of a few keystrokes, each carrier’s system can print out a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely that someone could enter false data into a carrier’s computer system to materially alter that

information.

As is reflected in the record in the case, *Intermax* has not provided either of these forms of *hard data* as probative evidence.

Instead, *Intermax* has provided propagation maps which purport to demonstrate gaps in coverage in the area surrounding the proposed installation.

A simple review of these propagation maps reflects that they contain *no hard data, whatsoever*. As explained in subsection (iii) above, the FCC has concluded that propagation maps without the hard data on which they are based are inherently unreliable. To illustrate the unreliability of the maps provided by *Intermax*, attached hereto as Exhibit “E” are copies of printouts from AT&T’s website and Verizon’s website purporting to show the existing coverage in the area of the proposed tower, 5410 West Beacon Light Road, Eagle, ID.¹⁵

The contrast between the coverage demonstrated by the coverage maps on the carriers’ websites in order to sell their services and the hypothetical propagation maps provided to this Board by *Intermax* in order to sell its tower are striking. If nothing else, these stark differences demonstrate the ease with which data can be manipulated to suit a particular purpose.

Accordingly, the propagation maps submitted by *Intermax* lack any probative value in establishing: (a) the existence of a significant gap in personal wireless service, or area suffering in any capacity deficiency, or (b) the location and geographic size of any actual gap in service or area suffering from a capacity deficiency.

¹⁵ *Intermax* has stated that no carriers are currently interested in locating on the proposed tower. Nevertheless, the coverage maps of AT&T and Verizon are provided here to demonstrate that there is no gap in personal wireless services in the area of the proposed tower.

POINT IV

To Comply With the TCA, *Intermax's* Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding. The denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons. *See e.g. MetroPCS v. City and County of San Francisco*, 400 F.3d 710(2005).

B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. “Substantial evidence” means “more than a scintilla of evidence (i.e., a nominal showing), but less than a preponderance.”¹⁶

Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board’s reasonable determination. *See e.g. American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F

¹⁶ *Knutson Towboat Co. & Saif Corp. v. Wakeley*, 660 F. App’x 487, 488 (9th Cir. 2016)

878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196]

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *Intermax's* application in a separate written decision, wherein the Board cites the evidence upon which its determination is based.

Conclusion

Based upon the foregoing, it is respectfully submitted that *Intermax's* application for a Conditional Use Permit to build its proposed 100' Cell Tower should be denied in its entirety.

Dated: Merrick, New York
March 3, 2022

Respectfully Submitted,

Brad Bentley
Brian Decker
Leslie Decker
Kirk Miller
Jan Miller
Mike Dustin
Suzie Dustin
Thomas Smith
Jordan Miller

TOWN OF EAGLE
STATE OF IDAHO, COUNTY OF ADA

-----X
In the Matter of the Application of:

INTERMAX TOWERS, LLC

Application for Conditional Use Permit

Premises: 5410 W. Beacon Light Road
Eagle, Idaho
Parcel ID: S0335433650

-----X

EXHIBITS IN OPPOSITION

Respectfully submitted:

Brad Bentley
Brian Decker
Leslie Decker
Kirk Miller
Jan Miller
Mike Dustin
Suzie Dustin
Thomas Smith
Jordan Miller

Exhibit List

- A *Intermax Towers, LLC* internet website webpage
- B Adverse Aesthetic Impact Letters
- C Real Estate Broker Opinion Letter and Appraisal Report
- D Contract of Sale for Property contingent on denial of application
- E. For 5410 W. Beacon Light Road, Eagle, Idaho:
 - Verizon* Coverage Map
 - AT&T* Coverage Map
- F. FCC Mobility Fund Phase II Coverage Maps Investigation Staff Report

EXHIBIT A



Intermax Towers leases long term rights to construct and maintain cell facilities. We also purchase or lease rights to existing towers. We take full responsibility for necessary governmental approvals, engineering, and relationships with cell carriers such as Verizon, AT&T, and TMobile.

[MORE ABOUT US](#)

[CONTACT US](#)



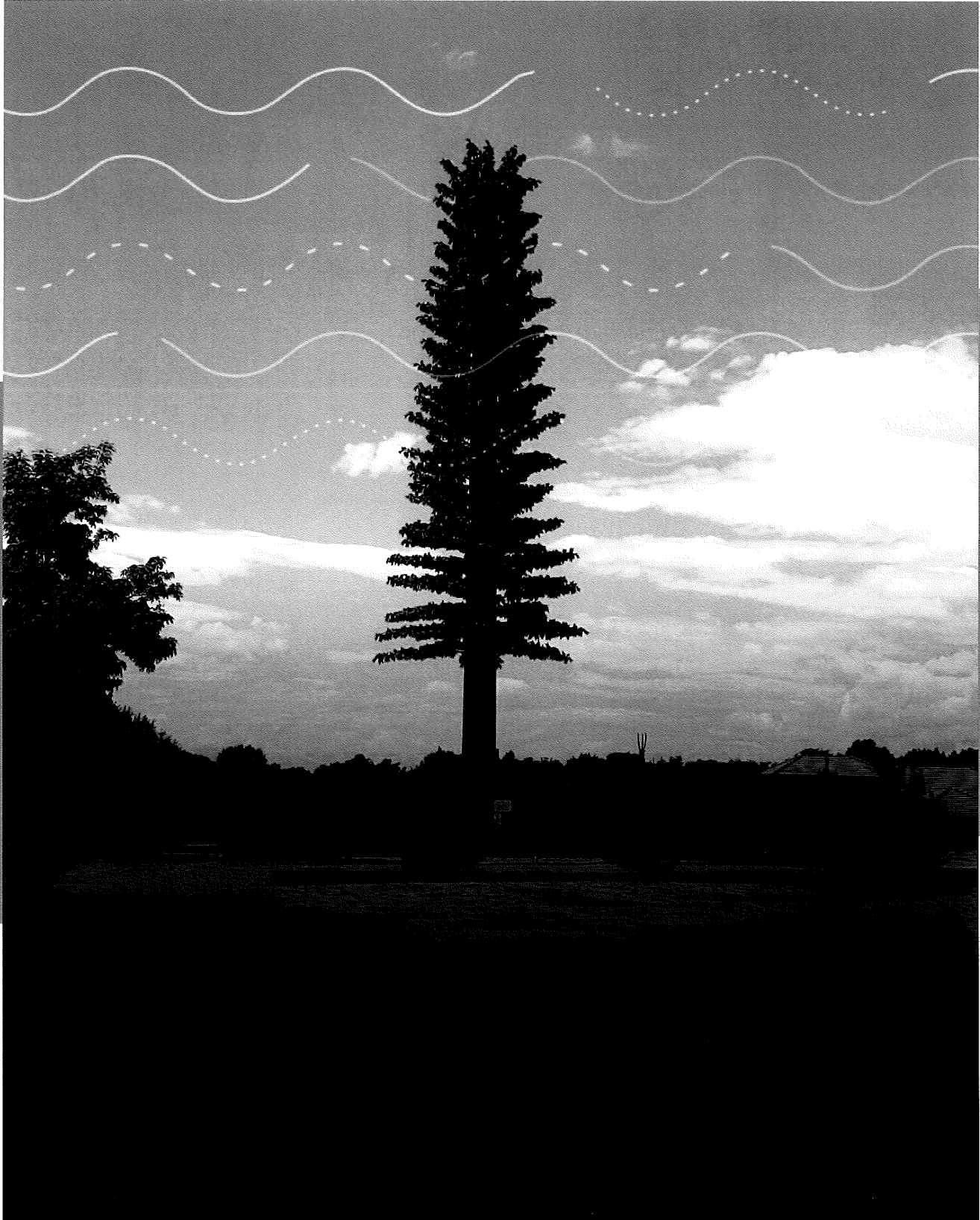


Property Owners

LEARN MORE

Cell Industry Carriers

LEARN MORE



[CONTACT US](#)

About Us

Cell tower sites must be strategically located to meet the expanding mobile market and to address gaps or weak links in existing local radio frequency patterns. Often, this means that the most desirable sites are environmentally and/or visually sensitive. Our approach is to identify and achieve way of balancing these sensitivities with cellular carrier needs.

We are flexible and adapt to the uniqueness of each situation. Dimensions of a tower site are usually small and require an access route for occasional maintenance. The exact location and access to facilities are not a matter of one size fits all. Necessary power to operate the equipment is our responsibility.

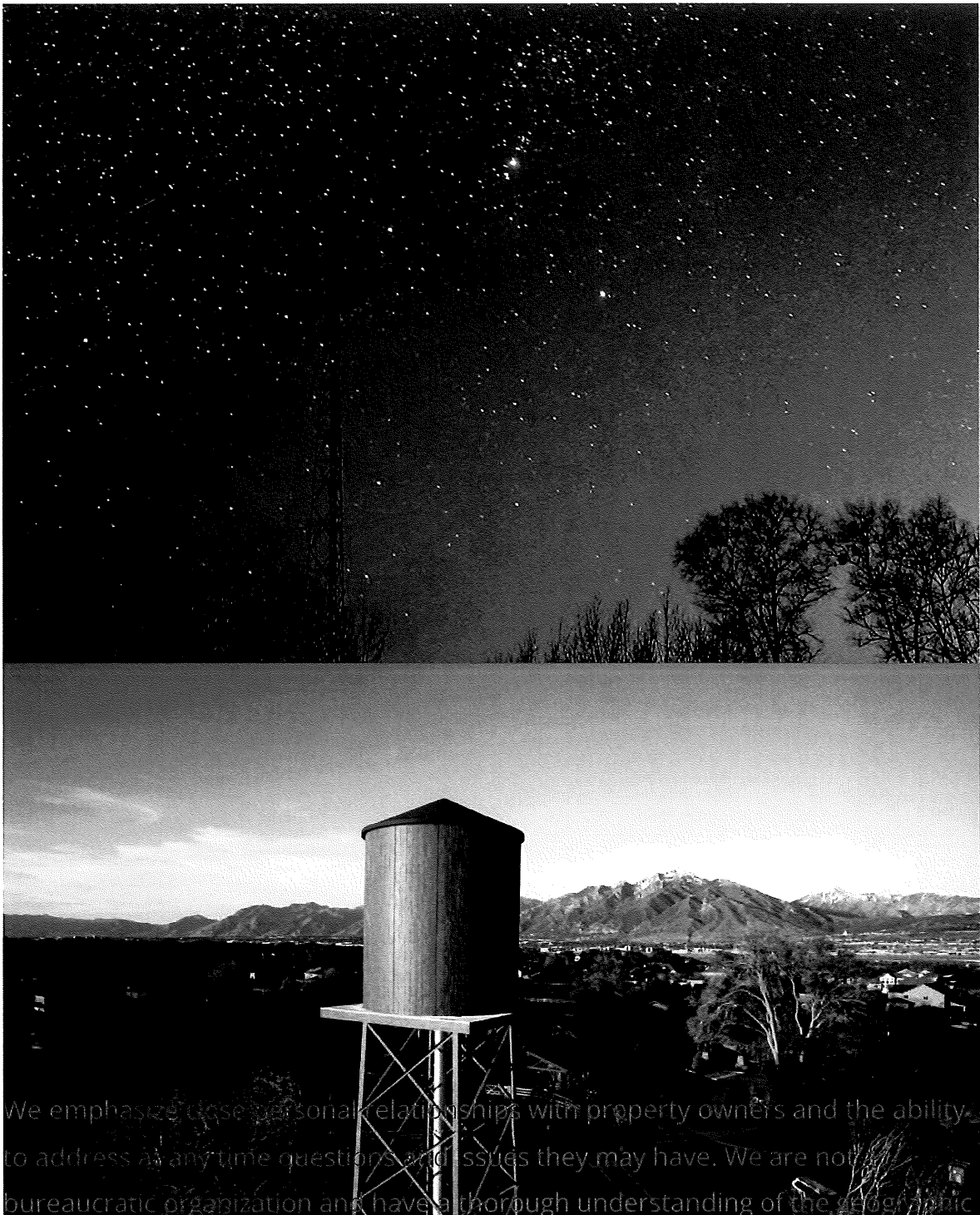
We are headquartered in Boise Idaho and our operating area is the Western states. Our sister company, Intermax Networks, builds and operates fiber optic facilities, microwave towers and internet connections In Washington and Idaho.

Property Owners

Intermax Towers is a financially solid company with a long term perspective on the facilities it develops and manages. We are at the forefront as the cellular industry evolves and expands.

We handle management of the carriers, and in many instances there will be several. We have strong and ongoing relationships with all major carriers. The owner has no responsibilities for interacting with them. The facilities operate very quietly and need only minimal maintenance.





We emphasize close personal relationships with property owners and the ability to address at any time questions and issues they may have. We are not a bureaucratic organization and have a thorough understanding of the geographic region and people of the region in which we operate.

Intermax generally leases long term rights for cell facility development. We also can purchase outright development rights and assume leases for existing facilities. We inspect and maintain facilities in an ongoing basis.

Lease payments are made automatically, generally on a monthly schedule. Payment escalation over time is part of every lease contract.

CONTACT US



Cell Industry Carriers

Intermax Towers is focused on cell facilities in the western US. We lease or purchase tower and rooftop sites and also acquire existing facilities.

We are active in both build to suit and colocation arrangements. Our sister company, Intermax Networks, develops and owns backhaul microwave towers and fiber networks.

We excel at establishing and maintaining wireless carrier relationships and adapting to their specific requirements in a given area. A particular set of abilities we have is the ability to navigate challenging physical and regulatory situations. We handle all aspects of site acquisition and development and provide turnkey services.

Intermax is nimble and able to commit financial and personnel resources quickly in a rapid and efficient manner.





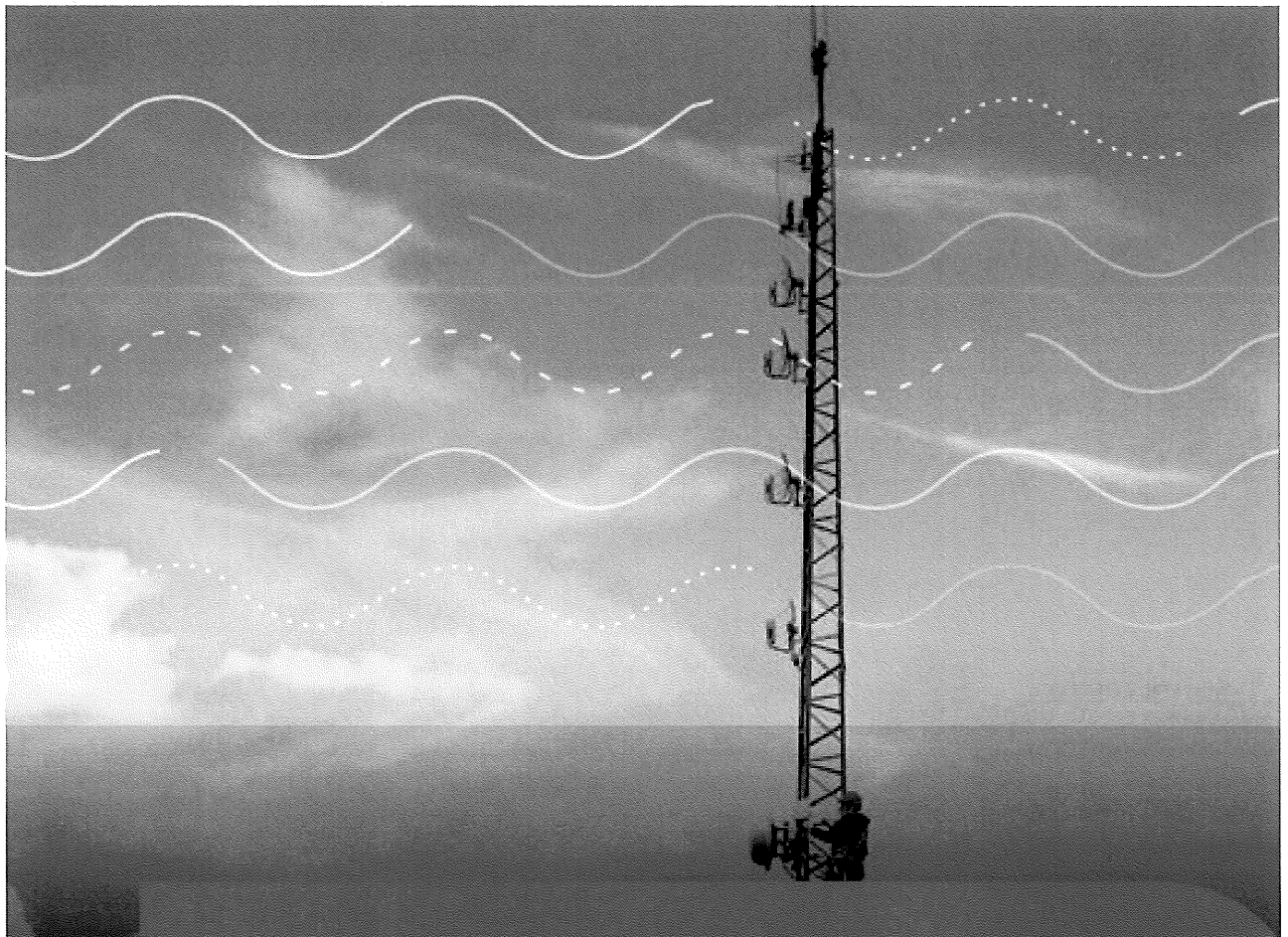
We have strong and ongoing relationships with carriers, including Verizon, AT&T, Sprint and T-Mobile.



Our sister company, Intermax Networks is a tower operator, data transport and Internet service providers Washington and Idaho.

[CONTACT US](#)

Contact Us



420 Main Street, Suite 204
Boise, Idaho 83702

[GET DIRECTIONS](#)

bill@intermaxtowers.com
(208) 861-9111

SEND A MESSAGE

Send A Message

Property Owners, contact us for information about leasing your land,
or if you're a Carrier interested in leasing land from one of our
Property Owner Partners.

Name

Email Address

Phone

Subject

Message

SEND MESSAGE



EXHIBIT B

Mr. & Mrs. Brian M. Decker
5505 W. Flicker Lane
Eagle, ID 83616

March 1, 2022

RE: Project #202102816

Dear Ada County Commissioners,

We write to express our objection to the proposed 100-foot monopole tower with equipment shelters located at 5410 W. Beacon Light Rd. The location of the proposed 100-foot tower will be visibly and esthetically obtrusive from our beloved home.

We bought our home in 2016 from a close family member; to keep the small family-farm in the family and perhaps someday, pass it on to the next generation. The next year, we did an extensive remodel and opened the south side of the house with large picture windows to enjoy the morning sunrise and to watch hot-air balloons float over the pastures. Outside of those windows, in the pasture, is the old wheel-line we keep just to remind us of Brian's dad. This is where we enjoy the backyard with early morning coffee on the deck, large family BBQs in the summertime and the door all friends' and family use as the "front door". Our backyard is the HUB of our home. The tower will be in the direct line of site from our beautiful backyard to Beacon Light Rd. making it an eyesore.

We have big plans this summer to do extensive landscaping and are planning to finish the front yard, and to make significant improvements to the backyard. How do we now incorporate a 100-foot monstrosity into our plans?

We urge the Commissioners to please preserve the natural beauty of Beacon Light Rd. We love our home and want to keep the beauty we have loved so much - without a monopole tower.

Sincerely,

Brian and Leslie Decker

3 January 2022

TO: Ada County Planning & Zoning Commissioners

Greetings,

This correspondence is to express opposition to **Application 202102816-CU – Conditional use for a project for a 100' Monopole Cellular Communications Tower** to be reviewed at the Ada County Planning & Zoning Commission public hearing on January 13th, 2022 for the following reasons:

1. The proposed location is in a residential area that is unsuitable for a large infrastructure installation.

The proposed location is in an area of >100 acres of 10-acre agricultural and horse farms, 5-acre lots, and open space. The proposed tower will permanently and irrevocably alter this area actively dedicated to a rural lifestyle and the agricultural roots of Ada County. In addition, this area north of Beacon Light is designated as an AVA wine-growing region, only the second such area designation in the State of Idaho. Ada County and the City of Eagle actively support and promote this designation and bear the responsibility to preserve the area from development inconsistent with this esteemed status.

2. The proposed tower is not a comparable replacement for the existing silo facility mentioned in the application.

The existing tower is ~½ mile west of the proposed location and is a fraction of the size of the proposed 100' monopole. It is also disguised within a feed silo that was part of the feedlot at Beacon Light and Palmer making it part of the local landscape and less noticeable. This proposed 100' monopole design is much more appropriate for a commercial setting rather than a residential lot.

3. There are more appropriate, alternate locations in the near vicinity that are suitable for infrastructure development.

Specifically, Idaho Power has a large lot within 1/4 mile dedicated to infrastructure. Alternately, areas near Highway 16 that will be developed as commercial will also be more appropriate for this type of structure rather than in a residential area.

4. The proposed tower location is inconsistent with the vision for this Area of Impact in the City of Eagle's Comprehensive plan:

"The City will **balance development with environmental stewardship** along the Boise River and in the **Eagle Foothills. Growth within Eagle will enhance our quality of life** while welcoming new development, citizens, and businesses who share our vision."

Specifically, the city has committed to strive to:

- protect property rights and enhance property values.
- ensure that the important environmental features of the City and its ACI are protected and enhanced.
- ensure that the development of land is commensurate with the physical characteristics of the land.

Such a large infrastructure project is inconsistent with this vision and the commitments Ada County and the City of Eagle have made to preserve the integrity of this area.

We implore you to deny this conditional use permit and encourage the applicant's corporate sponsor to pursue an alternate location in a commercially-appropriate area rather than on rural residential acreage.

Respectfully,

Adjacent Property Owners:

Michael & Suzie Dustin
Brad & Allie Bentley
Kirk & Jan Miller
Brian & Leslie Decker
Thomas & Jordan Smith
Jason & Renee Fry

March 2, 2022

JORDAN A. MILLER & THOMAS K. SMITH

5600 W BEACON LIGHT ROAD, EAGLE ID, 83616

Dear Ada County Commissioners,

The purpose of this letter is to register our strong opposition to Application 202102816-CU – Conditional use for a project for a 100' Monopole Cellular Communications Tower.

We currently homestead a 20-acre parcel that has been in our family for over 50 years. When we made the decision to start a family of our own and purchase this land from Thomas' parents, we had two objectives:

- 1) We wanted to provide our children with the same simple, rural existence that Thomas knew here as a child.
- 2) We wanted to grow organic vegetables, pasture-raised eggs and grass-fed beef to feed ourselves and our local community.

To the best of our knowledge, Thomas and I are the only farmers of our generation who currently reside in Eagle and grow food for a living. We spend our time shoveling an old irrigation ditch, pulling weeds by hand and harvesting vegetables. The primary source of joy within our lives stems from the love and labor we have devoted to restoring a small plot of land that now feeds our neighbors.

Nothing can replace the serenity that we experience when we stand in our pasture and gaze at the snowcapped peaks of the mountains behind Boise. It is enough to dull the sounds of Beacon Light, the endless construction that encroaches on our property, and the sadness we feel in knowing that active farmland disappears from the Eagle vicinity on a near-daily basis.

We want to stay here. We want to continue growing food for our local community, and we want to continue to do so in peace. A new, 5G tower is not only unnecessary, but it is an infringement upon the value of the last remaining swath of agricultural land in all of Eagle. The high-density development that you have already approved within this formerly rural paradise is enough of an insult for one lifetime. We beg of you, please find another location for this grotesque, pointless proposal, before all of Eagle is lost to commercial interests that serve only to disenfranchise the area's original residents.

Sincerely,

Jordan A. Miller & Thomas K. Smith

March 1, 2022

Ada County Commissioners:

Attached is a partial transcript of the Ada County Commissioners hearing on January 30, 2019, in regard to a previous cell tower application in Ada County (#201801311-A), which site is located just 2.51 miles from the current CUP application site.

Please note some of former Commissioner Visser's comments:

Pg 3 lines 15 to 23:

"The U.S. Constitution protects Americans' property rights through the Fifth and Fourteenth Amendments. That's the due process clause. There's also the Fifth Amendment's taking clause. Since 1926 the United States Supreme Court has consistently treated one's property rights as a foundational, fundamental right. A 1926 case is Village of Euclid v. Ambler, and it's found at 272 U.S. 365."

Pg 3 line 24 to Pg 4 line 7:

"Article I, Section 1 of the Idaho Constitution declares our inalienable rights. It says, 'All men', they excluded women back then, but we're taking part with that. So I would paraphrase, 'All men and women, by nature free and equal to have certain inalienable rights, among which are enjoying and defending life and liberty' -- and I stress this next line -- 'acquiring, possessing, and protecting property.'"

Pg 4 line 16 to 24:

"Let's look at the Idaho code and LLUPA. The first stated purpose of LLUPA is that 'This Act shall be -- the purpose of it, it shall be to promote the health, safety, and general welfare of the people of the state of Idaho as follows.' It has an extensive list. The first item on that list is sentence A. And it says, 'To protect the property rights.' Cities and counties are also directed to follow LLUPA."

Pg 5 lines 4 to 12:

"Next let's consider the Ada County code, and specifically Title 8, which addresses Ada County zoning. In subsection 8-12 we have a purpose. And it states that 'Some of the relevant purposes are' -- I added 'some.' Some of the relevant purposes are, '(A), to carry out the intent and purposes of the land use, local Land Use Planning Act, LLUPA; (E), to ensure the most appropriate use of properties; and (F), to protect property rights and enhance property values.'"

Pg 5 line 16 to Pg 6 line 2:

"In addition, Section 8-1-9(a) addresses the preservation of property -- private property rights. 'This title shall be interpreted to equally protect citizens from undue encroachment' -- we heard

that term used tonight. I think we have an idea of what that means, even if it means something different to one another -- 'on their private property by their neighbor's use of their private property.' Let me repeat that because I broke it up. 'This title shall be interpreted to equally protect citizens from the undue encroachment on their private property by their neighbor's use of their private property.'"

Pg 6 lines 9 to 12:

"I believe that the evidence from the testimony of the neighborhood residents shows that the tower would be an undue encroachment of their private property rights."

Pg 6 line 22 to 24 and Pg 7 line 3 to line 13:

"In Title 8 of the Ada County zoning, in Chapter 5 we have specific use standards. And Article B addresses conditional uses. Conditional use standards are covered in this section... .. Letter J states, 'The decision-making body may require additional conditions to mitigate impacts. The conditions may include, but are not limited to, any of the following. No. 4 on that list says that 'Other standards necessary to protect public health, safety, and welfare, and to mitigate adverse effects on surrounding property.' For emphasis, I'll repeat that: 'to mitigate adverse effects on surrounding property.' We don't have the word 'undue' there. We have a clear statement."

Commissioners, please note: In this hearing the Commissions overturned the Planning and Zoning Commission's decision and DENIED the conditional use permit for the cell tower. The matter was later heard by the courts. We would request that same consideration be afforded to us as was our neighbors. Please deny the CUP and, if necessary, let us have our day in court.

Thank you,

Brad & Allie Bentley

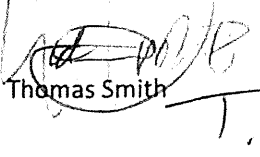
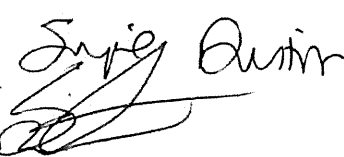
Krik & Jan Miller

Brian & Leslie Decker



Mike & Suzie Dustin

Thomas Smith

Jordan Miller



PARTIAL TRANSCRIPT OF ADA COUNTY BOARD OF COMMISSIONERS
RECORDED PUBLIC HEARING
JANUARY 30, 2019

COMMISSIONERS PRESENT:
KENDRA KENYON, CHAIRWOMAN
DIANA LACHIONDO
RICK VISSER

TRANSCRIBED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 (Begin transcription at 38:46 of audio
2 file.)

3 CHAIRWOMAN KENYON: Okay. Seeing that there's
4 no further testimony, we're going to now close the
5 public hearing. And we will -- among the Board we'll
6 ask questions and deliberate. So we'll open that up.

7 Commissioner Visser or
8 Commissioner Lachiondo, whoever wants to start.

9 COMMISSIONER VISSER: I'm ready -- I'm prepared
10 to lead off with the discussion tonight.

11 I think our questions have been adequately
12 addressed, and I applaud my fellow Commissioners for an
13 excellent job of partaking in this hearing tonight,
14 being their first one.

15 So thank you.

16 CHAIRWOMAN KENYON: Thank you.

17 COMMISSIONER VISSER: Congratulations.

18 Ladies and gentlemen, in reviewing local
19 land-use matters, I rely on a legal analysis that I
20 learned over 30 years ago in law school. It's called
21 IRAC. It's an acronym for issue, rule, application,
22 and conclusion.

23 In regard to tonight's hearing, here's my
24 analysis: The issue, that's the "I" in IRAC. Very
25 straightforward. Should a cell tower be placed in the

1 proposed location?

2 Second is "R" for rule or law. The law is
3 clear for County Commissioners considering land-use
4 matters. That law is found in the Idaho code in
5 Section 67 dash -- Title 67, in Idaho Code 67-6501 and
6 following. For short, it's called LLUPA. It's also
7 found in the Ada County code in Title 8, which deals
8 with Ada County zoning. And we are required to follow
9 LLUPA, as are every other local government.

10 It's also found -- the laws that I've also
11 found are in the United States Constitution and the
12 Idaho Constitution. Plus, we have the advantage of
13 established and binding precedent from our own Idaho
14 appellate courts.

15 The U.S. Constitution protects Americans'
16 property rights through the Fifth and Fourteenth
17 Amendments. That's the due process clause. There's
18 also the Fifth Amendment's taking clause.

19 Since 1926 the United States Supreme Court
20 has consistently treated one's property rights as a
21 foundational, fundamental right. A 1926 case is
22 Village of Euclid v. Ambler, and it's found at 272 U.S.
23 365.

24 Article I, Section 1 of the Idaho
25 Constitution declares our inalienable rights. It says,

1 "All men," they excluded women back then, but we're
2 taking part with that. So I would paraphrase, "All men
3 and women, by nature free and equal to have certain
4 inalienable rights, among which are enjoying and
5 defending life and liberty" -- and I stress this next
6 line -- "acquiring, possessing, and protecting
7 property." And it adds, "presume happiness and
8 securing safety."

9 I'm not saying that one's property rights
10 are unlimited. In fact, I believe most of you would be
11 surprised to learn that not a single one of our
12 constitutional rights are unlimited. Every one of our
13 constitutional rights have some limit by statute, by
14 ruling, by regulation. An example of that is zoning
15 ordinances.

16 Let's look at the Idaho code and LLUPA.
17 The first stated purpose of LLUPA is that "This Act
18 shall be -- the purpose of it, it shall be to promote
19 the health, safety, and general welfare of the people
20 of the state of Idaho as follows." It has an extensive
21 list. The first item on that list is sentence A. And
22 it says, "To protect the property rights."

23 Cities and counties are also directed to
24 follow LLUPA. I mentioned that earlier.

25 In addition, all zoning decisions are to

1 include expressed standards. Those were incorporated
2 through the evidence tonight and also, I hope, in what
3 I share with you.

4 Next let's consider the Ada County code,
5 and specifically Title 8, which addresses Ada County
6 zoning. In subsection 8-12 we have a purpose. And it
7 states that "Some of the relevant purposes are" -- I
8 added "some." "Some of the relevant purposes are, A,
9 to carry out the intent and purposes of the land use --
10 local Land Use Planning Act, LLUPA; E, to ensure the
11 most appropriate use of properties; and F, to protect
12 property rights and enhance property values."

13 Finally, G says that "We are to provide a
14 method of administration, as authorized by the
15 Constitution and the laws of the State of Idaho."

16 In addition, Section 8-1-9(a) addresses the
17 preservation of property -- private property rights.
18 "This title shall be interpreted to equally protect
19 citizens from undue encroachment" -- we heard that term
20 used tonight. I think we have an idea of what that
21 means, even if it means something different to one
22 another -- "on their private property by their
23 neighbor's use of their private property." Let me
24 repeat that because I broke it up. "This title shall
25 be interpreted to equally protect citizens from the

1 undue encroachment on their private property by their
2 neighbor's use of their private property." The second
3 part of it that is equal to that is just vice versa of
4 that.

5 Let's look at section "A" and "C" in my
6 IRAC analysis. So I'm going to apply the law as I see
7 it, and I'm going to provide my conclusion.

8 My findings: Based on the above code
9 section, the preservation of private property rights, I
10 believe that the evidence from the testimony of the
11 neighborhood residents shows that the tower would be an
12 undue encroachment of their private property rights. I
13 believe that the evidence that we heard tonight -- and
14 I accept it -- the appraisal by Mr. Corlett showed that
15 the estimates of property values, not speculative, but
16 an estimate, showed a decrease of 10 percent.

17 I place a high value on the testimony of an
18 expert, and it can only be rebutted, in my opinion, and
19 in some legal circles, quite a few to be exact, by
20 another expert's testimony. No such testimony was
21 provided tonight.

22 In Title 8 of the Ada County zoning, in
23 Chapter 5 we have specific use standards. And
24 Article B addresses conditional uses. Conditional use
25 standards are covered in this section, and it begins

1 with, "In addition to the specific use standards set
2 forth in this chapter, the following standards shall
3 apply," and the list follows. Letter J states, "The
4 decision-making body may require additional conditions
5 to mitigate impacts. The conditions may include, but
6 are not limited to, any of the following."

7 No. 4 on that list says that "Other
8 standards necessary to protect public health, safety,
9 and welfare, and to mitigate adverse effects on
10 surrounding property." For emphasis, I'll repeat that:
11 "to mitigate adverse effects on surrounding property."
12 We don't have the word "undue" there. We have a clear
13 statement.

14 I believe in reviewing the ruling of the
15 Ada County Planning and Zoning Commission in which they
16 approved the conditional-use permit for the
17 installation of this cell tower, they failed on one
18 vital accord. I did not find any adequate standards to
19 mitigate adverse effects on the surrounding property.

20 However, tonight we heard testimony from
21 Mr. AJ Osborne that he is willing to buy parcels, buy
22 property, and provide that to the cell phone company as
23 an alternative location.

24 Also, in subsection 8-5-3114 -- and I'm
25 sure you're all taking notice of that numerous number

1 there -- we have the tower antenna structure section in
2 regard to commercial towers. Subsection 10(f) states
3 that "Towers shall be architecturally and visually
4 compatible with the existing structures, vegetation,
5 and other uses in the area, or likely to exist in the
6 area, under the terms of the applicable base district
7 or Comprehensive Plan. The decision-making body shall
8 consider" -- and I emphasize this next line -- "but
9 shall not be limited to the following factors: Similar
10 height, color, bulk, shape, camouflage techniques,
11 et cetera."

12 My findings of facts on this analysis, this
13 final analysis: Based on the extensive testimony from
14 existing homeowners near the proposed site and the
15 exhibits that we received, which were a lot, over 100,
16 I find that this tower is not architecturally and
17 visually compatible with the existing homes or
18 structures; hence, I believe that there was substantial
19 evidence presented that there was an adverse and undue
20 impact.

21 Therefore, I would approve and grant
22 tonight's appeal.

23 Thank you.

24 CHAIRWOMAN KENYON: Thank you, Commissioner.

25 Commissioner Lachiondo, would you like to

1 weigh in?

2 COMMISSIONER LACHIONDO: Thank you for the
3 opportunity. And this is my first time weighing in.
4 And I am not an attorney, so I will not be citing code.

5 But I have had the opportunity to work with
6 our staff and review obviously the thousands of pages,
7 as well as consult with attorneys. And based on both
8 the testimony presented tonight, as well as the
9 evidence presented leading up to tonight, I have some
10 concerns with regard to the conditional-use permit
11 approval, and specifically section B, the section on
12 "The proposed use shall not create undue, adverse
13 impacts on surrounding properties."

14 As Mr. Leonard noted when I specifically
15 asked, that is a subjective decision, and there's not
16 necessarily a standard set out by code. It is
17 determined on how we perceive those undue impacts to be
18 occurring and certainly how people in the area do.

19 And so I'd like to note that I don't
20 believe that the cell phone tower is compatible with
21 surrounding properties, and this area is zoned rural
22 residential zoning, and this is a private commercial
23 use. I do consider the proposed cell tower to be
24 obtrusive and imposing into surrounding properties.

25 And I'm not satisfied that the applicant

1 has exhausted all other available options for leasing
2 land, based on the testimony tonight.

3 And finally, I'm not convinced that
4 construction of this cell tower will -- or I am
5 convinced that construction of this cell tower will
6 diminish property values.

7 A couple other things that I want to note:
8 While I do not believe this is a compatible use in this
9 area, one of the arguments that was made was because of
10 million-dollar homes in the area. And I'd like to
11 note, we don't take into consideration, and nor should
12 we, the valuation of anyone's particular home. Whether
13 it was a \$50,000 home or a million-dollar home, each
14 applicant or appellant would have the right to come up
15 and talk about this.

16 And finally, not as it relates to findings
17 on this particular application, although it was brought
18 up during the course of this application -- and again,
19 bear with me. I've been here for two-and-a-half
20 weeks -- my understanding, Mayor and Councilmembers and
21 Community, is that over time or in the past few years
22 there has been some attempts to restart the
23 incorporation of Eagle's Comprehensive Plan into Ada
24 County's Comprehensive Plan, and that as things happen
25 people get busy, and maybe there are some other matters

1 that needed to put that on pause. And so it's
2 unfortunate, but this has maybe brought this back to
3 our attention.

4 But I would like to note that I will be
5 encouraging our staff to work with Eagle to look at
6 adopting their most updated Eagle Comprehensive Plan
7 into our Comprehensive Plan.

8 CHAIRWOMAN KENYON: Any additional comments?

9 COMMISSIONER LACHIONDO: Thank you.

10 CHAIRWOMAN KENYON: Before we entertain a
11 motion, I'm not going to repeat what the two
12 Commissioners have just said. I'll be very, very
13 brief.

14 I, too, believe that there's not been an
15 exhaustive search for a more appropriate location. I
16 also believe that the tower is not architecturally or
17 visibly compatible with a rural neighborhood in a
18 commercial use.

19 I also believe that the construction and
20 maintenance of the tower does invade the privacy of the
21 home, as seen with the photograph that it's literally
22 60 steps away.

23 And I also find that there could possibly
24 be a safety issue with it being this close. It looks
25 like it's being placed in a field with weeds. It could

1 easily catch fire. If that tower of 70-foot fell over,
2 it would be literally right in the back yard of the
3 neighbor's house. And so I also believe that the use
4 would create an undue, adverse impact on the
5 surrounding neighbors and their surrounding properties.

6 So with that, I will entertain a motion,
7 unless there's further deliberation.

8 COMMISSIONER VISSER: I'm prepared to make a
9 motion, the discussion warrants such a motion, so here
10 goes.

11 And this is a little legalese, but I didn't
12 draft it, so here goes.

13 Madam Chair, I move to approve Appeal
14 Application No. 2018-01311-A, i.e., the Eberle Berlin
15 appeal, and overturn the Planning and Zoning
16 Commission's decision -- I see some people crying in
17 the audience, and it kind of brings me to tears. I'm
18 sorry. I apologize for that.

19 CHAIRWOMAN KENYON: I could read it for you.

20 COMMISSIONER VISSER: No, I can do it,
21 Commissioner.

22 -- and overturn the Planning and Zoning
23 Commission's decision to grant the conditional-use
24 permit for construction of a cell phone tower, to
25 direct staff to prepare findings of fact and

1 conclusions of law consistent with our decision based
2 upon the substantial record and the testimony presented
3 tonight.

4 I don't believe -- and we have to table it
5 to a certain date because there will be revised
6 findings.

7 Do we have a date available at this time,
8 or will that be determined?

9 CHAIRWOMAN KENYON: Yeah, we have to get a
10 second. We have to second this, so...

11 COMMISSIONER VISSER: Okay. So pending a
12 second.

13 Development Services meeting to adopt the
14 revised findings of fact and conclusions of law.

15 COMMISSIONER LACHIONDO: Second.

16 CHAIRWOMAN KENYON: Okay. We have a motion and
17 a second.

18 All those in favor state "aye."

19 COMMISSIONER VISSER: Aye.

20 COMMISSIONER LACHIONDO: Aye.

21 CHAIRWOMAN KENYON: Aye.

22 The ayes have it. The motion carries.

23 Okay. We'd like to -- we'll go ahead and
24 pick a date now before we close.

25 UNIDENTIFIED SPEAKER: Yes. Yes.

1 CHAIRWOMAN KENYON: Uh-huh. So if you'll hang
2 in there one more minute with us.

3 UNIDENTIFIED SPEAKER: Madam Chair,
4 Commissioners, the next scheduled meeting is
5 February 6th, there's a scheduled public hearing.
6 March 6th there's a public hearing. And then there is
7 a February 20th follow-up meeting, which currently we
8 don't have, which may be an option as well.

9 UNIDENTIFIED SPEAKER: [Unintelligible.]

10 UNIDENTIFIED SPEAKER: [Unintelligible.]

11 CHAIRWOMAN KENYON: February 6th? Okay. So
12 we're going to table -- table this to February 6th, and
13 then come back with the revisions of the findings of
14 fact and conclusions of law and order. Okay?

15 All right. We'll now close the public
16 hearing and -- or I'm sorry. We'll now recess and be
17 off the record.

18 And again, we thank you all very much for
19 your patience and helping.

20 (End of audio file at 55:48.)

21 -oOo-

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25

Audio Transcription

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings were transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 16th day of January, 2020.



JEFF LaMAR, CSR NO. 640

Notary Public

Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 30, 2023

	7:23	audio (2)	5:9
\$	although (1) 10:17	2:1;14:20	case (1) 3:21
\$50,000 (1) 10:13	Ambler (1) 3:22	authorized (1) 5:14	catch (1) 12:1
[Amendments (1) 3:17	available (2) 10:1;13:7	cell (8) 2:25;7:17,22;9:20,23;10:4, 5;12:24
[Unintelligible] (2) 14:9,10	Amendment's (1) 3:18	away (1) 11:22	certain (2) 4:3;13:5
A	Americans' (1) 3:15	aye (4) 13:18,19,20,21	certainly (1) 9:18
above (1) 6:8	among (2) 2:5;4:4	ayes (1) 13:22	cetera (1) 8:11
accept (1) 6:14	analysis (5) 2:19,24;6:6;8:12,13	B	Chair (2) 12:13;14:3
accord (1) 7:18	antenna (1) 8:1	back (4) 4:1;11:2;12:2;14:13	CHAIRWOMAN (11) 2:3,16;8:24;11:8,10;12:19; 13:9,16,21;14:1,11
acquiring (1) 4:6	apologize (1) 12:18	base (1) 8:6	Chapter (2) 6:23;7:2
acronym (1) 2:21	appeal (3) 8:22;12:13,15	Based (5) 6:8;8:13;9:7;10:2;13:1	circles (1) 6:19
Act (2) 4:17;5:10	appellant (1) 10:14	bear (1) 10:19	Cities (1) 4:23
Ada (7) 3:7,8;5:4,5;6:22;7:15; 10:23	appellate (1) 3:14	Begin (1) 2:1	citing (1) 9:4
added (1) 5:8	applaud (1) 2:12	begins (1) 6:25	citizens (2) 5:19,25
addition (3) 4:25;5:16;7:1	applicable (1) 8:6	Berlin (1) 12:14	clause (2) 3:17,18
additional (2) 7:4;11:8	applicant (2) 9:25;10:14	binding (1) 3:13	clear (2) 3:3;7:12
addressed (1) 2:12	application (4) 2:21;10:17,18;12:14	Board (1) 2:5	close (4) 2:4;11:24;13:24;14:15
addresses (3) 5:5,16;6:24	apply (2) 6:6;7:3	body (2) 7:4;8:7	code (8) 3:4,5,7;4:16;5:4;6:8;9:4,16
adds (1) 4:7	appraisal (1) 6:14	both (1) 9:7	color (1) 8:10
adequate (1) 7:18	appropriate (2) 5:11;11:15	brief (1) 11:13	comments (1) 11:8
adequately (1) 2:11	approval (1) 9:11	brings (1) 12:17	commercial (3) 8:2;9:22;11:18
administration (1) 5:14	approve (2) 8:21;12:13	broke (1) 5:24	Commission (1) 7:15
adopt (1) 13:13	approved (1) 7:16	brought (2) 10:17;11:2	Commissioner (15) 2:7,8,9,17;8:24,25;9:2; 11:9;12:8,20,21;13:11,15,19, 20
adopting (1) 11:6	architecturally (3) 8:3,16;11:16	bulk (1) 8:10	Commissioners (4) 2:12;3:3;11:12;14:4
advantage (1) 3:12	area (6) 8:5,6;9:18,21;10:9,10	busy (1) 10:25	Commission's (2) 12:16,23
adverse (6) 7:9,11,19;8:19;9:12;12:4	arguments (1) 10:9	buy (2) 7:21,21	Community (1) 10:21
again (2) 10:18;14:18	Article (2) 3:24;6:24	€	company (1) 7:22
ago (1) 2:20	attempts (1) 10:22	called (2) 2:20;3:6	compatible (5) 8:4,17;9:20;10:8;11:17
ahead (1) 13:23	attention (1) 11:3	camouflage (1) 8:10	Comprehensive (5) 8:7;10:23,24;11:6,7
AJ (1) 7:21	attorney (1) 9:4	can (2) 6:18;12:20	concerns (1) 9:10
alternative (1)	attorneys (1) 9:7	carries (1) 13:22	
	audience (1) 12:17	carry (1)	

conclusion (2) 2:22;6:7 conclusions (3) 13:1,14;14:14 conditional (2) 6:24,24 conditional-use (3) 7:16;9:10;12:23 conditions (2) 7:4,5 Congratulations (1) 2:17 consider (3) 5:4;8:8;9:23 consideration (1) 10:11 considering (1) 3:3 consistent (1) 13:1 consistently (1) 3:20 Constitution (5) 3:11,12,15,25;5:15 constitutional (2) 4:12,13 construction (4) 10:4,5;11:19;12:24 consult (1) 9:7 convinced (2) 10:3,5 Corlett (1) 6:14 Councilmembers (1) 10:20 counties (1) 4:23 County (7) 3:3,7,8;5:4,5;6:22;7:15 County's (1) 10:24 couple (1) 10:7 course (1) 10:18 Court (1) 3:19 courts (1) 3:14 covered (1) 6:25 create (2) 9:12;12:4 crying (1) 12:16 currently (1) 14:7	date (3) 13:5,7,24 deals (1) 3:7 decision (4) 9:15;12:16,23;13:1 decision-making (2) 7:4;8:7 decisions (1) 4:25 declares (1) 3:25 decrease (1) 6:16 defending (1) 4:5 deliberate (1) 2:6 deliberation (1) 12:7 determined (2) 9:17;13:8 Development (1) 13:13 different (1) 5:21 diminish (1) 10:6 direct (1) 12:25 directed (1) 4:23 discussion (2) 2:10;12:9 district (1) 8:6 draft (1) 12:12 due (1) 3:17 during (1) 10:18	encroachment (3) 5:19;6:1,12 End (1) 14:20 enhance (1) 5:12 enjoying (1) 4:4 ensure (1) 5:10 entertain (2) 11:10;12:6 equal (2) 4:3;6:3 equally (2) 5:18,25 established (1) 3:13 estimate (1) 6:16 estimates (1) 6:15 et (1) 8:11 Euclid (1) 3:22 even (1) 5:21 evidence (5) 5:2;6:10,13;8:19;9:9 exact (1) 6:19 example (1) 4:14 excellent (1) 2:13 excluded (1) 4:1 exhausted (1) 10:1 exhaustive (1) 11:15 exhibits (1) 8:15 exist (1) 8:5 existing (3) 8:4,14,17 expert (1) 6:18 expert's (1) 6:20 expressed (1) 5:1 extensive (2) 4:20;8:13	facts (1) 8:12 failed (1) 7:17 favor (1) 13:18 February (4) 14:5,7,11,12 fell (1) 12:1 fellow (1) 2:12 few (2) 6:19;10:21 field (1) 11:25 Fifth (2) 3:16,18 file (2) 2:2;14:20 final (1) 8:13 Finally (3) 5:13;10:3,16 find (3) 7:18;8:16;11:23 findings (7) 6:8;8:12;10:16;12:25; 13:6,14;14:13 fire (1) 12:1 first (4) 2:14;4:17,21;9:3 follow (2) 3:8;4:24 following (4) 3:6;7:2,6;8:9 follows (2) 4:20;7:3 follow-up (1) 14:7 forth (1) 7:2 found (5) 3:4,7,10,11,22 foundational (1) 3:21 Fourteenth (1) 3:16 free (1) 4:3 fundamental (1) 3:21 further (2) 2:4;12:7
	E		G
	Eagle (2) 11:5,6 Eagle's (1) 10:23 earlier (1) 4:24 easily (1) 12:1 Eberle (1) 12:14 effects (3) 7:9,11,19 emphasis (1) 7:10 emphasize (1) 8:8 encouraging (1) 11:5	F	
D		fact (4) 4:10;12:25;13:14;14:14 factors (1) 8:9	general (1) 4:19 gentlemen (1) 2:18 goes (2)
dash (1) 3:5			

12:10,12 government (1) 3:9 grant (2) 8:21;12:23	10:23 installation (1) 7:17 intent (1) 5:9 interpreted (2) 5:18,25 into (4) 9:24;10:11,23;11:7 invade (1) 11:20 IRAC (3) 2:21,24;6:6 issue (3) 2:21,24;11:24 item (1) 4:21	Letter (1) 7:3 liberty (1) 4:5 life (1) 4:5 likely (1) 8:5 limit (1) 4:13 limited (2) 7:6;8:9 line (2) 4:6;8:8 list (4) 4:21,21;7:3,7 literally (2) 11:21;12:2 little (1) 12:11 LLUPA (6) 3:6,9;4:16,17,24;5:10 local (3) 2:18;3:9;5:10 location (3) 3:1;7:23;11:15 look (3) 4:16;6:5;11:5 looks (1) 11:24 lot (1) 8:15	mitigate (4) 7:5,9,11,19 more (2) 11:15;14:2 most (3) 4:10;5:11;11:6 motion (6) 11:11;12:6,9,9;13:16,22 move (1) 12:13 much (1) 14:18
H			N
hang (1) 14:1 happen (1) 10:24 happiness (1) 4:7 health (2) 4:19;7:8 heard (3) 5:19;6:13;7:20 hearing (6) 2:5,13,23;14:5,6,16 height (1) 8:10 helping (1) 14:19 hence (1) 8:18 here's (1) 2:23 high (1) 6:17 home (4) 10:12,13,13;11:21 homeowners (1) 8:14 homes (2) 8:17;10:10 hope (1) 5:2 house (1) 12:3	J job (1) 2:13 K KENYON (11) 2:3,16;8:24;11:8,10;12:19; 13:9,16,21;14:1,11 kind (1) 12:17 L Lachiondo (6) 2:8;8:25;9:2;11:9;13:15, 20 Ladies (1) 2:18 land (3) 5:9,10;10:2 land-use (2) 2:19;3:3 law (8) 2:20;3:2,2,4;6:6;13:1,14; 14:14 laws (2) 3:10;5:15 lead (1) 2:10 leading (1) 9:9 learn (1) 4:11 learned (1) 2:20 leasing (1) 10:1 legal (2) 2:19;6:19 legalese (1) 12:11 Leonard (1) 9:14	M Madam (2) 12:13;14:3 maintenance (1) 11:20 March (1) 14:6 matters (3) 2:19;3:4;10:25 may (3) 7:4,5;14:8 maybe (2) 10:25;11:2 Mayor (1) 10:20 means (2) 5:21,21 meeting (3) 13:13;14:4,7 men (2) 4:1,2 mentioned (1) 4:24 method (1) 5:14 million-dollar (2) 10:10,13 minute (1) 14:2	nature (1) 4:3 near (1) 8:14 necessarily (1) 9:16 necessary (1) 7:8 needed (1) 11:1 neighborhood (2) 6:11;11:17 neighbors (1) 12:5 neighbor's (3) 5:23;6:2;12:3 next (4) 4:5;5:4;8:8;14:4 nor (1) 10:11 note (4) 9:19;10:7,11;11:4 noted (1) 9:14 notice (1) 7:25 number (1) 7:25 numerous (1) 7:25
I			O
Idaho (8) 3:4,5,12,13,24;4:16,20; 5:15 idea (1) 5:20 ie (1) 12:14 impact (2) 8:20;12:4 impacts (3) 7:5;9:13,17 imposing (1) 9:24 inalienable (2) 3:25;4:4 include (2) 5:1;7:5 incorporated (1) 5:1 incorporation (1)			obtrusive (1) 9:24 obviously (1) 9:6 occurring (1) 9:18 off (2) 2:10;14:17 one (7) 2:14;4:11,12;5:21;7:17; 10:9;14:2 one's (2) 3:20;4:9 only (1) 6:18

oOo- (1) 14:21	place (1) 6:17	quite (1) 6:19	satisfied (1) 9:25
open (1) 2:6	placed (2) 2:25;11:25	R	saying (1) 4:9
opinion (1) 6:18	Plan (5) 8:7;10:23,24;11:6,7		scheduled (2) 14:4,5
opportunity (2) 9:3,5	Planning (4) 5:10;7:15;12:15,22	read (1) 12:19	school (1) 2:20
option (1) 14:8	Plus (1) 3:12	ready (1) 2:9	search (1) 11:15
options (1) 10:1	possessing (1) 4:6	rebutted (1) 6:18	Second (7) 3:2;6:2;13:10,10,12,15,17
order (1) 14:14	possibly (1) 11:23	received (1) 8:15	Section (9) 3:5,24;5:16;6:5,9,25;8:1; 9:11,11
ordinances (1) 4:15	precedent (1) 3:13	recess (1) 14:16	securing (1) 4:8
Osborne (1) 7:21	prepare (1) 12:25	record (2) 13:2;14:17	Seeing (1) 2:3
out (2) 5:9;9:16	prepared (2) 2:9;12:8	regard (3) 2:23;8:2;9:10	sentence (1) 4:21
over (4) 2:20;8:15;10:21;12:1	presented (4) 8:19;9:8,9;13:2	regulation (1) 4:14	Services (1) 13:13
overturn (2) 12:15,22	preservation (2) 5:17;6:9	relates (1) 10:16	set (2) 7:1;9:16
own (1) 3:13	presume (1) 4:7	relevant (2) 5:7,8	shall (9) 4:18,18;5:18,24;7:2;8:3,7, 9:9;12
P	privacy (1) 11:20	rely (1) 2:19	shape (1) 8:10
	private (8) 5:17,22,23;6:1,2,9,12;9:22	repeat (3) 5:24;7:10;11:11	share (1) 5:3
pages (1) 9:6	process (1) 3:17	require (1) 7:4	short (1) 3:6
paraphrase (1) 4:2	promote (1) 4:18	required (1) 3:8	showed (2) 6:14,16
parcels (1) 7:21	properties (5) 5:11;9:13,21,24;12:5	residential (1) 9:22	shows (1) 6:11
part (2) 4:2;6:3	property (21) 3:16,20;4:7,9,22;5:12,12, 17,17,22,23;6:1,2,9,12,15; 7:10,11,19,22;10:6	residents (1) 6:11	Similar (1) 8:9
partaking (1) 2:13	proposed (4) 3:1;8:14;9:12,23	restart (1) 10:22	single (1) 4:11
particular (2) 10:12,17	protect (5) 4:22;5:11,18,25;7:8	review (1) 9:6	site (1) 8:14
past (1) 10:21	protecting (1) 4:6	reviewing (2) 2:18;7:14	single (1) 4:11
patience (1) 14:19	protects (1) 3:15	revised (2) 13:5,14	site (1) 8:14
pause (1) 11:1	provide (3) 5:13;6:7;7:22	revisions (1) 14:13	sorry (2) 12:18;14:16
pending (1) 13:11	provided (1) 6:21	right (4) 3:21;10:14;12:2;14:15	SPEAKER (4) 13:25;14:3,9,10
people (4) 4:19;9:18;10:25;12:16	public (5) 2:5;7:8;14:5,6,15	rights (12) 3:16,20,25;4:4,9,12,13,22; 5:12,17;6:9,12	specific (2) 6:23;7:1
perceive (1) 9:17	purpose (3) 4:17,18;5:6	rule (2) 2:21;3:2	specifically (3) 5:5;9:11,14
percent (1) 6:16	purposes (3) 5:7,8,9	ruling (2) 4:14;7:14	speculative (1) 6:15
permit (3) 7:16;9:10;12:24	put (1) 11:1	rural (2) 9:21;11:17	staff (3) 9:6;11:5;12:25
phone (3) 7:22;9:20;12:24	Q	S	standard (1) 9:16
photograph (1) 11:21			standards (7) 5:1;6:23,25;7:1,2,8,18
pick (1) 13:24	Q	safety (4) 4:8,19;7:8;11:24	start (1) 2:8
			state (3)

4:20;5:15;13:18 stated (1) 4:17 statement (1) 7:13 States (5) 3:11,19;5:7;7:3;8:2 statute (1) 4:13 steps (1) 11:22 straightforward (1) 2:25 stress (1) 4:5 structure (1) 8:1 structures (2) 8:4,18 subjective (1) 9:15 subsection (3) 5:6;7:24;8:2 substantial (2) 8:18;13:2 Supreme (1) 3:19 sure (1) 7:25 surprised (1) 4:11 surrounding (8) 7:10,11,19;9:13,21,24; 12:5,5	tower (13) 2:25;6:11;7:17;8:1,16; 9:20,23;10:4,5;11:16,20; 12:1,24 towers (2) 8:2,3 transcription (1) 2:1 treated (1) 3:20 two (1) 11:11 two-and-a-half (1) 10:19	11:17 Visser (7) 2:7,9,17;12:8,20;13:11,19 visually (2) 8:3,17 vital (1) 7:18	2018-01311-A (1) 12:14 20th (1) 14:7 272 (1) 3:22
		W	3
		wants (1) 2:8 warrants (1) 12:9 weeds (1) 11:25 weeks (1) 10:20 weigh (1) 9:1 weighing (1) 9:3 welfare (2) 4:19;7:9 willing (1) 7:21 women (2) 4:1,3 word (1) 7:12 work (2) 9:5;11:5	30 (1) 2:20 365 (1) 3:23 38:46 (1) 2:1
	U		4
	under (1) 8:6 undue (8) 5:19;6:1,12;7:12;8:19; 9:12,17;12:4 unfortunate (1) 11:2 UNIDENTIFIED (4) 13:25;14:3,9,10 United (2) 3:11,19 unless (1) 12:7 unlimited (2) 4:10,12 up (5) 2:6;5:24;9:9;10:14,18 updated (1) 11:6 upon (1) 13:2 use (13) 5:9,10,11,23;6:2,23,24; 7:1;9:12,23;10:8;11:18;12:3 used (1) 5:20 uses (2) 6:24;8:5		4 (1) 7:7
		Y	5
T		yard (1) 12:2 years (2) 2:20;10:21	5 (1) 6:23 55:48 (1) 14:20
		Z	6
	V	zoned (1) 9:21 zoning (9) 3:8;4:14,25;5:6;6:22;7:15; 9:22;12:15,22	60 (1) 11:22 67 (2) 3:5,5 67-6501 (1) 3:5 6th (4) 14:5,6,11,12
table (3) 13:4;14:12,12 talk (1) 10:15 tears (1) 12:17 techniques (1) 8:10 term (1) 5:19 terms (1) 8:6 testimony (10) 2:4;6:10,17,20,20;7:20; 8:13;9:8;10:2;13:2 Therefore (1) 8:21 thousands (1) 9:6 Title (6) 3:5,7;5:5,18,24;6:22 tonight (11) 2:10,13;5:2,20;6:13,21; 7:20;9:8,9;10:2;13:3 tonight's (2) 2:23;8:22	valuation (1) 10:12 value (1) 6:17 values (3) 5:12;6:15;10:6 vegetation (1) 8:4 versa (1) 6:3 vice (1) 6:3 Village (1) 3:22 visibly (1)	1	7
		1 (1) 3:24 10 (1) 6:16 100 (1) 8:15 10f (1) 8:2 1926 (2) 3:19,21	70-foot (1) 12:1
		2	8
			8 (3) 3:7;5:5;6:22 8-12 (1) 5:6 8-1-9a (1) 5:16 8-5-3114 (1) 7:24

EXHIBIT C

From: John Poole
Sent: Tuesday, March 1, 2022 4:04 PM
To: Brad Bentley
Subject: Opinion of value

To whom it may concern,

I have been a licensed real estate broker in Idaho since 1992 and have been an active full-time realtor for the past 22 years. My primary geographic area of expertise is Ada County.

In my professional opinion, the installation of a 100' cell tower adjacent to a home will have a negative impact on the value of that home. Likewise, homes that are in the immediate area will also suffer a negative impact on their value.

It is my experience that homes that are adjacent or within near proximity to structures, like cell towers or high tension power poles, are much more difficult to sell and typically sell for less than comparable homes without those structures.

I estimate a reduction in value anywhere from 10%-15%, depending on the location and proximity to the structure.

Respectfully,

John Poole
Associate Broker
Atova, Inc.
208-440-9600
jpoole@atova.com

March 1, 2022

Ada County Commissioners:

Here are the first three pages from a Property Appraisal that shows the negative impact that cell towers have on property values.

The appraisal shows an approximate 9% negative property value impact on adjacent properties. (\$1,160,000 before cell tower, \$1,045,000 after cell tower = \$115,000 difference / \$1,160,000 = 9%)

This appraisal was submitted in relation to a previous cell tower application in Ada County (#201801311-A), which site is located just 2.51 miles from the current CUP application site.

While property values have changed since the report was issued, it goes to reason that the negative percentage value impact would directionally remain consistent over time.

As desired, this appraisal can be found in full as Exhibit #21A of Ada County Project #201801311-A.

Thank you,

Brad Bentley and Neighbors



Valbridge
PROPERTY ADVISORS

Appraisal Report

Hodge Estate Home - Before and After Valuation
2622 N. Big Sky Place
Eagle, Ada County, Idaho 83616

Report Date: January 2, 2019



RECEIVED

JAN 04 2019

ADA COUNTY
DEVELOPMENT SERVICES

FOR:

Eberle Berlin
c/o Mr. Stanley J. Tharp
1111 W. Jefferson Street, Ste. 530
Boise, ID 83701

Client Number: N/A

**Valbridge Property Advisors |
Mountain States**

1459 Tyrell Lane, Suite B
Boise, ID 83706
208-336-1097 phone
208-345-1175 fax
valbridge.com

Valbridge File Number:
ID02-18-0241-000

EXHIBIT 21 A
Page 1 of 97
Project # 201801311 A



Valbridge

PROPERTY ADVISORS

Mountain States Appraisal &
Consulting, Inc.

1459 Tyrell Lane
Suite B
Boise, ID 83706
208-336-1097 phone
208-345-1175 fax
valbridge.com

1459 Tyrell Lane
Suite B
Boise, ID 83706
208-336-1097 phone
208-345-1175 fax
valbridge.com

January 2, 2019

Mr. Stanley J. Tharp
Eberle Berlin
1111 W. Jefferson Street, Ste. 530
Boise, ID 83701

RE: Appraisal Report
Hodge Estate Home - Before and After Valuation
2622 N. Big Sky Place
Eagle, Ada County, Idaho 83616

Dear Mr. Tharp:

In accordance with your request, we have performed an appraisal of the above referenced property. This appraisal report sets forth the pertinent data gathered, the techniques employed, and the reasoning leading to our value opinions. This letter of transmittal is not valid if separated from the appraisal report.

The appraisal problem is to estimate current market value in the before condition and hypothetical market value in the after condition (as-if a cellular tower is located on a site adjacent to the subject property).

The subject is improved with a good quality estate home on a 2.295 acre lot. The home was constructed in 2017 and is in excellent condition. It contains 7,104 livable square feet between three levels and a total 4 bedrooms and 5.5 bathrooms. An attached garage features 3 bays and a detached garage has 2 bays. A heated swimming pool flanks the east side of the home. Landscaping is partially complete. In the before condition, the subject provides features and appeal that are commensurate with that of competing estate home properties in the Eagle market.

We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

The client in this assignment is Eberle Berlin c/o Mr. Stanley J. Tharp. The intended user of this report is the client and any duly appointed representatives of the client, specifically authorized by the client to view or use this appraisal in accordance with the stated purpose or function. The sole intended use is for potential litigation purposes. The value opinions reported herein are subject to the definitions, assumptions, limiting conditions, and certifications contained in this report.

The findings and conclusions are further contingent upon the following extraordinary assumptions and/or hypothetical conditions, the use of which might have affected the assignment results:

Extraordinary Assumptions:

- None necessary.

Hypothetical Conditions:

- Our valuation in the after condition is hypothetical given that the cell tower does not exist on the effective date of value.

Based on the analysis contained in the following report, our value conclusions are summarized as follows:

Value Conclusions		
Value Perspective	Current	Hypothetical
Value Type	Market Value	Market Value
Value Premise	In the Before Condition	In the After Condition
Property Rights Appraised	Fee Simple	Fee Simple
Date of Value	December 21, 2018	December 21, 2018
Value Conclusion	\$1,160,000	\$1,045,000

Value Difference	
Market Value in the Before Condition	\$1,160,000
<u>Less: Market Value in the After Condition</u>	<u>\$1,045,000</u>
Value Difference	\$115,000

Respectfully submitted,
 Valbridge Property Advisors | Mountain States



David Pascua, RT
 Appraiser
 Idaho, License #RT-3191
 License Expires 07/21/2019



G. Joseph Corlett, MAI, SRA
 Senior Managing Director
 Idaho, Certification # CGA-7
 Certificate Expires 03/11/19

To whom it may concern,

We are active and full-time realtors in Idaho, working with clients in the area and from other states. We primarily work with buyers and sellers in the Treasure Valley, but also work with customers relocating from California. In our professional opinion, the installation of a 100' cell tower would have a negative impact for those trying to purchase and sell homes. It has been our experience, especially with out of state buyers, that they are looking to escape these types of situations and looking for more country style living. For our clients who are looking to purchase homes, something of this nature would be a major deterrent to them and could also create a negative impact on home valuations. We are actively working with a few clients who are looking to purchase homes and land in that area and this could be a deterrent for them if something like this is built.

Respectfully,

Sara & Soraya

Twin Partners Realty

TwinPartnersRealty@gmail.com

(208) 515-5702

EXHIBIT D

March 2, 2022

RE: Project #202102816

Ada County Commissioners:

We are opposed to the development of 100' tall cell tower on Beacon Light / Lanewood due to the impact it will have on the value of our property. We recently just finished developing 40 acres at Heartland Ranch which is now 7 parcels all over 5 acres next to the proposed tower. We paid a premium to maintain wide open spaces and keep each parcel over 5 acres in order preserve the farm and rural lifestyle. It's what makes property North of Beacon light so valuable. In addition to developing Heartland Ranch, we are building our forever family dream home on Lot #5. We and our neighbors currently share unobstructed views of the foothills, bogus mountain, and sunsets to the West. The proposed monster tower will dominate the entire skyline.

We invested over \$4.5M into Heartland Ranch subdivision, paving a new private road, installing new fencing, and landscaping as part of the entrance into Heartland Ranch subdivision. The proposed cell tower is less than 100' from the entrance to our subdivision further impacting the appeal and value of our new subdivision.

We sold 4 lots, and now have 3 remaining lots, but once word has gotten out about the proposed tower, buyers are reluctant to purchase lots due to the pending cell tower. Just today, we received an offer on Lot #1 of Heartland Ranch, with a contingency that the cell tower application being rejected. Studies support a double-digit decline in property value when adjacent to cell towers, but I'm in a position where I'm seeing the impact being far greater for my family.

The existing cell tower location ½ mile west of the proposed new location is less than 50' tall, but it's also camouflaged as a silo tower with only one small band of antennas. What data supports the need to relocate that tower and double the height to 100' and quadruple the antennas by over 400%? What is being proposed is beyond obnoxious with no thought and consideration to impact it's having on the surrounding property equity.

Ada County and Eagle city are special places, which require smart and innovate solutions to infrastructure to maintain the quality of living and property value. Brute force, lazy engineering only focused on revenue/profit of tower companies with no thought on community impact is criminal and your citizens deserve better.

Thank you for your consideration,

Brad & Allie Bentley



RE-24 VACANT LAND

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.
IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.
NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF HABITABILITY, AGREEMENTS OR REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN SHALL BE BINDING UPON EITHER PARTY.



1 ID# HeartlandRanchLot1 DATE 03/02/2022

2 LISTING AGENCY Better Homes & Gardens 43North Office Phone # 208-381-8000 Fax # 888-452-5257

3 Listing Agent Aryn Sampson E-Mail aryn-sampson@43re.com Phone # 208-631-0641

4 SELLING AGENCY Better Homes & Gardens 43North Office Phone # 208-381-8000 Fax # 888-452-5257

5 Selling Agent Aryn Sampson E-Mail aryn-sampson@43re.com Phone # 208-631-0641

6 1. BUYER: Eric H. Vehlou Katrina L. Vehlou

7 (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to

8 as "PROPERTY" COMMONLY KNOWN AS 3591 Hope Valley Ln

9 Eagle City Ada County, ID, Zip 83669 legally described as:

10 Lot 1 BLK 1 of Heartland Ranch SUB

11 OR Legal Description Attached as exhibit _____ (Exhibit must accompany original offer and be signed or initialed by

12 BUYER and SELLER.)

13 2. \$ 1,035,000 PURCHASE PRICE: One Million Thirty-Five Thousand DOLLARS,

14 payable upon the following TERMS AND CONDITIONS (not including closing costs):

15 This offer is contingent upon the sale, refinance, and/or closing of any other property ☒ Yes ☐ No

16 3. FINANCIAL TERMS: Note: A+D+E+F must add up to total purchase price.

17 (A) \$ 20,000 EARNEST MONEY: Twenty Thousand Seven Hundred DOLLARS

18 BUYER hereby offers the above stated amount as Earnest Money which shall be credited to BUYER upon closing. Earnest Money is/will be:

19

Evidenced by:	Held By:	Delivered:	Deposited:
<input type="checkbox"/> Cash	<input checked="" type="checkbox"/> Responsible Broker	<input type="checkbox"/> With Offer	<input checked="" type="checkbox"/> Upon Receipt and Acceptance
<input checked="" type="checkbox"/> Personal Check	<input type="checkbox"/> Closing Company	<input checked="" type="checkbox"/> Within <u>3</u> business days (three [3] if left blank) of acceptance.	<input type="checkbox"/> Upon Receipt Regardless of Acceptance
<input type="checkbox"/> Cashier's Check	<input type="checkbox"/> See Section 5	<input type="checkbox"/> See Section 5	<input type="checkbox"/> See Section 5
<input type="checkbox"/> Wire/Electronic Transfer			
<input type="checkbox"/> Note			
<input type="checkbox"/> See Section 5			

THE RESPONSIBLE BROKER SHALL BE: Jeff Martel

(B). ALL CASH OFFER: ☒ NO ☐ YES If this is an all cash offer do not complete Sections 3D and 3E, fill blanks with N/A (Not Applicable). IF CASH OFFER BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days (five [5] if left blank) from the date of acceptance of this agreement by all parties written confirmation of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or financial statement.

(C) Cash proceeds from another sale: ☐ Yes ☐ No (No if left blank)

(D). \$ 311,440.00 NEW LOAN PROCEEDS: If a number greater than zero appears in the preceding blank then this Agreement is contingent upon BUYER obtaining the following financing:

FIRST LOAN of \$ 311,440.00 not including mortgage insurance, through ☐ FHA, ☐ VA, ☒ CONVENTIONAL, ☐ IHFA, ☐ RURAL DEVELOPMENT, ☐ OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____ In the event BUYER is unable, after exercising good faith efforts, to obtain the indicated financing, BUYER's Earnest Money shall be returned to BUYER.

SECOND LOAN of \$ _____ through ☐ FHA, ☐ VA, ☐ CONVENTIONAL, ☐ IHFA, ☐ RURAL DEVELOPMENT, ☐ OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: ☐ Fixed Rate ☐ Other _____

LOAN APPLICATION: BUYER ☐ has applied OR ☒ shall apply for such loan(s). Within 10 business days (ten [10] if left blank) of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios, and evidence of sufficient funds and/or proceeds necessary to close transaction in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If an appraisal is required by lender, the PROPERTY must appraise at not less than purchase price or BUYER'S Earnest Money shall be returned at BUYER'S request unless SELLER, at SELLER'S sole discretion, agrees to reduce the purchase price to meet the appraised value, in which case SELLER shall be entitled to a copy of the appraisal and shall have the option to notify BUYER of any price reduction. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER. FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the PROPERTY described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the PROPERTY of not less than the sales price as stated in the contract. The purchaser shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property are acceptable.

BUYER'S Initials (EV) (KV) Date 03/03/2022

SELLER'S Initials (BB) (_____) Date 03/03/2022

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PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

(E). \$ ADDITIONAL FINANCIAL TERMS:

- ☐ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 5).
☐ Additional financial terms are contained in a **FINANCING ADDENDUM** of same date, attached hereto, signed by both parties.

(F). \$ 202,850.00 APPROXIMATE FUNDS DUE AT CLOSING: Cash at closing, not including closing costs, to be paid by BUYER at closing, in GOOD FUNDS, which includes: **cash, electronic transfer funds, certified check or cashier's check.**

If such written confirmation required in 3(B) or 3(D) is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within 3 business days (three [3] if left blank) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval or waived the right to receive written confirmation and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld.

4. SATISFACTION AND/OR REMOVAL OF ALL CONTRACT CONTINGENCIES: Unless specifically stated below all contingencies in this Agreement and in any counter offers, addendums or amendments are required to be satisfied, removed or exercised no later than 30 business days (five [5] if left blank) prior to the stated closing date or any extension thereof. Failure of either BUYER or SELLER to exercise any contingency by this deadline shall constitute an unconditional waiver of said contingency. Unless this Agreement is properly terminated under a specific provision of this Agreement prior to the contingency deadline stated above then all parties shall conclusively be deemed to have elected to proceed with the transaction and all Earnest Money shall become nonrefundable except upon an instance of SELLER's default. This contingency deadline shall not apply to the following contingency(ies): _____

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies. The contingency deadline shall not apply to the following contingencies;

1. Recorded & funded sale of Buyer's current home located at 1659 E Crowne Pointe Drive Eagle, ID
2. Denial of pending application regarding location and/or size of cell tower on Lanewood Rd & Beacon Light.

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are **INCLUDED IN THE PURCHASE PRICE** (unless excluded below) and shall be transferred free of liens and in as-is condition. Unless specifically excluded below, the irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY are included in the purchase price and shall include (1) all personal property owned by the SELLER and used primarily in connection with the PROPERTY, and (2) all rights and easements appurtenant to the PROPERTY. BUYER should satisfy himself/herself that the condition of the included items is acceptable. The terms stated in this section shall control over any oral statements, prior written communications and/or prior publications including but not limited to MLS listings and advertisements. Personal property described in a property disclosure report shall not be inferred as to be included unless specifically set forth herein.

ITEMS SPECIFICALLY INCLUDED IN THIS SALE: _____

ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: _____

7. "NOT APPLICABLE" DEFINED: The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

8. INSPECTION:

(A). BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

SIZE: Square footage and lot size. (Any numerical statements regarding these items are APPROXIMATION ONLY, and have not been and will not be verified and should not be relied upon by BUYER.)

1. **LINES AND BOUNDARIES:** Property lines and boundaries, septic, and leach lines (Fences, walls, hedges, and other natural or constructed barriers or markers do not necessarily identify true property boundaries. Property lines may be verified by surveys.)
2. **ZONING AND LAND USE:** Inquiries, investigations, studies or any other means concerning past, present or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the PROPERTY, BUYER's intended use of the PROPERTY, future development, zoning, building, size, governmental permits and inspections. Both parties are advised that Broker does not guarantee the status of permits, zoning or code compliance. The parties are to satisfy themselves concerning these issues.
3. **UTILITIES AND SERVICE:** Availability, costs, and restrictions of utilities and services, including but not limited to, sewage, sanitation, water, electricity, gas, telephone, cable TV, internet and drainage.
4. **UTILITIES, IMPROVEMENTS & OTHER RIGHTS:** SELLER represents that the PROPERTY does have the following utilities, improvements, services and other rights available (describe availability): _____

5. **HAZARDOUS MATERIALS:** The real estate broker(s) or their agents in this transaction have no expertise with respect to toxic waste, hazardous materials or undesirable substances. BUYERS who are concerned about the presence of such materials should have the PROPERTY inspected by qualified experts. BUYER acknowledges that he/she has not relied upon any representations by either the Broker or the SELLER with respect to the condition of the PROPERTY that are not contained in this Agreement or in any disclosure statements.

6. **TAX LIABILITY:** The BUYER and SELLER acknowledge that they have not received or relied upon any statements or representations by the Broker with respect to the effect of this transaction upon BUYER's or SELLER's tax liability.

(B). BUYER chooses to conduct inspections; [EB] [JB] 03/03/2022 If BUYER chooses not to conduct inspections skip the remainder of Section 8.
 BUYER'S Initials ([EB])([JB]) Date 03/03/2022 SELLER'S Initials ([EB])([JB]) Date 03/03/2022

PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

If indicated, BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at **BUYER'S expense, hereafter referred to as the "Primary Inspection."** BUYER'S inspection of the PROPERTY includes all aspects of the PROPERTY, including but not limited to neighborhood, conditions, zoning and use allowances, environmental conditions, applicable school districts and/or any other aspect pertaining to the PROPERTY or related to the living environment at the PROPERTY. Unless otherwise addressed BUYER shall, within 30 calendar days (thirty [30] if left blank) from acceptance, complete these inspections and give to SELLER written notice of disapproved items/conditions or written notice of termination of this Agreement based on an unsatisfactory inspection. Once BUYER delivers written notice to SELLER it shall end BUYER's timeframe and is irrevocable regardless of if it was provided prior to the deadline stated above. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire PROPERTY. SELLER shall make the PROPERTY available for all inspections. BUYER shall keep the PROPERTY free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. **No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER, unless required by local law.** BUYER'S acceptance of the condition of the PROPERTY is a contingency of this Agreement.

(C) SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1. If BUYER **does not** within the strict time period specified give to SELLER written notice of disapproved items/conditions or written notice of termination of this Agreement, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections.

2. If BUYER **does** within the strict time period specified give to SELLER written notice of termination of this Agreement based on an unsatisfactory inspection, the parties will have no obligation to continue with the transaction and the Earnest Money shall be returned to BUYER.

3. If BUYER **does** within the strict time period specified give to SELLER written notice of disapproved items, **it shall end BUYER's timeframe for inspections and is irrevocable.** BUYER shall provide to SELLER pertinent section(s) of written inspection reports upon request, if applicable. Upon receipt of written notice SELLER shall have 3 business days (three [3] if left blank) in which to respond in writing. SELLER, at SELLER's option, may agree to correct the items as requested by BUYER in the notice or may elect not to do so. If SELLER agrees in writing to correct items/conditions requested by BUYER, then both parties agree that they will continue with the transaction and proceed to closing. Otherwise, immediately upon a written response from SELLER that rejects BUYER's requests, in whole or in part, **said response is irrevocable** without consent of BUYER and BUYER may proceed under 8(C)(4) below.

4. If SELLER does not agree to correct BUYER'S disapproved items/conditions within the strict time period specified, or SELLER does not respond in writing within the strict time period specified above, then within 3 business days (three [3] if left blank) the BUYER has the option of **1)** negotiating with SELLER to obtain a modification of SELLER'S response **2)** proceeding with the transaction without the SELLER being responsible for correcting the disapproved items/conditions stated in that particular BUYER'S notice, or **3)** giving the SELLER written notice of termination of this agreement in which case Earnest Money shall be returned to BUYER. If within the strict time period specified in this paragraph BUYER does not obtain a modification of SELLER'S response or give written notice of cancellation, BUYER shall conclusively be deemed to have elected to proceed with the transaction without the repairs or corrections to the disapproved items/conditions stated in that particular BUYER'S notice.

9. SELLER DISCLOSURES. Within 3 business days (two [2] if left blank) from acceptance SELLER shall disclose, and provide copies if available, to BUYER the following:

- (a) any studies and/or reports that have previously been performed in connection with or for the PROPERTY, including without limitation, environmental reports, soil studies, seismic studies, site plans and surveys;
- (b) any notices relating to a violation of applicable law including, without limitation, environmental law and laws relating to land use, zoning or compliance with building codes;
- (c) SELLER shall make available for inspection all documents in SELLER's possession relating to ownership, operation, renovation or development of the PROPERTY including: statements for real estate tax assessments and utilities for the last year; property management agreements; leases or other occupancy agreements; maintenance records, accounting records and audit records for the past year; and installment purchase contracts or leases of personal property used in connection with the PROPERTY; and
- (d) all other documents described in any Addenda or Counteroffer to this Agreement.

10. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects, which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

11. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the buyer additional coverage.

(A). PRELIMINARY TITLE COMMITMENT AND CC&Rs: Within 6 business days (six [6] if left blank) of final acceptance of all parties, ~~SELLER~~ or ☐ BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said PROPERTY **and** a copy of any covenants, conditions and restrictions (CC&Rs) applicable to the PROPERTY. BUYER shall have 2 business days (two [2] if left blank) after receipt of the preliminary commitment and CC&Rs, within which to object in writing to the condition of the title or CC&Rs as set forth in the documentation provided. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title and CC&Rs. If the title of said PROPERTY is not marketable, and cannot be made so within 2 business days (two [2] if left blank) after SELLER'S receipt of a written objection and statement of defect from BUYER, or if BUYER objects to the CC&Rs, then BUYER'S Earnest Money deposit shall be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any. Nothing contained herein shall constitute a waiver of BUYER to challenge CC&R terms directly with a homeowner's association after closing.

(B). TITLE COMPANY: The parties agree that Title One Title Company located at 868 E Riverside Dr #100 Eagle ID 83616 shall provide the title policy and preliminary report of commitment.

BUYER'S Initials (EV)(KV) Date 03/03/2022 SELLER'S Initials (BB)(BB) Date 03/03/2022

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PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

(C). **STANDARD COVERAGE OWNER'S POLICY:** SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. **The risk assumed by the title company in the standard coverage policy is limited to matters of public record.** BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing company in writing and pay any increase in cost unless otherwise provided herein.

(D). **EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy):** The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. **This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.**

12. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, Bylaws and rules and regulations of the Association. BUYER is further aware that the PROPERTY may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☒ Yes ☐ No ☐ N/A. Association fees/dues are \$ 650 per Quarter.
☐ BUYER ☐ SELLER ☐ Shared Equally ☒ N/A to pay Association SET UP FEE of \$ _____ at closing.
☐ BUYER ☐ SELLER ☐ Shared Equally ☒ N/A to pay Association PROPERTY TRANSFER FEES of \$ _____ at closing.
☐ BUYER ☐ SELLER ☐ Shared Equally ☒ N/A to pay Association STATEMENT OF ACCOUNT FEE of \$ _____ at closing. Association Fees are governed by Idaho Code 55-116 and 55-1507.

13. INTERSTATE LAND SALES FULL DISCLOSURE ACT: This Vacant Land Real Estate Purchase and Sale Agreement is NOT intended to be used for situations in which Seller owns and is selling one hundred (100) or more lots. Properties containing one hundred (100) or more lots for sale may be subject to the reporting and disclosure requirements of the Interstate Land Sales Full Disclosure Act ("Act"), 15 USC § 1701 et seq. If you have questions regarding this Act, contact your attorney before signing. Any contract or agreement for the sale or lease of a lot subject to the Act may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable law. Any contract or agreement for the sale or lease of a lot for which a property report is required by the Act and the property report has not been given to the purchaser or lessee in advance of his or her signing such contract or agreement, such contract or agreement may be revoked at the option of the purchaser or lessee within two (2) years from the date of such signing.

14. FARM/CROPS/TIMBER RIGHTS: SELLER, or any tenant of SELLER, shall be allowed to harvest, sell or assign any annual crops which have been planted on the PROPERTY prior to the date of this Contract, even though said harvest time may occur subsequent to the date of the settlement of this contract, unless otherwise agreed by attached addendum. If the crop consists of timber, then neither SELLER nor any tenant of SELLERS shall have any right to harvest the timber unless the right to remove same shall be established by an attached addendum. Notwithstanding the provisions hereof, any tenant who shall be leasing the PROPERTY shall be allowed to complete the harvest of any annual crops that have been planted prior to the date of Contract Acceptance as previously agreed between SELLER and Tenant. **ANY AND ALL SUCH TENANT AGREEMENTS ARE TO BE ATTACHED.**

15. NOXIOUS WEEDS: BUYER of the PROPERTY in the State of Idaho should be aware that some properties contain noxious weeds. The laws of the State of Idaho require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For more information concerning noxious weeds and your obligations as an owner of property, contact your local county extension office.

16. MINERAL RIGHTS: Any and all mineral rights appurtenant to the PROPERTY, and owned by SELLER, are included in and are part of the sale of this PROPERTY, and are not leased or encumbered, unless otherwise agreed to by the parties in writing.

17. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch rights, and the like, if any, appurtenant to the PROPERTY, and owned by SELLER, are included in and are a part of the sale of this PROPERTY, and are not leased or encumbered, unless otherwise agreed to by the parties in writing.

18. RIGHT TO FARM: BUYER acknowledges Idaho's right to farm statutes codified in Title 22, Chapter 45 which states a preference for, and protects, agricultural land use by limiting certain nuisances.

19. RISK OF LOSS OR NEGLECT: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially damaged by fire, neglect, or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

20. BUSINESS DAYS: A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real PROPERTY is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code §73-108. If the time in which any act required under this agreement is to be performed is based upon a business day calculation, then it shall be computed by excluding the calendar day of execution and including the last business day. The first business day shall be the first business day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

21. CALENDAR DAYS: A calendar day is herein defined as Monday through Sunday, midnight to midnight, in the local time zone where the subject real PROPERTY is physically located. A calendar day shall include any legal holiday. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day, thus the first day shall be the day after the date of execution. Any reference to "day" or "days" in this agreement means the same as calendar day, unless specifically enumerated as a "business day."

22. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby.

23. TRANSMISSION OF DOCUMENTS: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, the LENDER, the Closing company, or either broker, the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document. SELLER and BUYER

BUYER'S Initials (EV) (JB) Date 03/03/2022

SELLER'S Initials (BB) () Date 03/03/2022

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PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

consent to conduct the transaction referenced herein, when not prohibited by law, by and through electronic means in accordance with Idaho's Uniform Electronic Transaction Act and Idaho Code § 54-2052. Unless specifically stated otherwise, delivery of any document, notice or communication to a Broker or real estate licensee working on behalf of a party hereto, shall constitute delivery to that party.

24. WIRE TRANSFER WARNING: Electronic means of transferring money (i.e. ETF, wire transfer, electronic check, direct deposit, etc...) are subject to sophisticated cyber fraud attacks. These attacks are even more prevalent in real estate transactions due to the large sums of money being exchanged. All parties are advised that Brokerage will not provide electronic transfer instructions by e-mail. Following money transfer instructions contained in an email from any party is inherently dangerous and should be avoided. All parties agree that if any party uses, or authorizes the use of, electronic transfer of funds in a transaction all parties hereby hold the Brokerages, their agents, and the designated title and escrow company harmless from any and all claims arising out of inaccurate transfer instructions, fraudulent interception of said funds and/or any other damage relating to the conduct of third parties influencing the transfer process or stealing funds.

25. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

26. ENTIRE AGREEMENT: This Agreement including any addendums or exhibits, constitutes the entire Agreement between the parties respecting the matters set forth and supersedes all prior Agreements between the parties respecting such matters. This Agreement may be modified only by a written agreement signed by each of the parties.

27. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2083(6)(d), a "sold" price of real property is not confidential client information.

28. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

29. ADDITIONAL CONTINGENCIES AND COSTS: The closing of this transaction is contingent upon written satisfaction or waiver of the contingencies listed in the "contingencies" column below. In addition, the parties shall satisfy all contingencies set forth in this section by close of business (Date): _____ unless otherwise agreed to by the parties in writing. The parties agree to pay the following costs **immediately when due and regardless of transaction closing, unless otherwise indicated.** These costs shall be paid by the indicated party regardless of whether or not the transaction closes; if the transaction fails to close due to breach of a party, any costs paid by the non-breaching party may be recovered as damages. None of the costs to be paid by the parties in this section creates an inspection or performance obligation other than strictly for the payment of costs unless otherwise stated below. There may be other costs incurred in addition to those set forth below. Such costs may be required by the lender, by law, or by other such circumstances. Requested tests/inspection reports as indicated below shall be provided to the other party within _____ business days (ten [10] if left blank) prior to closing.

COSTS	BUYER	SELLER	Shared Equally	N/A	CONTINGENCIES	BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	X				Environmental Inspection (Phase 1)				X
Long Term Escrow Fees			X		Environmental Inspection (Phase 2)				X
Closing Escrow Fee			X		Environmental Inspection (Phase 3)				X
Survey				X	PERC Test				X
Shall be ordered by: <input type="checkbox"/> BUYER <input type="checkbox"/> SELLER				X	Zoning Variance				X
Flood Certification/Tracking Fee				X	Soil(s) Test(s)				X
Title Ins. Standard Coverage Owner's Policy		X			Hazardous Waste Report(s)				X
Title Ins. Extended Coverage Lender's Policy – Mortgagee Policy	X				Domestic Well Water Potability Test				X
Additional Title Coverage				X	Shall be ordered by: <input type="checkbox"/> BUYER <input type="checkbox"/> SELLER				X
Water Rights/Shares Transfer Fee			X		Domestic Well Water Productivity Test				X
Attorney Contract Preparation or Review Fee				X	Shall be ordered by: <input type="checkbox"/> BUYER <input type="checkbox"/> SELLER				X
					Septic Inspections				X
					Shall be ordered by: <input type="checkbox"/> BUYER <input type="checkbox"/> SELLER				X
					Septic Pumping				X
					Shall be ordered by: <input type="checkbox"/> BUYER <input type="checkbox"/> SELLER				X

Upon closing SELLER agrees to pay ☐ n/a % of the purchase price OR ☐ \$ n/a (dollar amount) (N/A if left blank) as a SELLER concession. This can be used toward lender-approved BUYER's closing costs, lender fees, and prepaid costs which include but are not limited to those items in BUYER columns marked below. This concession can also be used for any other expense not related to financing at the BUYER's discretion.

30. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker, provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed-to commission. SELLER and BUYER specifically agree that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed-to commission.

BUYER'S Initials (CA) (SC) Date 03/03/2022

SELLER'S Initials (BB) (BB) Date 03/03/2022

PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. However, in the event the parties mutually agree in writing that the Earnest Money shall become non-refundable, said agreement shall not be considered an election of remedies by SELLER and the non-refundable Earnest Money shall not constitute liquidated damages; nor shall it act as a waiver of other remedies, all of which shall be available to SELLER; it may however be used to offset SELLER'S damages. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER's Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

31. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination or breach of this Agreement, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing company, Broker may reasonably rely on the terms of this Agreement or other written documents signed by both parties to determine how to disburse the disputed money. However, Broker or closing company shall not be required to take any action but may await any proceeding, or at Broker's or closing company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover all costs which were incurred as a result of the dispute including, but not limited to, reasonable attorney's fees. If either parties' Broker incurs attorney's fees as a result of any Earnest Money dispute, whether or not formal legal action is taken, said Broker is entitled to recover actual fees incurred from either BUYER or SELLER.

32. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If a party is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind the party.

35. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing company all funds and instruments necessary to complete this transaction. **Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER.** The closing shall be no later than (Date) 5/31/2022

The parties agree that the **CLOSING COMPANY** for this transaction shall be Title One located at 868 E Riverside Dr #100 Eagle ID 83616. If a long-term escrow /collection is involved, then the long-term escrow holder shall be Christie Gerber

36. CONDITION OF PROPERTY AT CLOSING: Upon closing, BUYER agrees to purchase the PROPERTY in **as-is-condition** with all faults and with no further repairs required, subject only to the representations and warranties stated herein, or unless otherwise agreed upon by the parties in writing. Upon Closing, BUYER will assume all obligations with respect to the PROPERTY.

37. POSSESSION: BUYER shall be entitled to possession ☒ upon closing or ☐ date 5/31/2022 at 12:00 ☐ am ☐ pm.

38. PRORATIONS: Property taxes and water assessments (using the last available assessment as a basis), rents collected, interest and reserves, liens, encumbrances or obligations assumed, and utilities shall be prorated ☒ upon closing or as of ☐ date _____. BUYER to reimburse SELLER for fuel in tank ☐ Yes ☐ No ☐ N/A. Dollar amount may be determined by SELLER's supplier.

39. SECTION 1031 TAX DEFERRED EXCHANGE: If applicable, each party shall cooperate with the other Party in effectuating an exchange under IRS Section 1031; provided however, that the other Party's cooperation shall be conditioned on the following: (a) the exchange shall be at no additional liability and/or cost to the other Party; (b) the exchange shall not delay Settlement or Closing; and (c) the other Party shall not be required to acquire title to any proposed exchange properties to accommodate an exchange. The exchanging party shall indemnify, defend and hold the other Party harmless from and against all claims, demands, costs and expenses which that Party may sustain as a result of the actual or attempted 1031 exchange.

40. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☐ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☒ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☐ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☒ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (EV) (KV) Date 03/03/2022

SELLER'S Initials (BB) (_____) Date 03/03/2022

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PROPERTY ADDRESS: 3591 Hope Valley Ln Eagle ID 83669 ID#: HeartlandRanchLot1

41. ASSIGNMENT: This Agreement and any rights or interests created herein ☐ may ☒ may not be sold, transferred, or otherwise assigned.

42. ACCEPTANCE: This offer may be revoked at any time prior to acceptance and is made subject to acceptance on or before
(Date) 03/04/22 at (Local Time in which PROPERTY is located) 5:00 ☐ A.M. ☒ P.M.

43. BUYER'S SIGNATURES:

☐ SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

☐ SEE ATTACHED BUYER'S EXHIBIT(S): _____ (Specify number of BUYER exhibit(s) attached.)

☒ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.

Eric H. Vehlow

BUYER Signature 03/03/2022 3:21:28 AM MST 9:21 AM

BUYER (Print Name) Eric H. Vehlow

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____ E-Mail Eric.Vehlow@lambweston.com

City _____ State _____ Zip _____ Fax # _____

☒ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.

Katrina L. Vehlow

BUYER Signature 03/03/2022 9:16:17 AM MST 9:16 AM

BUYER (Print Name) Katrina L. Vehlow

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____ E-Mail kvehlow@gmail.com

City _____ State _____ Zip _____ Fax # _____

44. SELLER'S SIGNATURES: On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ACCEPTANCE OF ATTACHED COUNTER OFFER

☐ COUNTER OFFER INCLUDES ATTACHED ADDENDUM(S) # _____

☐ COUNTER OFFER INCLUDES ATTACHED EXHIBIT(S) # _____

☒ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

Bradley Bentley

SELLER Signature 03/03/2022 8:48:14 AM MST 8 AM

SELLER (Print Name) Bradley Bentley

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____ E-Mail brad.bentley@gmail.com

City _____ State _____ Zip _____ Fax # _____

☐ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

SELLER Signature _____ SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M. Phone # _____ Cell # _____

Address _____ E-Mail _____

City _____ State _____ Zip _____ Fax # _____

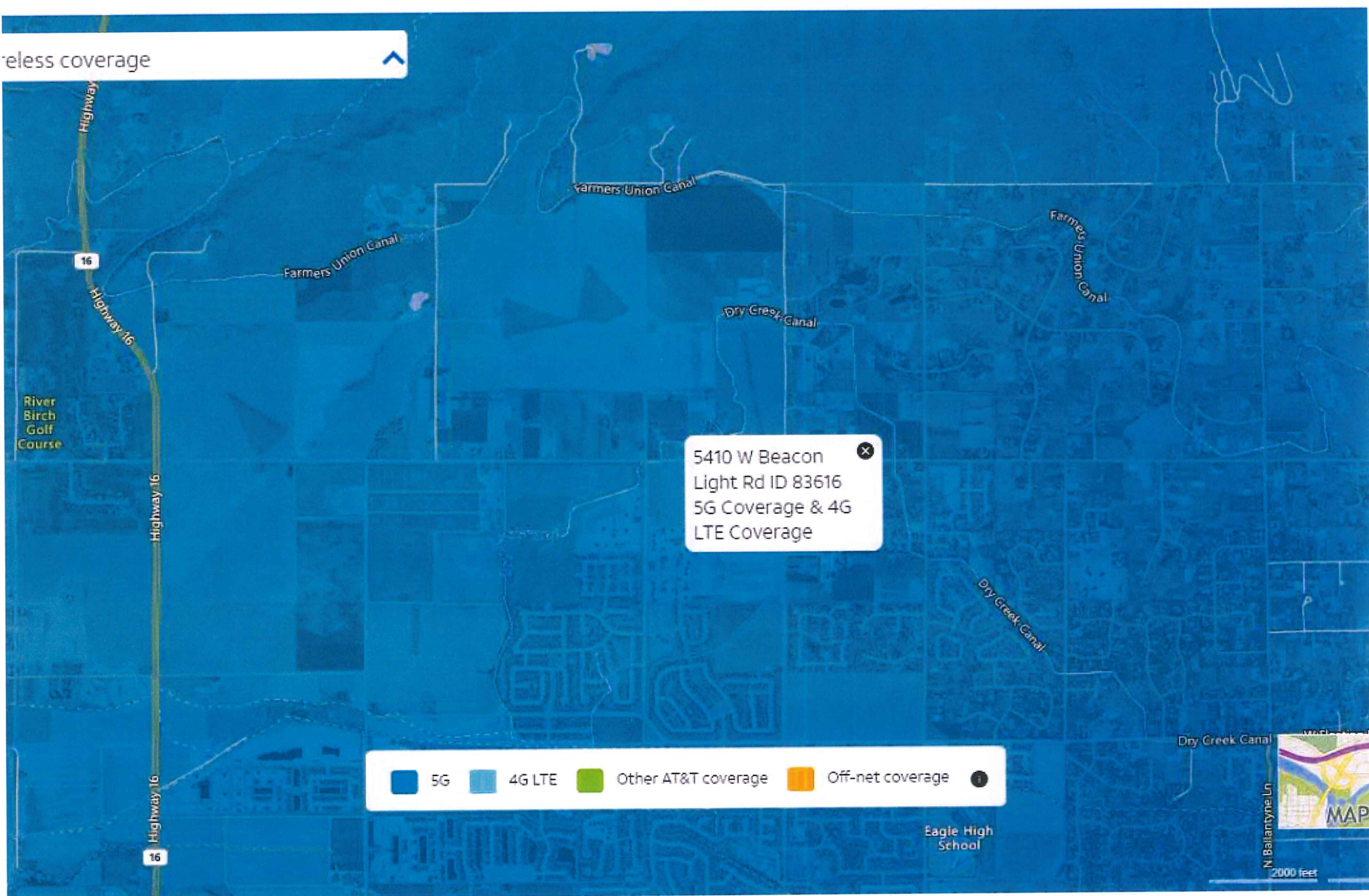
LATE ACCEPTANCE

If acceptance of this offer is received after the time specified, it shall not be binding on the BUYER unless BUYER approves of said acceptance within _____ calendar days (three [3] if left blank) by BUYER initialing HERE (____)(____) Date _____. If BUYER timely approves of SELLER's late acceptance, an initialed copy of this page shall be immediately delivered to SELLER.

BUYER'S Initials (____)(____) Date _____ SELLER'S Initials (____)(____) Date _____

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EXHIBIT E



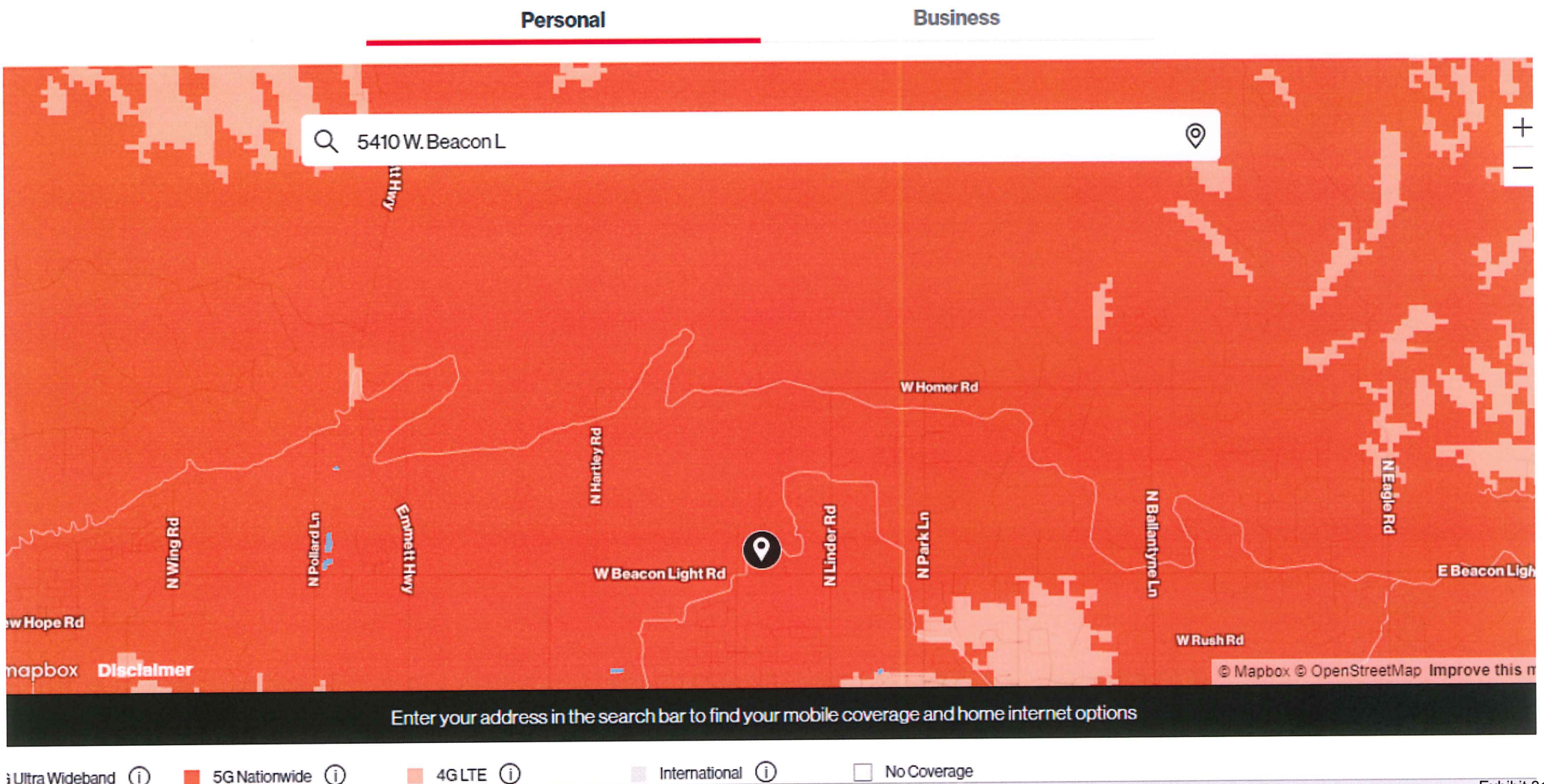


EXHIBIT F

**MOBILITY FUND PHASE II
COVERAGE MAPS INVESTIGATION
STAFF REPORT**

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	11
III. COMPARATIVE ANALYSIS OF THE MF-II 4G LTE COVERAGE DATA	37
IV. UPLINK CHANNEL INQUIRIES	44
V. MOBILE SPEED TESTING AND ANALYSIS OF SPEED TEST DATA	52
A. Test Methodology.....	55
B. Drive Test Results.....	59
C. Stationary Test Results	70
VI. CONCLUSIONS.....	73
APPENDIX A – FORM 477 FILERS THAT SUBMITTED MF-II 4G LTE COVERAGE DATA	
APPENDIX B – ADDITIONAL FINDINGS FROM THE MF-II CHALLENGER DATA	
APPENDIX C – RESOURCES	

I. INTRODUCTION

1. Bridging the digital divide is the Federal Communications Commission’s top priority, and accurate broadband deployment data are critical to this mission. As part of the Commission’s ongoing effort to reform universal service funding of mobile wireless services and focus subsidies on unserved areas rather than on areas that already have service, the Commission unanimously adopted a new data collection of 4G Long-Term Evolution (LTE) mobile broadband coverage maps and a challenge process to determine areas eligible for support in the Mobility Fund Phase II (MF-II) auction. The largest mobile providers supported both this data collection and the challenge process. After mobile providers submitted coverage maps to the Commission and during the challenge process, some parties raised concerns regarding the accuracy of the maps submitted by providers. Based on these parties’ complaints and its own review of the record, staff became concerned that maps submitted by Verizon, U.S. Cellular, and T-Mobile overstated their coverage and thus were not accurate reflections of actual coverage.

2. Mobile providers are responsible for submitting accurate coverage maps in accordance with the Commission’s rules and orders. In response to these concerns and based upon a preliminary staff review of the challenger data, on December 7, 2018, the Commission launched an investigation into whether one or more major mobile providers violated the requirements of the one-time collection of coverage data. The investigation was led by the Rural Broadband Auctions Task Force in coordination with the Office of Economics and Analytics, Enforcement Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and the Office of Engineering and Technology. Commission staff initially requested information directly from several providers in order to understand providers’ mapping processes, and later issued subpoenas to Verizon and U.S. Cellular.

3. The Commission dispatched Enforcement Bureau field agents to conduct speed tests of the Verizon, U.S. Cellular, and T-Mobile networks. Commission field agents measured on-the-ground network performance in 12 states across six drive test routes,¹ conducting a total of 24,649 tests and driving nearly 10,000 miles in the course of this testing. Field agents also conducted 5,916 stationary speed tests at 42 distinct locations in nine states. Commission staff analyzed the speed test data from both the staff tests and MF-II challengers' speed tests and compared these test data with the maps submitted for the MF-II data collection as well as with maps providers had previously submitted to the Commission in other proceedings. This report documents the steps and processes undertaken by staff to investigate the coverage maps, analyzes speed tests taken by staff and submitted by challengers, and explains why discrepancies may exist between the submitted maps and actual coverage.

4. Through the investigation, staff discovered that the MF-II coverage maps submitted by Verizon, U.S. Cellular, and T-Mobile likely overstated each provider's actual coverage and did not reflect on-the-ground performance in many instances. Only 62.3% of staff drive tests achieved at least the minimum download speed predicted by the coverage maps—with U.S. Cellular achieving that speed in only 45.0% of such tests, T-Mobile in 63.2% of tests, and Verizon in 64.3% of tests. Similarly, staff stationary tests showed that each provider achieved sufficient download speeds meeting the minimum cell edge probability in fewer than half of all test locations (20 of 42 locations). In addition, staff was unable to obtain any 4G LTE signal for 38% of drive tests on U.S. Cellular's network, 21.3% of drive tests on T-Mobile's network, and 16.2% of drive tests on Verizon's network, despite each provider reporting coverage in the relevant area.

5. The Commission and the public must be able to rely on the deployment data that providers submit to the Commission. Inaccurate data jeopardize the ability of the Commission to focus our limited universal service funds on the unserved areas that need the most support. Accordingly, and considering the findings in this report, the Rural Broadband Auctions Task Force makes the following recommendations:

6. *First*, the Commission should terminate the MF-II Challenge Process. The MF-II coverage maps submitted by several providers are not a sufficiently reliable or accurate basis upon which to complete the challenge process as it was designed. The MF-II Challenge Process was designed to resolve coverage disputes regarding generally reliable maps; it was not designed to correct generally overstated coverage maps.

7. *Second*, the Commission should release an Enforcement Advisory on broadband deployment data submissions, including a detailing of the penalties associated with filings that violate federal law, both for the continuing FCC Form 477 filings and the new Digital Opportunity Data Collection. Overstating mobile broadband coverage misleads the public and can misallocate our limited universal service funds, and thus it must be met with meaningful consequences.

8. *Third*, the Commission should analyze and verify the technical mapping data submitted in the most recent Form 477 filings of Verizon, U.S. Cellular, and T-Mobile to determine whether they meet the Form 477 requirements. Staff recommends that the Commission assemble a team with the requisite expertise and resources to audit the accuracy of mobile broadband coverage maps submitted to the Commission. The Commission should further consider seeking appropriations from Congress to carry out drive testing, as appropriate. While Form 477 currently affords providers significant discretion in

¹ Although staff focused its testing on these six drive test routes in particular states, some tests were taken in neighboring states along several test routes. Specifically, a portion of tests were taken in Arizona on the New Mexico test route; in Kansas, New Mexico, and Texas on the Oklahoma test route; in Wyoming and North Dakota on the Montana test route; and in Massachusetts and New Hampshire on the Vermont test route. Tests on the Alabama and Arizona drive test routes were taken entirely within those states.

determining the extent of their mobile broadband coverage, this discretion does not encompass reporting inaccurate mobile coverage across extended areas in which consumers cannot receive any wireless signal whatsoever.

9. *Fourth*, the Commission should adopt policies, procedures, and standards in the Digital Opportunity Data Collection rulemaking and elsewhere that allow for submission, verification, and timely publication of mobile broadband coverage data. Mobile broadband coverage data specifications should include, among other parameters, minimum reference signal received power (RSRP) and/or minimum downlink and uplink speeds, standard cell loading factors and cell edge coverage probabilities, maximum terrain and clutter bin sizes, and standard fading statistics. Providers should be required to submit actual on-the-ground evidence of network performance (e.g., speed test measurement samplings, including targeted drive test and stationary test data) that validate the propagation model used to generate the coverage maps. The Commission should consider requiring that providers assume the minimum values for any additional parameters that would be necessary to accurately determine the area where a handset should achieve download and upload speeds no less than the minimum throughput requirement for any modeling that includes such a requirement.

10. Because detailed information on propagation model parameters and deployed infrastructure is necessary to fully verify the engineering assumptions inherent in mobile coverage data, the Commission should collect specific information used in the models, including the locations and specific characteristics of certain cell sites used for mobile wireless service, the modeling software used, the entire link budget, the sources of terrain and clutter data, and clutter values. The Commission should require engineering certifications of mobile broadband deployment data submissions. And the Commission should convene a workshop of stakeholders on best practices for the generation and submission of accurate mobile broadband deployment data including speed testing methodologies.

II. BACKGROUND

11. The Commission relies upon coverage maps submitted by providers in accordance with data collection rules and specifications adopted through notice and comment rulemakings. For almost two decades, the Commission has relied on FCC Form 477 to collect data on mobile services. In 2000, when the Commission first established the form, the Commission focused on subscription data at a broad level, envisioning that the data collected would help it better assess the availability of broadband services, such as high-speed Internet access service, and the development of competition for telephone service.² A decade later, the Commission recognized that such a high-level data collection, focused on subscriptions, was insufficient. Accordingly, in conjunction with reforms to reorient the Universal Service Fund toward supporting broadband deployment,³ the Commission revised Form 477 to collect data on deployments at a granular level: census blocks for fixed services and the boundaries of coverage areas for mobile services.⁴

12. The Commission adopted a framework for an MF-II auction to focus our limited universal service funds to the areas most in need of support.⁵ The Commission defined the eligible areas

² *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717, 7718, 7719, 7752-53, paras. 1, 3, 69-72 (2000).

³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17682 (2011) (*USF/ICC Transformation Order*).

⁴ *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887 (2013).

⁵ *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2157-88, paras. 16-83 (2017) (*MF-II Report & Order*).

for MF-II as those areas that lacked unsubsidized 4G LTE service.⁶ The Commission initially decided to use providers' Form 477 mobile broadband coverage data to determine which areas lack service in advance of the MF-II auction.⁷ In light of concerns raised in the record about the accuracy and suitability of providers' Form 477 submissions for use in MF-II—in particular, the absence of standardization among coverage maps, as well as the extent of areas reported on Form 477 as having 4G LTE deployed, despite numerous on-the-ground reports of a lack of mobile broadband—the Commission also established a challenge process by which certain entities could contest the coverage data.⁸ Responding to lingering concerns about whether the Commission could rely on providers' Form 477 submissions even as a starting point for a challenge process, the Commission decided to conduct a one-time, standardized collection of coverage data specifically for purposes of MF-II that would address the reliability issues with the Form 477 data.⁹

13. The process adopted by the Commission was largely based upon an industry consensus proposal to hold a one-time, standardized collection of 4G LTE coverage data, with certain modifications to the proposed standardized propagation parameters.¹⁰ Draft specifications were included in the public version of the order establishing the challenge process, and this order was released to the public in advance of the August 2017 Commission meeting. The Commission ultimately adopted a cell edge probability in the middle of the range supported in the record in order to avoid parameters for the one-time collection that would be lower than the performance requirement for winners in the MF-II auction.¹¹ The adopted specifications thus sought to avoid the possibility that bidders could win funding in the auction without having to commit to additional deployment.¹² In reaching this conclusion, the

⁶ *Id.* at 2173, para. 51.

⁷ *Id.* at 2175, para. 56 (concluding that “Form 477 data is the most reliable data currently available for the purpose of determining the coverage levels of existing mobile services”). While the Commission acknowledged the concerns raised by parties that opposed use of these data, it explained that “none of the commenters criticizing the Form 477 data has identified a better data source for moving forward expeditiously to implement MF-II.” *Id.* at 2177, para. 58.

⁸ *Id.* at 2177, para. 58 (“Recognizing that no data source – including Form 477 – will be perfectly accurate, we will utilize a challenge process to improve the accuracy of the coverage analysis underlying eligibility determinations reached in reliance on Form 477 data.”).

⁹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6299-6302, paras. 35-39 (2017) (*MF-II Challenge Process Order*).

¹⁰ *Id.* Based upon record evidence, the adopted parameters were tailored for rural areas to include an 80% cell edge probability and a 30% cell loading factor. *Id.* at 6298, 6300-01, paras. 34 n.89, 36-37 (citing support for a 70% cell edge probability and 30% cell loading factor and explaining that the adopted parameters “exceed the parameters that wireless operators typically use when deploying networks into previously-unserved areas”). Also differing from CTIA’s proposal, the specifications adopted by the Commission did not specify support for VoLTE or particular Multiple-Input Multiple-Output (MIMO) antenna configuration assumptions but did require disclosure of the modeled signal strength and range of signal loss values associated with terrain clutter. *Id.* at 6302-03, paras. 39-40 & n.111. The adopted parameters did not otherwise deviate significantly from the industry consensus proposal. *Id.* at 6302, para. 39.

¹¹ *Id.* at 6300, para. 36 (“[W]e estimate that the cell area median download speed in the cell areas associated with CTIA’s proposed parameters would be significantly in excess of 10 Mbps and therefore higher than the MF-II performance requirement.”).

¹² *Id.* (“Adopting the higher cell edge probability and cell loading factor parameters in CTIA’s proposal, however, would increase the likelihood that MF-II funds would be directed to areas that already meet the MF-II performance requirement of a 10 Mbps median download speed.”).

Commission sought to “appropriately balance the concern of misrepresenting coverage with our priority of directing our limited universal service funds to areas most in need of support.”¹³

14. Under the adopted framework, providers would first submit qualified, 4G LTE coverage data as part of the one-time collection, and from these data, combined with current subsidy data from the Universal Service Administrative Company (USAC), the Commission would release a map of areas presumptively eligible for MF-II support.¹⁴ Parties that believed the coverage data were inaccurate would next be able to conduct on-the-ground speed testing and submit results to the Commission during the challenge process.¹⁵ Providers whose coverage data were challenged would then have an opportunity to respond,¹⁶ and ultimately challenges would be adjudicated by Commission staff.¹⁷ Lastly, the Commission would release a final map of eligible areas that reflected the results of successful challenges.¹⁸ This final map of eligible areas would ultimately serve as the basis for where support would be offered in the MF-II auction.¹⁹

15. The data specifications adopted for the one-time data collection were the most granular and standardized that the Commission had ever adopted for assessing mobile wireless coverage. The industry consensus proposal, which the adopted specifications largely mirrored, was supported by most parties in the proceeding, and no parties sought reconsideration of the Commission’s decision to use the adopted specifications to establish eligibility for MF-II funding.

16. Under the one-time data collection framework, each mobile service provider that had previously reported 4G LTE coverage as part of its Form 477 filings was required to submit and certify 4G LTE coverage maps showing where its propagation models predicted that devices would receive a download speed of at least 5 Mbps with an 80% cell edge probability and a 30% cell loading factor,²⁰ or alternatively certify that it provides no such service.²¹ In addition to these specifications, the data collection required that filers report an outdoor level of coverage, that coverage boundaries have a resolution of 100 meters or better, and that filers use an appropriate clutter factor and terrain model with a resolution of 100 meters or better.²² Providers were also required to report the propagation modeling software, spectrum band or bands, bandwidth, clutter factor categories (and associated loss value), and

¹³ *Id.* at 6301, para. 36.

¹⁴ *Id.* at 6296, para. 28; *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, 33 FCC Rcd 1985, 1987-89, paras. 4-8 (WCB/WTB 2018) (*MF-II Challenge Process Procedures PN*).

¹⁵ *MF-II Challenge Process Order*, 32 FCC Rcd at 6296-97, para. 29; *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 1989-90, para. 9.

¹⁶ *See generally MF-II Challenge Process Order*, 32 FCC Rcd at 6311-12, paras. 58-60; *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2005-13, paras. 43-65.

¹⁷ *MF-II Challenge Process Order*, 32 FCC Rcd at 6313-14, paras. 63-64.

¹⁸ *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2014, para. 67.

¹⁹ *MF-II Report & Order*, 32 FCC Rcd at 2181-82, paras. 66-67.

²⁰ *MF-II Challenge Process Order*, 32 FCC Rcd at 6287-88, 6298, paras. 11, 34. We use the term “coverage map” throughout this report to refer specifically to these predictive maps based upon standardized propagation models.

²¹ *See Instructions for Filing 4G LTE Coverage Data to Determine Areas Presumptively Eligible for Mobility Fund II Support*, Public Notice, 32 FCC Rcd 7023 (WCB/WTB 2017).

²² *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39.

signal strength used to generate the coverage maps.²³ Filers were otherwise required to use the optimized RF propagation models and parameters used in their normal course of business.²⁴

17. Providers submitting coverage maps were also required to submit a list of at least three handsets that interested parties could use in conducting speed tests on the provider's network for the MF-II challenge process, at least one of which must run the Android operating system and one of which must support industry-standard drive test software.²⁵ Along with these data, filers were required to submit a certification by a qualified engineer that the propagation maps and model details reflected the filer's coverage in accord with all required parameters at the time the map was generated.²⁶ Submissions for the one-time collection of 4G LTE coverage data were due on January 4, 2018.²⁷ In total, 48 mobile service providers filed the required data, with an additional five providers filing certifications that they did not provide 4G LTE service meeting the specifications of the data collection.²⁸

18. In February 2018, Commission staff released the map of areas presumptively eligible for MF-II support.²⁹ Using the one-time collection of qualified 4G LTE coverage data—i.e., coverage based upon mobile service providers' propagation models that predicted a download speed of at least 5 Mbps—the Commission considered any areas that did not have qualified 4G LTE coverage to be presumptively eligible for MF-II support.³⁰ In determining whether an area lacked qualified 4G LTE coverage, the Commission excluded from each provider's submitted coverage data those areas where the provider receives legacy frozen high-cost support, factoring in subsidy data from USAC.³¹

19. *MF-II Challenger Speed Tests.* After release of the map of presumptively eligible areas, mobile service providers, state, local, and Tribal government entities, and other interested parties granted a waiver were eligible to submit challenges in the challenge process via an online system operated by USAC.³² Challengers that requested access to the USAC MF-II Challenge Portal were able to access the provider-specific coverage maps, after agreeing to keep the coverage data confidential, and to file challenges to providers' coverage claims by submitting speed test data.³³ Challengers were required to conduct speed tests pursuant to a number of standard parameters using specific testing methods on the

²³ *Instructions for Filing 4G LTE Coverage Data to Determine Areas Presumptively Eligible for Mobility Fund II Support*, Public Notice, 32 FCC Rcd 7023, 7024-25 (WCB/WTB 2017) (*MF-II 4G LTE Data Collection PN*).

²⁴ *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39.

²⁵ *MF-II 4G LTE Data Collection PN*, 32 FCC Rcd at 7024-28; *Mobility Fund Phase II Challenge Process Handsets and Access Procedures for the Challenge Process Portal*, Public Notice, 32 FCC Rcd 10372, 10373-74, para. 5 (WCB/WTB 2017) (*MF-II Challenge Process Handsets and Portal Access PN*).

²⁶ *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39.

²⁷ *Responses to the Mobility Fund Phase II 4G LTE Data Collection Are Due by January 4, 2018*, Public Notice, 32 FCC Rcd 7431 (WCB/WTB 2017).

²⁸ Appendix C contains a complete list of the 48 providers that submitted MF-II 4G LTE coverage data.

²⁹ *Mobility Fund Phase II Initial Eligible Areas Map Available; Challenge Window Will Open March 29, 2018*, Public Notice, 33 FCC Rcd 2041 (WCB/WTB 2018) (*MF-II Initial Eligible Areas Map PN*).

³⁰ *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 1987, para. 4 (adopting a "methodology for generating the initial map of areas presumptively eligible for MF-II support, i.e., those areas lacking unsubsidized qualifying coverage by any provider").

³¹ *See id.* at 1987-88, paras. 4-5.

³² *MF-II Challenge Process Order*, 32 FCC Rcd at 6303-04, paras. 42-43.

³³ *Id.* at 6296-97, para. 29; *MF-II Challenge Process Handsets and Portal Access PN*, 32 FCC Rcd at 10375-76, paras. 7-10.

providers' pre-approved handset models.³⁴ The Commission adopted the requirement that challengers use one of the handsets specified by the provider primarily to avoid inaccurate measurements resulting from the use of an unsupported or outdated device—e.g., a device that does not support all of the spectrum bands for which the provider has deployed 4G LTE.³⁵ The window to file challenges was open from March 29, 2018, through November 26, 2018.³⁶

20. During the eight-month challenge window, 106 entities were granted access to the MF-II Challenge Portal.³⁷ Of the 106 entities granted access to the MF-II Challenge Portal, 38 were mobile service providers required to file Form 477 data, 19 were state government entities, 27 were local government entities, 16 were Tribal government entities, and six were other entities that filed petitions requesting, and were each granted, a waiver to participate.³⁸

21. During the window to file challenges in the MF-II challenge process, 21 challengers submitted 20.8 million speed tests across 37 states.³⁹ Of these submitted tests, the Challenge Portal validated approximately 20.5 million speed tests and these tests were thus considered to be valid challenges.⁴⁰ Challengers then certified almost 19.8 million valid tests by the close of the challenge window. Approximately 4 million speed tests fell outside of the reported 4G LTE coverage area for the provider tested—leaving approximately 15.9 million tests within areas reported as covered.⁴¹

³⁴ *MF-II Challenge Process Order*, 32 FCC Rcd at 6307-10, paras. 49-52.

³⁵ *See id.* at 6308, para. 50; *MF-II Challenge Process Handsets and Portal Access PN*, 32 FCC Rcd at 10372-73, 10375, paras. 3, 6 (declining to adopt a proposal to limit the cost of handsets because doing so would “reduce the accuracy of data collected . . . by limiting the number of handsets compatible with the latest versions of drive test software and mobile network technologies.”).

³⁶ *MF-II Initial Eligible Areas Map PN*, 33 FCC Rcd at 2041 (announcing that the challenge window would open on March 29, 2018 and conclude on August 27, 2018); *Connect America Fund; Universal Service Reform – Mobility Fund*, Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 33 FCC Rcd 8463, 8465, para. 6 (2018) (*MF-II Challenge Process Extension Order*) (extending the challenge window by 90 days to run through November 26, 2018).

³⁷ *Mobility Fund Phase II Challenge Process Portal Update: November 2018*, Public Notice, 33 FCC Rcd 11706 (WCB/WTB 2018) (*November MF-II Challenge Portal Update PN*).

³⁸ *See, e.g., Petition of the Mississippi Farm Bureau Federation for Waiver to Participate in Mobility Fund II Challenge Process*, Order, 33 FCC Rcd 8093 (WTB 2018); *see also MF-II Challenge Process Handsets and Portal Access PN*, 32 FCC Rcd at 10376, para. 10; *MF-II Challenge Process Order*, 32 FCC Rcd at 6304, para. 43 n.119. No petitions to participate in the challenge process were denied.

³⁹ *November MF-II Challenge Portal Update PN*, 33 FCC Rcd at 11706. While challenger speed tests reported a variety of measurement methods and measurement applications, the vast majority of speed tests submitted by challengers appeared to be drive tests where speed readings were recorded at frequent intervals (i.e., every 1-2 seconds) along the route driven. Three Tribal government entities submitted 4,869 speed tests across four states (Idaho, Washington, Kansas, and Nebraska).

⁴⁰ The USAC MF-II Challenge Portal system performed automated validation on speed test data submitted by challengers, rejecting as invalid any speed tests that failed specific validation checks. For example, among other checks, the system validated that each record: recorded the latitude and longitude of the test in decimal degrees with a precision of at least five decimal places; recorded a timestamp value between 6:00 AM and 12:00 AM (midnight) from Feb. 27, 2018 through the date of submission; and identified a valid combination of provider and device, per the list of providers' pre-approved handsets. *See Mobility Fund Phase II Data Specifications and Error Codes* (Mar. 20, 2018), https://www.usac.org/_res/documents/hc/pdf/MF-II-Challenge-Process_Data-Specifications.pdf.

⁴¹ In order to facilitate analysis of challenger speed test data as compared to the coverage maps, we excluded tests that fell outside the reported coverage of the tested provider. We also excluded from our calculations, tables, and

Federal Communications Commission

22. As shown in Table 1, challengers submitted speed tests of all nationwide providers' networks, as well as some regional providers' networks. These data therefore included providers other than the three (Verizon, U.S. Cellular, and T-Mobile) for which staff were most concerned with overstated coverage. When aggregated across all challengers and states, 66.4% of challenger-submitted speed tests recorded no download speed whatsoever and 87.2% of the submitted challenger speed tests recorded download speeds below the minimum speed required (5 Mbps). A detailed analysis of the challenger speed testing is provided in Appendix B, and the full dataset of those speed tests is available for download on the Commission's website.⁴²

Table 1. Within-Coverage, Certified Challenger Speed Test Results by Provider Challenged

Provider Name	Test Count Zero Mbps	Test Count > 0 & < 5 Mbps	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	5,724,909	1,453,000	1,016,652	8,194,561	12.41%
T-Mobile	2,615,362	1,158,577	170,025	3,943,964	4.31%
AT&T	1,970,651	629,014	778,859	3,378,524	23.05%
Sprint	167,767	55,419	63,197	286,383	22.07%
US Cellular	468	2,216	387	3,071	12.60%
All Other Providers	99,756	18,449	2,795	121,000	2.31%
Total	10,578,913	3,316,675	2,031,915	15,927,503	12.76%

23. Under the framework adopted by the Commission, the USAC MF-II Challenge Portal system validated challenger-submitted speed tests by overlaying a uniform grid of one square kilometer cells and determining whether challengers submitted evidence of insufficient coverage in at least 75% of the challengeable portion of each grid cell.⁴³ Across the 126,164 grid cells for which challengers submitted and certified challenges, speed tests with download speeds of less than 5 Mbps meeting the 75% coverage threshold were certified in 45,309 grid cells (36% of the challenged grid cells), and were thus presumptively successful challenges.⁴⁴

charts an additional 170 speed tests for T-Mobile and one speed test for Verizon that recorded a negative download speed or a positive signal strength RSRP, which are clearly erroneous data that were not rejected during automated system validations. An analysis quantifying anomalous and erroneous data within the challenger speed test results is included in Appendix B.

⁴² The complete challenger speed test data associated with valid, certified challenges can be downloaded at <https://www.fcc.gov/mobility-fund-phase-2#data>, alongside the file specifications for these data files. Please note that certain data fields have been masked to maintain the confidentiality of entities that submitted challenges.

⁴³ *MF-II Challenge Process Order*, 32 FCC Rcd at 6310-11, paras. 53-57.

⁴⁴ While challengers were required to submit data for all speed tests, including those showing speeds greater than or equal to 5 Mbps, the system calculated whether a challenger had submitted evidence covering 75% of the challengeable portion of each grid cell only considering tests with download speeds below 5 Mbps. *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2013-14, para. 66. The Commission, however, emphasized that staff would adjudicate each challenge on a preponderance-of-the-evidence standard based on all the evidence submitted by challengers and challenged parties, irrespective of the presumptive status calculated by the system. *MF-II Challenge Process Order*, 32 FCC Rcd at 6313, para. 63 & n.180 (adopting "a preponderance of the evidence standard to evaluate the merits of any challenges" but retaining "discretion to discount the weight of a challenger's evidence if a challenge appears designed to undermine the goals of MF-II").

24. *Allegations of Inaccurate MF-II Coverage Data.* While the challenge process was underway, certain parties raised concerns in the record about the accuracy of the coverage maps submitted by certain nationwide providers.⁴⁵ Smith Bagley (d/b/a Cellular One) submitted maps of its service area in Arizona overlaid with Verizon's publicly-stated 4G LTE coverage and the preliminary results of drive tests that Smith Bagley had conducted.⁴⁶ Smith Bagley asserted that, for large stretches of road in areas where Verizon reported coverage, its drive testers recorded no 4G LTE signal on Verizon's network.⁴⁷ Smith Bagley argued that the "apparent scope of Verizon's inaccurate data and overstated coverage claims is so extensive that, as a practical matter, the challenge process will not and cannot produce the necessary corrections."⁴⁸

25. The Vermont Department of Public Service also participated in the challenge process "primarily to demonstrate that good cause exists to expand the territory that is deemed eligible" for MF-II support.⁴⁹ As part of a public report detailing its experience, Vermont published a map showing its speed test results which contradicted the coverage maps in Vermont of U.S. Cellular, T-Mobile, and Verizon, among others. This map included information on the approximately 187,000 speed tests submitted by Vermont, including download speed, latency, and signal strength.⁵⁰ In the report, Vermont detailed that 96% of speed tests for U.S. Cellular, 77% for T-Mobile, and 55% for Verizon failed to receive download speeds of at least 5 Mbps.⁵¹

26. The Rural Wireless Association (RWA) similarly criticized the coverage data submitted by Verizon and later by T-Mobile. RWA initially submitted a map created by engineers working for RWA member Panhandle Telecommunication Systems, Inc. (Panhandle) that estimated Verizon's coverage in the Oklahoma panhandle to cover less than half of the area Verizon publicly claims to be

⁴⁵ See *Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Informal Request of the Rural Wireless Association, Inc. for Commission Action (Aug. 6, 2018) (First RWA MF-II Informal Request); *Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Informal Request of the Rural Wireless Association, Inc. for Commission Action (Dec. 26, 2018) (Second RWA MF-II Informal Request); *Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Informal Request of Smith Bagley, Inc. for Commission Action (Oct. 18, 2018) (SBI MF-II Informal Request); Letter from Caressa D. Bennet, General Counsel, RWA, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (Apr. 20, 2018) (April 20, 2018 RWA *Ex Parte* Letter); Letter from Mark Seagren, CTO/Senior RF Engineer, 4G Unwired, Inc., Lynn R. Merrill, P.E., President and CEO, Monte R. Lee and Company, Howard Gorter, P.E., Executive Vice President, Engineering Operations, Palmetto Engineering & Consulting, and Jeff Little, President – Central Division, CT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 (July 5, 2018) (July 5, 2018 RF Engineering Coalition *Ex Parte* Letter).

⁴⁶ SBI MF-II Informal Request at Ex. B.

⁴⁷ *Id.* at 8-9; *id.* at Ex. B.

⁴⁸ *Id.* at 5.

⁴⁹ Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at Ex. 1 (Feb. 13, 2019) (Feb. 13, 2019 RWA *Ex Parte* Letter); Vermont Department of Public Service, *Mobile Wireless in Vermont at 2* (2019), *available at* <https://publicservice.vermont.gov/content/mobile-wireless-drive-test-report-january-2019> (Vermont Mobile Wireless Report).

⁵⁰ Vermont Mobile Wireless Report at 6; Vermont Wireless Drive Test Results, Vermont Department of Public Service, <http://vtpsd.maps.arcgis.com/apps/webappviewer/index.html?id=444a3d49c2374d509958f1c0e1d0d21b> (last visited Sept. 30, 2019).

⁵¹ See Vermont Mobile Wireless Report at 4.

covered.⁵² RWA subsequently asserted in an informal request for Commission action that the results of testing by Panhandle similarly “indicates that Verizon has overstated its coverage by more than 50 percent in the Oklahoma Panhandle.”⁵³ RWA members, in coordination with a coalition of radiofrequency (RF) engineers, also raised specific concerns about technical assumptions made by Verizon in its propagation modeling.⁵⁴ In addition, RWA argued that T-Mobile’s coverage was overstated in Alabama, Oklahoma, and Montana, where speed testing by three of its members showed that 95.8% of all tests failed to achieve download speeds of at least 5 Mbps.⁵⁵ RWA alleged that T-Mobile relied upon facilities with insufficient backhaul in Montana and additionally that in Oklahoma “the installation of the [backhaul] circuits occurred after the January 4, 2018 deadline [to submit 4G LTE data], meaning that the coverage claimed by T-Mobile could not have been in place prior to the January 4, 2018 deadline.”⁵⁶

27. Verizon and T-Mobile directly responded to several of the claims made by RWA and its members. Verizon argued that the map submitted by Panhandle “underestimates Verizon’s Mobility Fund coverage because it fails to take into account all of the Verizon cell sites that provide coverage to customers in the Oklahoma Panhandle.”⁵⁷ Verizon also rejected the comparison to the Panhandle map because it did not reflect the standardized parameters adopted for MF-II, and because it “reflects an uplink constraint, which the Commission specifically declined to include in the Mobility Fund mapping specifications.”⁵⁸ Additionally, Verizon specifically responded to a number of technical claims made by RWA’s engineers, explaining that it used more than 2,500 separately-calibrated propagation models for different markets to generate the MF-II coverage map.⁵⁹

28. T-Mobile similarly rejected RWA’s contention that its coverage maps were incorrect because they did not reflect service as of January 2018. Citing its required construction notifications on file with the Commission, T-Mobile explained that it “was required to provide signal coverage and offer service to at least 40 percent of the geographic area covering each of the three licenses [for which it received a waiver of the Commission’s rules] and file the necessary construction notifications with the Commission by January 21, 2018.”⁶⁰

⁵² April 20, 2018 RWA *Ex Parte* Letter, App. C at 6.

⁵³ First RWA MF-II Informal Request at 6.

⁵⁴ Letter from Caressa D. Bennet, General Counsel, RWA, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at Attachment A, Attachment B (Apr. 30, 2018); July 5, 2018 RF Engineer Coalition *Ex Parte* Letter at 4-5; Letter from Mark Seagren, CTO/Senior RF Engineer, 4G Unwired, Inc., Lynn R. Merrill, P.E., President and CEO, Monte R. Lee and Company, Howard Gorter, P.E., Executive Vice President, Engineering Operations, Palmetto Engineering & Consulting, and Jeff Little, President – Central Division, CT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at 1-3 (Aug. 3, 2018) (Aug. 3, 2018 RF Engineering Coalition *Ex Parte* Letter). These parties generally assert that Verizon’s propagation models did not adequately account for local terrain and clutter conditions.

⁵⁵ Second RWA MF-II Informal Request at 5-7, 8-9.

⁵⁶ *Id.* at 8-10, 14-15 (emphasis removed).

⁵⁷ Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, WC Docket No. 10-90 at 3 (July 27, 2018) (July 27, 2018 Verizon *Ex Parte* Letter).

⁵⁸ *Id.* at 3 (citing *MF-II Challenge Process Order*, 32 FCC Rcd at 6293, para. 19).

⁵⁹ *Id.* at 2-3.

⁶⁰ Letter from Cathleen A. Massey, Vice President, Federal Regulatory, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208 at 6 & n.21 (Jan. 30, 2019).

29. No other provider that filed coverage data submitted anything in the record seeking to defend its maps.

30. *Initiation of the Coverage Map Investigation.* Considering the claims filed in the record, initially regarding Verizon's coverage, Commission staff requested information from Verizon about the parameters and other data used to generate its coverage maps. The information submitted by Verizon led the staff to become concerned about whether Verizon, as well as other providers, may have modeled their propagation in a way that did not account for any uplink channel capacity, and if that was the case, whether this could be responsible for inaccurate projections. In a mobile wireless network, the uplink channel refers to the uplink connection required for a user of a mobile device to transmit to a cell phone tower or building mounted antenna, and for that antenna to successfully receive the user's transmission. For a device to be able to upload data to a network, there must be an uplink connection and sufficient uplink channel capacity. Mobile Internet traffic requires both downlink transmission of data packets from the sender to the receiver (i.e., base station to handset) as well as uplink transmissions from the receiver to the sender (i.e., handset to base station) acknowledging receipt of packets as well as initiating transmission from the handset to the network.

31. In October and November 2018, staff made inquiries directly to each of the five largest providers—AT&T, Sprint, T-Mobile, Verizon, and U.S. Cellular—to better understand the assumptions underlying each provider's propagation models. In particular, staff inquired whether each provider's model used to generate its MF-II 4G LTE coverage data took into consideration an uplink channel constraint—that is, the limitation imposed by uplink channel capacity—and if so, what was the minimum uplink channel throughput (i.e., upload speed) assumed in the model.⁶¹ Staff also asked whether the provider uses an uplink channel constraint when generating maps in its normal course of business. Three of the providers responded that their MF-II propagation models provided for sufficient uplink channel throughput.⁶² U.S. Cellular and Verizon, however, responded that their MF-II propagation models did not take into account any uplink channel.⁶³ Staff requested additional propagation model details from Verizon, including link budget and infrastructure information in several of the areas identified by parties in the record as having insufficient coverage. Verizon responded with the technical parameters and infrastructure details requested by staff along with a request for confidential treatment of its response.⁶⁴

⁶¹ This report uses different terms to discuss different aspects of how uplink works in a mobile network. In order to provide users with an uplink speed, a network must first provide uplink coverage and then the network must have some uplink capacity. Uplink capacity only describes the uplink bandwidth, but a network needs to provide both uplink coverage and uplink capacity to provide users with uplink speed. The uplink constraint on a network — effectively, how far the network can project uplink coverage — could be either uplink coverage, uplink capacity, or both.

⁶² From their responses to staff inquiries, AT&T confirmed that the uplink channel throughput associated with its maps was more than sufficient to sustain download speeds of 5 Mbps; Sprint stated that it used an uplink channel constraint of between {[]} and {[]}; and T-Mobile stated that it used an uplink constraint of {[]}. Material highlighted and set off by double brackets {[]} is redacted from the public version of this document.

⁶³ {[]}

⁶⁴ Staff thereafter requested that Verizon generate and submit new 4G LTE coverage data that took into account an uplink channel constraint. After the staff request, Verizon initially indicated that it would be willing to file new coverage data that would take into account an uplink channel constraint, and that such data would be {[]}. However, prior to the date by which staff requested Verizon file new data, the Commission announced the launch of an investigation into whether one or more major providers violated the MF-II requirements. Verizon did not file the requested new coverage data.

32. Shortly after the close of the challenge window and considering the record evidence that called into question the accuracy of the submitted coverage map of at least one nationwide provider, staff conducted a preliminary review of the speed test data submitted during the MF-II challenge process. The staff review of challenger data, in combination with the record evidence focusing on specific areas in which coverage appeared to be overstated, suggested, among other things, that some providers had reported inaccurate coverage data to the Commission. Based upon this review and the providers' responses to staff inquiries, the Commission decided to launch a formal investigation of the MF-II 4G LTE coverage data submitted by certain providers. In announcing the start of the investigation into potential violations of the data collection rules, the Commission suspended the response phase of the challenge process pending conclusion of the investigation.⁶⁵ The staff investigation comprised collecting additional information from certain providers regarding their generation of coverage data, gathering independent speed test data to verify the challenger data, and analyzing specific allegations made in the record to evaluate the accuracy of the submitted coverage maps.

33. As part of the investigation, and based upon the responses to staff inquiries, subpoenas were served on Verizon and U.S. Cellular in December 2018 requesting detailed answers to questions pertaining to each provider's assumptions regarding its propagation models, as well as copies of internal communications related to the generation of the MF-II 4G LTE coverage data. Specifically, Commission staff asked each provider for details about the uplink and downlink channel capacity accounted for in its propagation models for both the MF-II 4G LTE coverage data (including any revisions submitted to the Commission) and as used in its normal course of business. Staff requested the basis for each provider's assertion that their MF-II 4G LTE coverage data submission met the Commission's requirements if it did not account for any uplink channel capacity.⁶⁶ The subpoena also asked each provider about its methodology for considering terrain variation and for specific parameters used in its link budget, including the target signal-to-interference-plus-noise ratio used to develop the maximum operational path loss for the downlink channel link budget. The providers were asked about differences between the propagation models used for the MF-II 4G LTE coverage data and other coverage data submitted to the Commission (including Form 477 and Form 601 construction notification filings) and whether the MF-II 4G LTE coverage maps reflect the data, spectrum, and network infrastructure each provider had in place at the time the coverage data were generated. Finally, the subpoena asked each provider to provide details on any drive testing or other measurements they had conducted to confirm the MF-II 4G LTE coverage data.

34. U.S. Cellular submitted all requested information in its subpoena response on February 22, 2019, and filed amended responses and updated declarations on March 19, 2019. In its subpoena response, U.S. Cellular clarified that it did initially account for an uplink channel link budget in preparing its maps for the MF-II 4G LTE coverage data collection.⁶⁷ U.S. Cellular explained that because the uplink channel link budget it used resulted in a higher maximum allowable path loss than the downlink channel it calculated, its coverage-area for uplink applications was greater than (and entirely contained within) the coverage area for downlink applications.⁶⁸ As a result, according to U.S. Cellular, constraining the coverage area by the calculated uplink channel capacity was unnecessary and it therefore

⁶⁵ See News Release, FCC, FCC Launches Investigation into Potential Violations of Mobility Fund Phase II Mapping Rules (Dec. 7, 2018) (MF-II Coverage Map Investigation News Release).

⁶⁶ See *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39 (requiring providers to model unspecified parameters as they would in the normal course of business).

⁶⁷ Responses of U.S. Cellular to Subpoena dated December 27, 2018 at 1 (File No. EB-IHD-18-00028278) (U.S. Cellular Subpoena Response).

⁶⁸ *Id.*

did not rely upon an uplink channel link budget to calculate coverage in its MF-II 4G LTE coverage data submission.⁶⁹ U.S. Cellular explained that the uplink channel link budget it initially considered would have resulted in a minimum upload speed of 64 kbps with an 80% cell edge probability and 30% cell loading factor.⁷⁰ Addressing the subpoena questions about the differences between its propagation models used for the MF-II 4G LTE coverage data and other coverage maps in its normal course of business, U.S. Cellular stated that the uplink channel link budget used to generate its maps {[

]].⁷¹ U.S. Cellular additionally provided the requested detailed technical parameters for both its uplink and downlink link budgets used by its propagation models.⁷²

35. Verizon submitted narrative responses to subpoena questions in its subpoena response on February 19, 2019. Verizon submitted a supplemental production on March 8, 2019, privilege logs on March 18, 2019, and additional files on March 27, 2019. In its subpoena response, Verizon reiterated that it did not account for an uplink channel link budget in generating its MF-II 4G LTE coverage data,⁷³ but that it had subsequently estimated that the minimum upload speed for the area throughout its MF-II 4G LTE coverage would be 115 kbps.⁷⁴ Verizon asserted that this uplink channel capacity would have been sufficient to establish a downlink channel that met the specifications for MF-II.⁷⁵ Verizon further explained that, in its normal course of business and for other coverage maps that it generates (including those submitted to the Commission as part of its Form 477 filings and Form 601 notifications), Verizon's propagation model {[

]].⁷⁶ Verizon also indicated that its MF-II propagation model assumed that the device was outdoors and stationary (as opposed to within a vehicle and in-motion), which it asserted could have resulted in drive test measurements recording lower performance than predicted by its model.⁷⁷ Additionally, Verizon provided the requested detailed technical parameters for the downlink channel link budget it used for its propagation model when generating the MF-II 4G LTE coverage data.⁷⁸

36. Shortly after staff made inquiries to the providers, and concurrent with the initial staff review of challenger data, field agents from the Commission's Enforcement Bureau commenced a five-month effort to examine coverage data in certain MF-II 4G LTE areas by conducting their own speed tests, via a mix of drive and stationary testing. Staff conducted speed tests along six separate test routes

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 2.

⁷² *Id.* at 2, 4.

⁷³ Responses of Verizon to Subpoena dated December 27, 2018 at 1 (File No. EB-IHD-18-00028219) (Verizon Subpoena Response).

⁷⁴ *Id.* at 8.

⁷⁵ *Id.*

⁷⁶ *Id.* at 4, 13-14.

⁷⁷ *Id.* at 10.

⁷⁸ *Id.* at Attachment A.

in 12 states, recording 24,649 drive tests and 5,916 stationary tests on the mobile networks of T-Mobile, U.S. Cellular, and Verizon.⁷⁹

III. COMPARATIVE ANALYSIS OF THE MF-II 4G LTE COVERAGE DATA

37. In an initial analysis of the MF-II 4G LTE coverage data, staff compared the MF-II 4G LTE coverage data submitted by each provider with its then-most-recent Form 477 4G LTE coverage data. Given that the rationale for adopting the one-time collection of 4G LTE coverage data specifically for MF-II was to improve upon the accuracy of the Form 477 data, such comparison is useful to determine the extent to which standardizing the technical parameters affected each provider's coverage maps. Specifically, staff sought to determine whether allegations in the record that many providers' Form 477 4G LTE coverage data overstated their service area were correct, and to what extent standardizing propagation model parameters reduced any such overstatement.⁸⁰

38. The difference in the area predicted to be within coverage between the MF-II data and the December 2017 Form 477 data varied significantly among the five largest providers (see Table 2).⁸¹ AT&T, Sprint, and T-Mobile saw similar reductions of approximately 18-19% in the total area of 4G LTE coverage with the MF-II data as compared to their coverage reported on Form 477. Verizon and U.S. Cellular, however, reported modest *increases* in their MF-II 4G LTE coverage compared to their Form 477 submissions from similar timeframes.

Table 2. Comparison of 4G LTE Coverage Area Dec. 2017 Form 477 vs. MF-II Collection

Provider Name	4G LTE Coverage (Form 477 Only)	4G LTE Coverage (MF-II Only)	Percent Difference Form 477 vs. MF-II
AT&T	5,287,563 sq. km	4,276,681 sq. km	-19.12%
Sprint	2,546,499 sq. km	2,086,801 sq. km	-18.05%
T-Mobile	5,376,006 sq. km	4,329,075 sq. km	-19.47%
U.S. Cellular	1,024,633 sq. km	1,029,916 sq. km	0.52%
Verizon	6,489,764 sq. km	6,583,288 sq. km	1.44%

39. Staff additionally compared coverage data among providers. This comparison suggests that some providers refined their projections for the MF-II data collection, while others submitted coverage data that were substantially similar to the unstandardized Form 477 maps. For example, AT&T's coverage data show substantial differences between its Form 477 coverage and the significantly smaller coverage in its MF-II data (see Figure 1), with clear delineations apparent for individual cell sites. While we are unable to confirm that AT&T's MF-II coverage map based on MF-II parameters is necessarily more accurate than its Form 477 filing, the modeled MF-II propagation map has less uniformity and more precise definition. Staff engineers found that these characteristics could be indicative of realistic coverage experienced on the ground, where gaps in coverage would be expected due to the statistical nature of the link channel. On the other hand, for both Verizon and U.S. Cellular, the providers' MF-II coverage and their Form 477 coverage cover broadly the same area without much

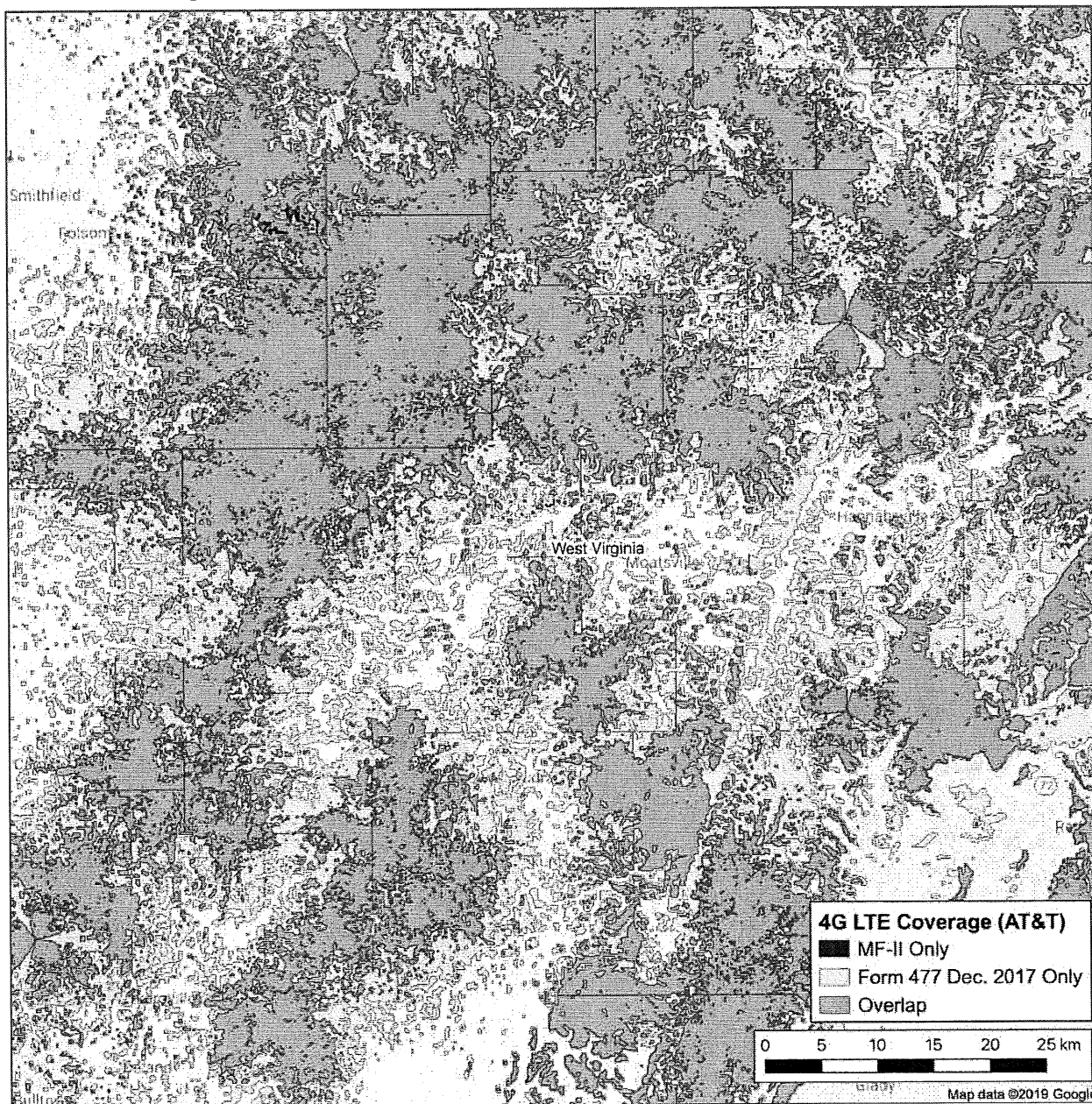
⁷⁹ We exclude staff speed tests that were conducted outside of each provider's submitted 4G LTE coverage area.

⁸⁰ This comparative analysis led to the staff's recommendation for the Commission to explore further the accuracy of mobile wireless providers' Form 477 data.

⁸¹ We have calculated the 4G LTE coverage area for each of the providers excluding any coverage in Alaska, Puerto Rico, or the U.S. Virgin Islands, as those states or territories were not included as part of MF-II.

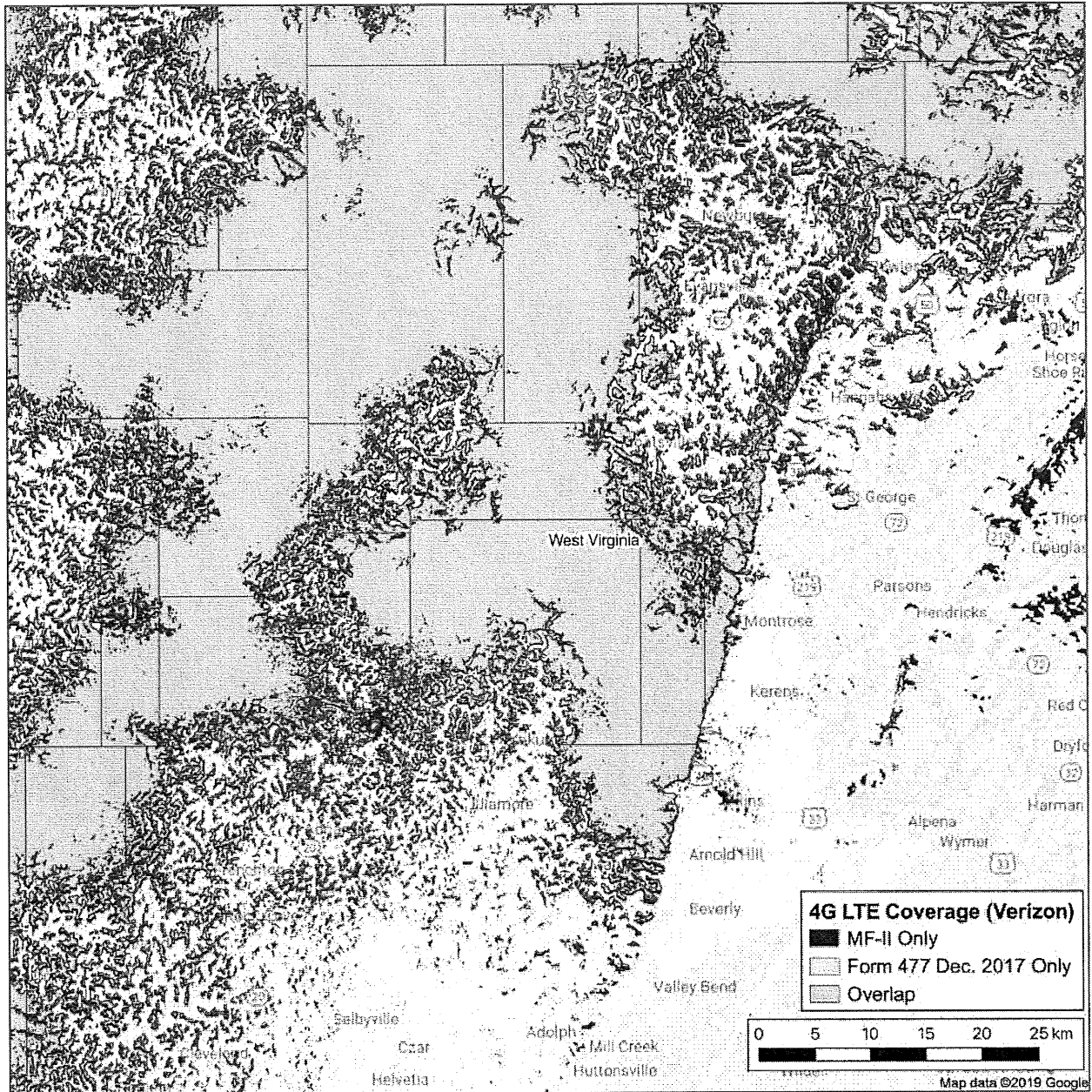
noticeable difference in the pattern of their modeled propagation, and with the two datasets often overlapping in their entirety (see Figure 2 and Figure 3).

Figure 1. AT&T 4G LTE Coverage in West Virginia (MF-II vs. Form 477)⁸²

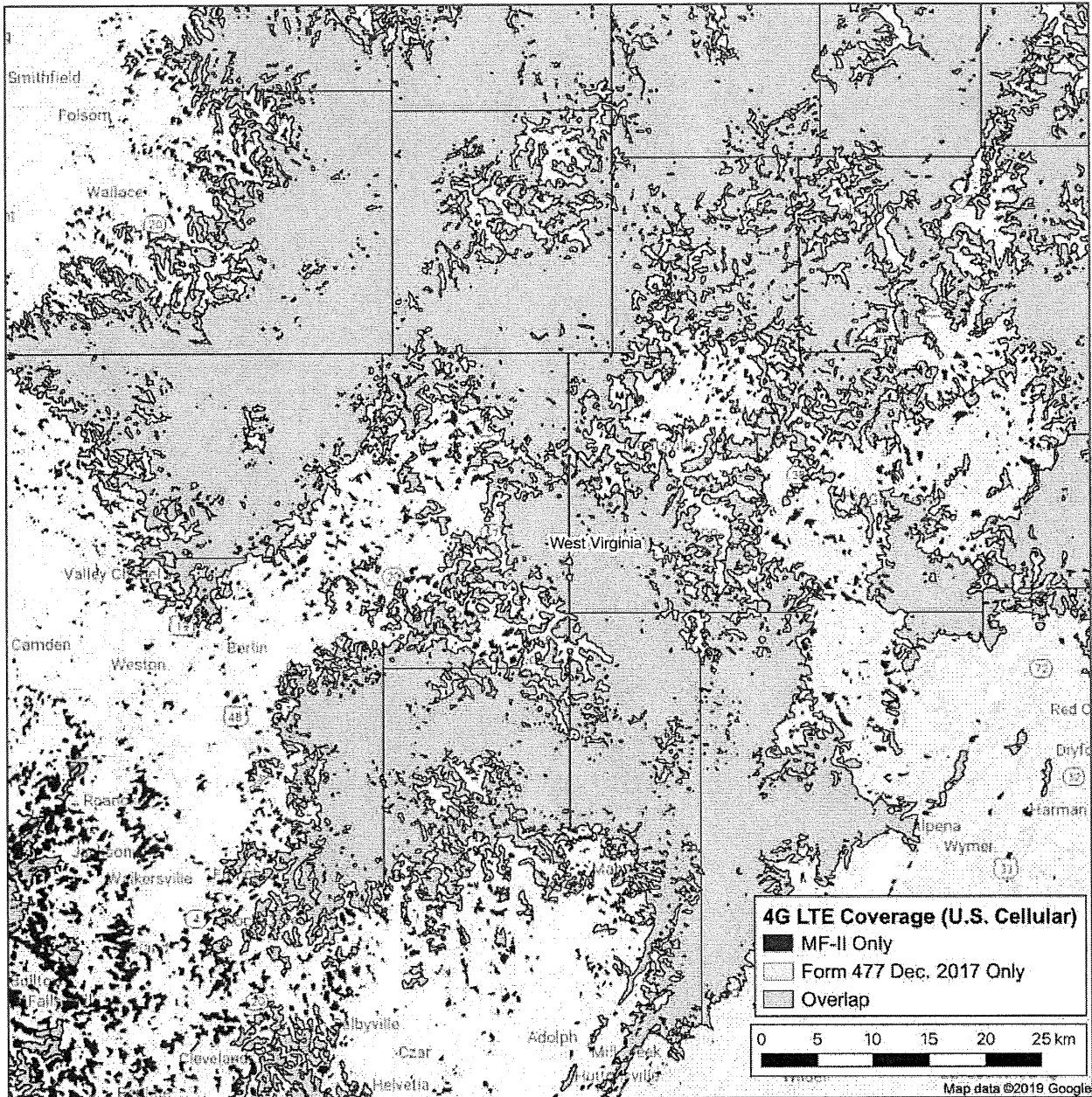


⁸² Because the maps in Figure 1, Figure 2, and Figure 3 contain provider-specific coverage data that the Commission has now released, these three figures have not been redacted. See *Rural Broadband Auctions Task Force Releases Mobility Fund Phase II 4G LTE Coverage Maps*, Public Notice, DA 20-525 (WCB/WTB/OEA May 18, 2020).

Figure 2. Verizon 4G LTE Coverage in West Virginia (MF-II vs. Form 477)⁸³



⁸³ See *supra* note 82.

Figure 3. U.S. Cellular 4G LTE Coverage in West Virginia (MF-II vs. Form 477)⁸⁴

40. The areas predicted by Verizon and U.S. Cellular's propagation models to have coverage are effectively identical for most areas when comparing between the provider's MF-II 4G LTE coverage and its December 2017 Form 477 coverage. Conversely, AT&T's propagation models predicted a smaller area to have coverage when using the MF-II parameters, and the shapes generated by that model appear to better reflect the real-world characteristics of RF propagation, especially at the apparent edge of cells.

41. We acknowledge that these datasets may not be directly comparable due to differences in the provider's use of standardized versus non-standardized link budget parameters (e.g., cell edge probability, cell loading factor, etc.). In addition, the Form 477 coverage data depict the boundaries

⁸⁴ See *supra* note 82.

where users should expect to receive a set of minimum advertised speeds (both upload and download) submitted by the provider, which may differ from the 5 Mbps download speed standard for MF-II. Some providers may, for example, have modeled their Form 477 4G LTE coverage using a stricter specification—e.g., a higher minimum download speed—than was required for MF-II, which could result in an increased coverage depicted in their MF-II maps as compared to Form 477 coverage. Others may have used a less strict specification in their Form 477 coverage models, which could result in decreased coverage depicted in their MF-II maps as compared to Form 477 coverage.

42. The two sets of coverage data are also not necessarily contemporaneous snapshots of 4G LTE coverage. For its MF-II 4G LTE coverage data, a provider was permitted to model its network as of any time between August 4, 2017, and the deadline to submit its data, January 4, 2018, whereas for its Form 477 filing, the data was required to be current as of December 31, 2017. As such, some difference between Form 477 and MF-II coverage could be the result of deployment subsequent to the date a provider generated its MF-II 4G LTE coverage data if it did so prior to the end of December.⁸⁵ Consequently, by themselves, changes in the total area covered do not necessarily indicate a problem.

43. Staff engineers, however, found that AT&T's adjustments to its model to meet the MF-II requirements may have resulted in a more realistic projection of where consumers could receive mobile broadband. This suggests that standardization of certain specifications across the largest providers could result in coverage maps with improved accuracy. Similarly, the fact that AT&T was able to submit coverage data that appear to more accurately reflect MF-II coverage requirements raises questions about why other providers did not do so. And while it is true that MF-II challengers submitted speed tests contesting AT&T's coverage data, unlike for other major providers, no parties alleged in the record that AT&T's MF-II coverage data were significantly overstated.

IV. UPLINK CHANNEL INQUIRIES

44. Mobile broadband requires uplink channel capacity in order to generate a two-way mobile data transmission at any speed. Specifically, network protocols operating on the transport layer (such as TCP/IP, which is used for Internet traffic) require both downlink transmission of data packets from the sender to the receiver (i.e., base station to handset) as well as uplink transmissions from the receiver to the sender (i.e., handset to base station) acknowledging receipt of packets and/or initiating transmission. As such, in order to achieve download speeds of at least 5 Mbps, per the *MF-II Challenge Process Order*, some minimal speed in the uplink direction to provide this return link (i.e., handset to base station) is required. As the Commission recognized, there exists an “interplay between download and upload speeds when designing and optimizing an LTE network.”⁸⁶ According to an analysis submitted into the record, uplink speeds may vary widely, with most of the measured uplink data rates being from around 64 kbps to well in excess of 1 Mbps.⁸⁷ But in all cases, a mobile network requires an uplink speed to function.

45. When not otherwise specified, the *MF-II Challenge Process Order* directed providers to “use the optimized RF propagation models and parameters used in their normal course of business” in

⁸⁵ This appears to be the case in particular for T-Mobile, which was at the time deploying new 600 MHz band spectrum in certain markets. See Letter from Michael A. Lewis, Senior Engineering Advisor, DLA Piper LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-306, GN Docket No. 12-268 (filed on June 1, 2017) (detailing 4G LTE expansion planned in 2017 using 600 MHz spectrum). When comparing the MF-II 4G LTE coverage to its June 2017 Form 477 4G LTE coverage, there is a much smaller 5.39% reduction in area.

⁸⁶ *MF-II Challenge Process Order*, 32 FCC Rcd at 6293, para. 19.

⁸⁷ See Petition of T-Mobile USA, Inc. for Reconsideration, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017).

preparing their 4G LTE coverage data for submission.⁸⁸ Although the Commission specified some of the parameters that providers were to use in the data collection, providers were afforded flexibility to use the parameters that they used in their normal course of business when parameters were not specified by the Commission. For example, the Commission did not specify fading statistics or clutter loss values, and providers were required to model these factors as they would in the normal course of business. Because the Commission did not specify the uplink channel constraint that each provider was to use in its model, providers were expected to account for uplink channel capacity as they would in the normal course of business. Not surprisingly, in the pre-subpoena inquiries, staff learned from multiple providers that they had accounted for an uplink channel in their models.

46. In general, if a provider failed to properly account for an uplink channel corresponding to the downlink requirements when generating its coverage data, it could result in overstated coverage. This is because the downlink speeds projection could indicate coverage in some areas in which the propagation model would not predict to have an uplink connection with sufficient capacity for the specified downlink speeds. If such an uplink channel constraint had been considered in the model, the projected downlink coverage could be smaller when the uplink is the limiting link. During the challenge process, staff received complaints in the record about Verizon's coverage maps.⁸⁹ Verizon and U.S. Cellular told staff that the propagation models used to generate their submitted MF-II coverage data did not include an uplink channel constraint. Accordingly, staff served subpoenas on Verizon and U.S. Cellular to obtain more detailed information on each provider's uplink channel assumptions in its propagation models to determine whether the MF-II data collection requirements had been followed.

47. Based upon the explanations and link budget details given by U.S. Cellular in its subpoena response, staff concluded that U.S. Cellular had, in fact, taken into account uplink channel capacity in its propagation models when it generated its MF-II 4G LTE coverage data. Notwithstanding its response to the pre-subpoena inquiries that the uplink channel was not considered, U.S. Cellular's subpoena response clarified that the "uplink channel budget was considered and accounted for, but not used in preparing the map because it would have created greater coverage than the downlink channel budget, which contained the parameters the FCC required to be included for determining coverage at the required download speeds."⁹⁰ Moreover, U.S. Cellular's explanation is consistent with its description of how it accounts for the uplink channel link budget when generating coverage maps in its normal course of business. Specifically, U.S. Cellular stated that it models propagation using both uplink and downlink channel link budgets and then uses the limiting link (i.e., the link with smaller path loss) to determine coverage.⁹¹ Because it modeled both the uplink and downlink channel in accordance with the technical specifications required for MF-II, and used the limiting link—in this case, the downlink channel—to create its 4G LTE coverage, U.S. Cellular's approach was consistent with the MF-II data collection requirements.

48. Verizon, on the other hand, did not take into account uplink channel capacity in its propagation models when it generated and submitted its 4G LTE coverage data. In its subpoena response, Verizon stated that it "did not account for an Uplink Channel Link Budget in its MF-II Data," and that, "Verizon did not use an Uplink Channel Link Budget to develop its MF-II Data."⁹² Verizon argued that it nonetheless complied with the requirements of the *MF-II Challenge Process Order* based upon its

⁸⁸ *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39.

⁸⁹ See *supra* nn. 45, 54 (complaints filed in the record about Verizon's coverage).

⁹⁰ U.S. Cellular Subpoena Response at 1.

⁹¹ *Id.* at 1-2, 6.

⁹² Verizon Subpoena Response at 1, 7.

interpretation of those regulations, which, it argued, did not “allow for an uplink constraint” and, moreover, was the only reasonable interpretation of the requirements.⁹³ Verizon simultaneously explained that in the normal course of business it models propagation {[]} when generating coverage and that an uplink is necessary to establish a downlink for mobile service.⁹⁴

49. Verizon asserted that not accounting for an uplink channel link budget was inconsequential for its MF-II coverage maps.⁹⁵ In its response, Verizon estimated that the upload speed within its MF-II coverage area would be at least 115 kbps, with an 80% cell edge probability and 30% cell loading factor, and that an uplink speed of 115 kbps would be “sufficient to establish a Downlink that meets the . . . 5 Mbps download speed requirement.”⁹⁶ Thus, Verizon asserted that the absence of an uplink channel link budget in its model had not led it to submit coverage maps where the upload speed would be insufficient to achieve the required download speeds.⁹⁷

50. Verizon misconstrues the Commission declining to adopt an *upload speed benchmark* as an affirmative requirement to ignore entirely any consideration of an *uplink channel link budget*, irrespective of how a provider would account for the uplink channel in its normal course of business.⁹⁸ Moreover, in making this argument, Verizon disregards the fact that some uplink channel capacity is required to facilitate the two-way communication necessary for a mobile device to achieve download speeds of at least 5 Mbps.⁹⁹ Nonetheless, staff engineers reviewed the coverage maps and link budgets

⁹³ *Id.* at 1-5 (“The Commission rejected the use of an upload speed requirement and instead adopted standards for the submission of MF-II Data that do not contemplate or *allow* for an uplink constraint.”), (“[T]he *only* interpretation of the *MF-II Second R&O* that is consistent with the Commission’s objective of standardizing mapping parameters is that all carriers were required to develop their MF-II Data using *solely* the Downlink Channel Link Budget.”) (emphasis added). Verizon further claimed that because, according to Verizon, the Commission had directed providers not to use an uplink constraint, the uplink constraint was wholly exempt from the “normal course of business” requirement that applied to parameters not otherwise specified by the rules, *id.* at 5, in effect arguing that any provider that had accounted for uplink capacity had deviated from the requirements. *Id.* at 2-3, 5-6 (“[T]he *MF-II Second R&O* could not reasonably be interpreted as permitting carriers to decide on their own to include some uplink constraint.”).

⁹⁴ *Id.* at 4, 7.

⁹⁵ *Id.* at 8.

⁹⁶ *Id.* at 1, 8.

⁹⁷ *Id.* at 8.

⁹⁸ An upload speed benchmark (i.e., the target throughput) is merely one component of an uplink channel link budget, and in the absence of an expressly defined parameter, the Commission’s requirement was to use the “RF propagation models and parameters used in [the provider’s] normal course of business.” *MF-II Challenge Process Order*, 32 FCC Rcd at 6302, para. 39. While it is true that a provider may have had to modify its uplink budget in light of the specified parameters to project coverage accurately, it was unreasonable for a provider to ignore the uplink channel in its entirety when generating its MF-II coverage data. To the extent that Verizon believed that the uplink channel assumptions it uses in its normal course of business were otherwise inconsistent with the objectives of the MF-II collection, it could have sought reconsideration of the data collection rules or it could have sought a waiver to allow it to model propagation based upon the particular characteristics of its network. Alternatively, Verizon could have modified how it treats the uplink channel, consistent with its standard engineering practices used in the normal course of business, in order to more accurately model those areas that should achieve the target download speed (such as {[]}).

⁹⁹ It would have been inconsistent with the objectives of MF-II for the Commission to adopt a mobile download speed benchmark and then require a provider to claim coverage where the provider’s model would predict

that Verizon submitted in other proceedings and found little variation between those filings and the MF-II coverage maps. Staff did not find evidence indicating that Verizon's model or its coverage projections were clearly unreasonable.

51. Verizon's coverage maps for MF-II were also not significantly different from its Form 477 filings, and Verizon stated that it {[]}¹⁰⁰ And after review of the data, subpoena responses, and document production, staff was unable to determine that Verizon's failure to account for an uplink channel link budget in its MF-II coverage data was a significant factor affecting the accuracy of the area it determined had 4G LTE coverage meeting the Commission's specifications. Based on the totality of the circumstances, staff concluded that an enforcement action was not warranted.

V. MOBILE SPEED TESTING AND ANALYSIS OF SPEED TEST DATA

52. To provide the Commission with its own speed test data that could be used to evaluate the accuracy of the submitted coverage maps and verify the challenger data, staff field agents conducted on-the-ground mobile network speed testing of three providers' networks in six areas of the country over a period of five months. The purpose of this testing was to provide the Commission with independent speed tests that staff could rely upon because the tests were taken using standardized methods and equipment. The decisions as to which geographic areas and provider networks to test were informed by submissions in the record questioning Verizon's and T-Mobile's coverage and by the challenger speed test data. Staff primarily attempted to confirm the assertions made by RWA and SBI in their respective informal requests for Commission action about the sufficiency of the coverage maps submitted by Verizon and T-Mobile in several states.¹⁰¹ Staff additionally attempted to confirm results published by the Vermont Department of Public Service for Verizon and U.S. Cellular.¹⁰² The on-the-ground testing consisted of both app-based drive testing and stationary testing along select routes, primarily in Arizona, New Mexico, Oklahoma, Vermont, Alabama, and Montana.¹⁰³

insufficient uplink channel necessary to achieve the target download speed for mobile devices. And this argument is even more at odds with the objectives of MF-II when considering Verizon's even bolder claims that the Commission *prohibited* providers from including an uplink constraint in their models and that Verizon's coverage map met the requirements even if it could be shown that the projected coverage had insufficient uplink for the required downlink. Verizon Subpoena Response at 8 ("Verizon's MF-II Data would comply with the *MF-II Second R&O* even if *it were possible to show that the uplink speed may not be sufficient* to establish a Downlink in an area shown as covered.") (emphasis added).

¹⁰⁰ *Id.* at 11.

¹⁰¹ See SBI MF-II Informal Request at Ex. B, Ex. C (identifying areas in Arizona for which SBI's contractor tested Verizon's network); First RWA MF-II Informal Request at 4-6 (claiming that Verizon's coverage is incorrect throughout the Oklahoma Panhandle); Second RWA MF-II Informal Request at 5-7, 8-9 (claiming that T-Mobile's coverage is incorrect in Alabama, Oklahoma, and Montana, in addition to identifying particular areas in Montana where RWA claims T-Mobile had insufficient backhaul capacity).

¹⁰² Vermont PSD Mobile Wireless Report; Vermont Wireless Drive Test Results, Vermont Department of Public Service, <http://vtpsd.maps.arcgis.com/apps/webappviewer/index.html?id=444a3d49c2374d509958f1c0e1d0d21b> (last visited Sept. 30, 2019).

¹⁰³ While the drive test routes and stationary test locations primarily fell in these six states, and are identified as such in the tables below, some tests for particular test routes were also taken in neighboring states (e.g., some tests associated with the Montana test route were taken just across the state border in Wyoming and North Dakota). See *supra* note 1.

53. A detailed summary of the speed testing conducted by staff is provided below, and the full dataset of those speed tests is available for download on the Commission's website.¹⁰⁴ Staff performed geospatial processing on speed test data using geographic information system software. We have excluded from this dataset and our analyses any staff speed tests that were conducted outside of the areas identified in the respective provider's coverage maps. While staff took care to minimize discrepancies, we acknowledge that differences between geographic information system software platforms, computational precision, and processing steps may lead to slightly different results even when using the same source data.

54. The staff speed testing revealed significant discrepancies between the coverage maps generated by the providers whose networks were tested and the actual, on-the-ground mobile experience, as measured by the speed tests. For the consumer experience to reflect the service predicted in the coverage maps, a mobile device should receive 4G LTE service with a download speed of at least 5 Mbps with an 80% probability at the cell edge, which corresponds to a 92% probability within the area reported to have coverage.¹⁰⁵ That is, a set of speed tests taken uniformly throughout the cell area should achieve the required download speeds 92% of the time, whereas tests taken exclusively around the cell edge should achieve such speeds 80% of the time. The staff speed tests were not necessarily taken uniformly throughout the cell area, but nevertheless we would expect that tests recorded within the predicted coverage area would achieve download speeds of at least 5 Mbps 80% of the time or more. The staff speed test data did not approach the 92% threshold for any route-provider combination and in fact achieved the required download speed for less than 80% of tests across every route tested.

A. Test Methodology

55. For each speed test route, staff conducted in-motion drive tests as well as a number of stationary tests, both using an app-based testing platform customized for the Commission.¹⁰⁶ Based upon the speed test configuration parameters using a one-second "inter-test delay"¹⁰⁷ and two-second "inter-cycle delay,"¹⁰⁸ the app recorded one test approximately every 20 seconds along the drive test route or at each stationary test location.

¹⁰⁴ The staff speed test data can be downloaded at <https://www.fcc.gov/mobility-fund-phase-2#data>.

¹⁰⁵ *MF-II Challenge Process Order*, 32 FCC Rcd at 6300, para. 36; see also Christophe Chevallier et al., WCDMA (UMTS) Deployment Handbook: Planning and Optimization Aspects 33 Figure 2.6 (1st ed. 2006); D. O. Reudink, Microwave Mobile Communications 126-28 Figure 2.5-1 (William C. Jakes ed. 2d ed. 1974). We recognize that there may be discrepancies between coverage maps and on-the-ground performance because the assumptions made in the propagation model may not necessarily reflect actual conditions at the time of measurement.

¹⁰⁶ The Commission used a version of the FCC Speed Test app developed by SamKnows Ltd. modified to run continuous tests throughout the coverage area and that is thus better suited for the drive testing conducted by staff. This functionality differs from the publicly-available FCC Speed Test app, which is designed to run on-demand, user-initiated speed tests. See, e.g., FCC Speed Test, Apple App Store, <https://apps.apple.com/us/app/fcc-speed-test/id794322383> (last visited Nov. 26, 2019); FCC Speed Test, Apps on Google Play, <https://play.google.com/store/apps/details?id=com.samknows.fcc> (last visited Nov. 26, 2019).

¹⁰⁷ Inter-test delay controls how long the app pauses between completing and initiating a new test metric (i.e., measuring download speed and measuring latency, which are measured separately).

¹⁰⁸ Inter-cycle delay controls how long the app pauses between completing and initiating a new test (comprised of a set of test metrics including both latency and download speed measurements).

56. EB field agents conducted in-motion drive testing using the following standardized test procedures:

- The agent turned off all other phones in the vehicle (including any modem built into the test vehicle) and configured the test handsets in the vehicle.
- The agent recorded the date and time that testing commenced.
- The agent then initialized the measurement application on the test handsets and drove along a pre-planned route with a “not-to-exceed” vehicle speed of between 35 and 60 miles per hour (depending on the route), while monitoring the measurement app for any errors.
- After completing the drive test route, the agent stopped the app and noted the date and time that testing concluded.
- The agent then evaluated and verified recorded data using a laptop.
- For most routes, the agent repeated the same testing steps while driving along the route in the opposite direction.¹⁰⁹

57. EB field agents also conducted stationary testing using the following standardized test procedures:

- At selected locations along the drive test routes,¹¹⁰ the agent stopped the vehicle, turned off all other phones (including any modem built-in to the test vehicle), and configured the test handset to perform tests outside of the vehicle.
- The agent recorded the date and time that testing commenced, as well as the geographic coordinates of the location.
- The agent then initialized the measurement application on the test handsets.
- After continuous testing for between one and two hours,¹¹¹ the agent stopped the app and noted the date and time that testing concluded.
- The field agent then evaluated and verified recorded data using a laptop.

58. All tests were conducted using a Samsung Galaxy S9 handset (model SM-G960U1), which was mounted in a vehicle for the drive tests. We note that the staff speed tests were conducted approximately one year after providers submitted their list of pre-approved handsets, and the newer Samsung Galaxy S9 had been released in the intervening period. Although the Samsung Galaxy S9 was therefore not one of the pre-approved devices for any of the three carriers tested, all three providers sold

¹⁰⁹ Staff made multiple passes, conducting drive testing along the same roads at different times, for most drive test routes in order to mitigate false positives arising from the inherent variability of mobile networks. As we found when analyzing the staff drive test data below, there are clear patterns that emerge from analyzing the drive test data indicating insufficient coverage across large areas. Because we would expect that speed tests would fail in a coverage area that meets the cell edge probability only a small percentage of time, lengthy stretches of roadways where speed tests record download speeds below 5 Mbps (especially taken at different times) are unlikely due to any inherent variability.

¹¹⁰ Locations for the first set of stationary tests, conducted on the Arizona and New Mexico routes, were selected and conducted after conducting drive tests, based upon the signal strength recorded while drive testing. All later stationary test locations were pre-selected based upon areas location near the edge of each providers’ coverage and were conducted at various points while drive testing.

¹¹¹ We note that the stationary test results for locations in Arizona, which was the first route tested by staff, did not follow the same methodology as for stationary tests conducted on other, later test routes. Specifically, the Arizona tests were conducted for a much shorter duration (for approximately one-to-two minutes) and thus recorded far fewer tests than were conducted at each location for later testing where stationary tests were conducted continuously for between one-to-two hours. Notwithstanding the duration of testing at each location, the Arizona stationary test results are otherwise comparable, and thus have not been excluded from the analysis.

and supported this handset by the time of the staff testing and all three providers approved similar, prior-year Samsung Galaxy models for conducting speed tests during the challenge process.¹¹² Because the Samsung Galaxy S9 uses a newer chipset with improved peak 4G LTE download speeds (LTE category 18) and supports all of the 4G LTE spectrum bands that were supported by the prior-year models, staff engineers concluded that use of the newer model handset would not meaningfully impact the results.

B. Drive Test Results

59. An analysis of the staff drive test data reveals wide variation across areas in the percentage of tests that were successful, with a “successful” test defined as one that achieved a download speed of at least 5 Mbps (see Table 3 and Table 4) in an area where the provider claimed to offer 4G LTE satisfying the Commission’s requirements.

60. Across all three providers tested, no combination of route driven and provider tested (i.e., a route-provider combination, such as Verizon-Alabama) by staff achieved a success rate of 92% across the provider’s coverage area, which would be consistent with a download speed of at least 5 Mbps at the cell edge 80% of the time, nor did any route-provider combination even meet the lower 80% success rate associated with the cell edge.¹¹³ The lowest observed success rate recorded by staff drive tests was 45.0% for U.S. Cellular in Vermont, while the highest success rate was 74.6% for Verizon in Montana. The overall success rate of all providers and routes drive tested was 62.3%.¹¹⁴

61. This success rate includes tests taken on non-4G LTE (i.e., 2G or 3G) networks. While a non-4G LTE test may indicate that there was no 4G LTE signal in that location, it may also indicate there is a 4G LTE network, but that the handset switched to a 2G or 3G network due to congestion or some other reason. However, tests on 2G or 3G networks account for only about 8% of all tests and excluding them would not materially change the analysis (see Table 5 and Table 6).

62. Finally, we note that the handsets could not obtain any 4G LTE signal for a portion of the staff drive tests conducted in areas where the tested provider claimed to have 4G LTE coverage. For example, handsets could not obtain a 4G LTE signal for 16.2% of tests on Verizon’s network, for 21.3% of the tests on T-Mobile’s network, and for 38.0% of the tests on U.S. Cellular’s network for the routes drive tested.

¹¹² Specifically, the Samsung Galaxy S8 was pre-approved by both Verizon Wireless and U.S. Cellular, and the similar Samsung Galaxy S8 Active, which includes support for LTE spectrum band 71 (600 MHz band), was approved by T-Mobile. See *Rural Broadband Auctions Task Force Releases List of Handsets to be Used in Mobility Fund Phase II Challenge Process Speed Tests*, Public Notice, 33 FCC Rcd 5324 (WCB/WTB 2018); MF-II Challenge Process Provider Handsets, <https://www.fcc.gov/files/mf-ii-challenge-process-provider-handsets> (last updated Jun. 11, 2018); Built for the Way We Communicate Today: Samsung Galaxy S9 and S9+ (Feb. 25, 2018), <https://news.samsung.com/us/samsung-galaxy-s9-s9plus/> (“AT&T, Sprint, T-Mobile, U.S. Cellular, Verizon Wireless and Xfinity mobile will carry Galaxy S9 and Galaxy S9+ in stores beginning March 16, 2018”).

¹¹³ See *MF-II Challenge Process Order*, 32 FCC Rcd at 6300, para. 36 (“Our analysis shows that the 80 percent cell edge probability we adopt corresponds with a 92 percent cell area probability, which means users would have a greater than 90 percent chance of achieving a download speed of at least 5 Mbps across the entire coverage area of a cell.”).

¹¹⁴ We recognize there may be differences in the results between stationary tests and drive tests due to a number of factors, including additional signal loss associated with measurements conducted inside a vehicle and in-motion.

Federal Communications Commission

Table 3. Staff Drive Test Results by Provider

Provider Name	Test Count Zero Mbps	Test Count > 0 & < 5 Mbps	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	2,717	3,094	10,487	16,298	64.3%
U.S. Cellular	654	587	1,015	2,256	45.0%
T-Mobile	1,258	986	3,851	6,095	63.2%
Total	4,629	4,667	15,353	24,649	62.3%

Table 4. Staff Drive Test Results by Route and Provider

Provider Name	Test Route	Date Range	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	Alabama	Mar. 04-07, 2019	2,674	4,671	57.2%
Verizon	Arizona	Nov. 27-29, 2018	322	658	48.9%
Verizon	Montana	Apr. 01-04, 2019	2,009	2,694	74.6%
Verizon	New Mexico	Dec. 03-05, 2018	563	890	63.3%
Verizon	Oklahoma	Jan. 28-31, 2019	3,219	4,389	73.3%
Verizon	Vermont	Mar. 05-08, 2019	1,700	2,996	56.7%
U.S. Cellular	Vermont	Mar. 05-08, 2019	1,015	2,256	45.0%
T-Mobile	Alabama	Mar. 04-07, 2019	3,024	4,500	67.2%
T-Mobile	Montana	Apr. 01-04, 2019	827	1,595	51.8%
Total			15,353	24,649	62.3%

Table 5. Staff Drive Test Results by Provider (Excluding 2G / 3G Tests)

Provider Name	Test Count Zero Mbps	Test Count > 0 & < 5 Mbps	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	2,120	2,727	10,487	15,334	68.4%
U.S. Cellular	290	315	1,015	1,620	62.7%
T-Mobile	969	870	3,848	5,687	67.7%
Total	3,379	3,912	15,350	22,641	67.8%

Table 6. Staff Drive Test Results by Route and Provider (Excluding 2G / 3G Tests)

Provider Name	Test Route	Date Range	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	Alabama	Mar. 04-07, 2019	2,674	4,330	61.8%
Verizon	Arizona	Nov. 27-29, 2018	322	618	52.1%
Verizon	Montana	Apr. 01-04, 2019	2,009	2,489	80.7%
Verizon	New Mexico	Dec. 03-05, 2018	563	860	65.5%

Federal Communications Commission

Provider Name	Test Route	Date Range	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	Oklahoma	Jan. 28-31, 2019	3,219	4,237	76.0%
Verizon	Vermont	Mar. 05-08, 2019	1,700	2,800	60.7%
U.S. Cellular	Vermont	Mar. 05-08, 2019	1,015	1,620	62.7%
T-Mobile	Alabama	Mar. 04-07, 2019	3,021	4,464	67.7%
T-Mobile	Montana	Apr. 01-04, 2019	827	1,223	67.6%
Total			15,350	22,641	67.8%

63. The results of staff drive tests reveal significant variance across time and location along the test routes driven, with performance achieving the minimum download speed across some portions of the test route but with substantial sections where download speeds drop below 5 Mbps or where no 4G LTE signal was received. In the following maps, we have visualized the routes driven by Commission staff by calculating for each route-provider combination the average download speed across tests that fell within each one square kilometer grid cell. We have not included the boundaries of each provider's 4G LTE coverage maps submitted as part of the MF-II one-time collection because the Commission previously indicated that it would treat such data as confidential.¹¹⁵ Instead, we have plotted the staff drive test results on the publicly released 4G LTE coverage maps from Form 477 submitted by each provider from a similar time period (December 2017) in order to aid the visualization.¹¹⁶ As discussed in Section III, we acknowledge that the Form 477 4G LTE coverage data may not be directly comparable to that provider's MF-II 4G LTE coverage data. Nevertheless, the Form 477 4G LTE coverage maps are still useful to help understand in which areas the provider's propagation model predicts users should expect to receive some baseline 4G LTE service.

¹¹⁵ *MF-II 4G LTE Data Collection PN*, 32 FCC Rcd at 7028.

¹¹⁶ See *Mobile Deployment Form 477 Data*, <https://www.fcc.gov/mobile-deployment-form-477-data> (last updated Sep. 10, 2019, 4:13 PM). The coverage maps in the following figures are based upon the public mobile broadband data from the December 2017 Shapefiles for technology 83 (4G LTE) for the relevant providers.

Figure 4. Staff Drive Test Route for Arizona (Verizon)

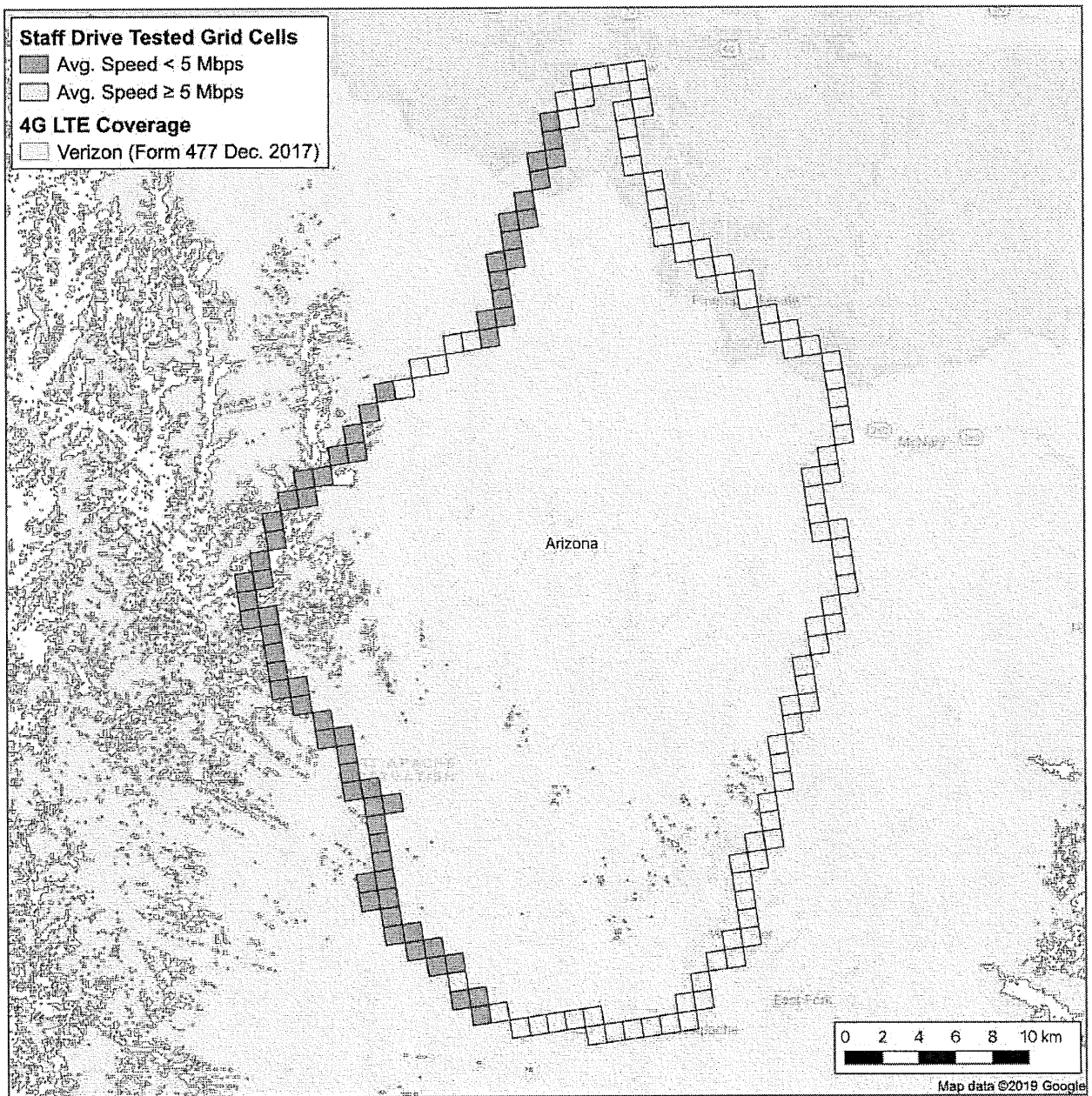


Figure 5. Interstate 40 Portion of Staff Drive Test Route for New Mexico (Verizon)

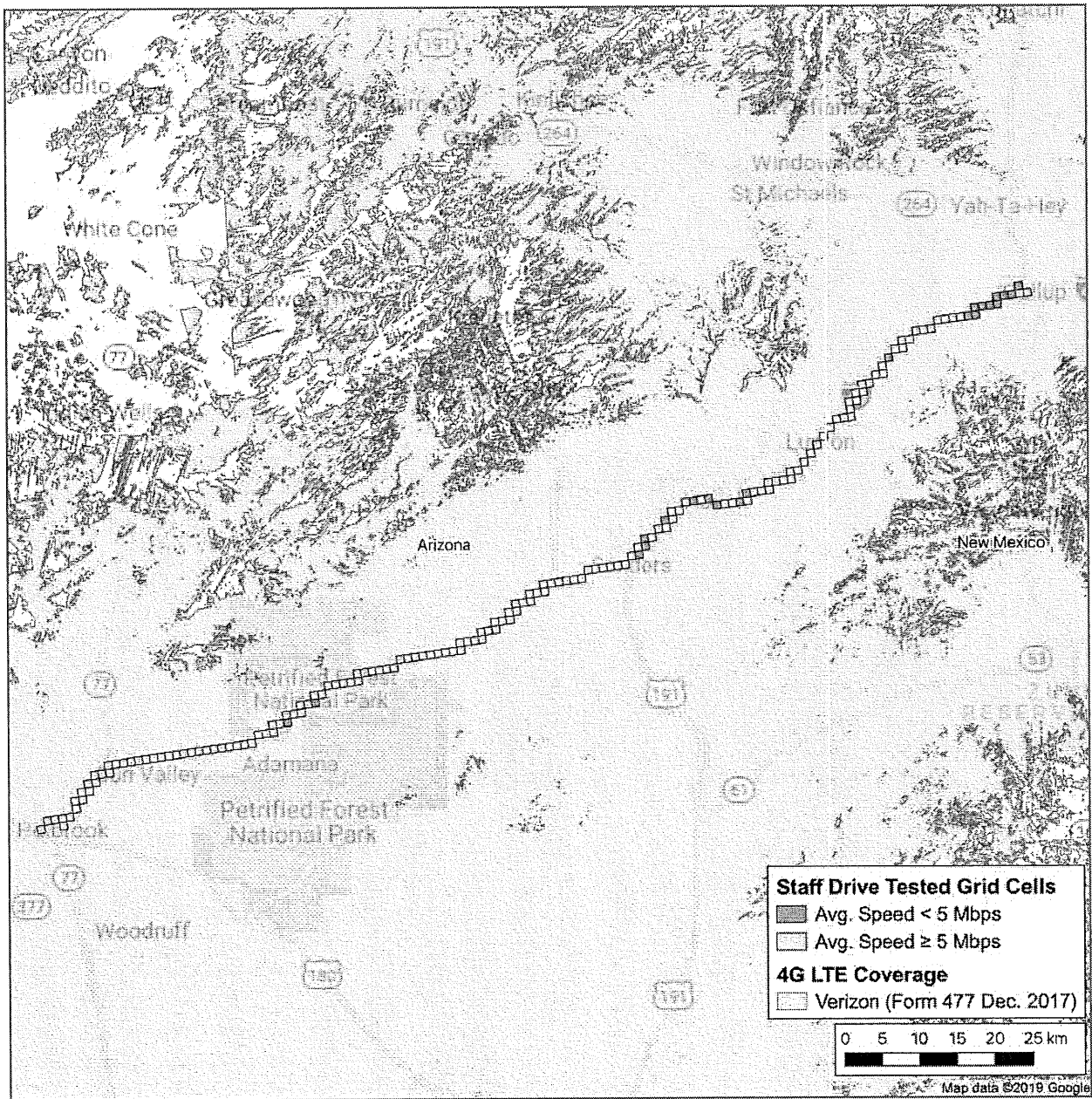


Figure 6. Eastern Portion of Staff Drive Test Route for New Mexico (Verizon)

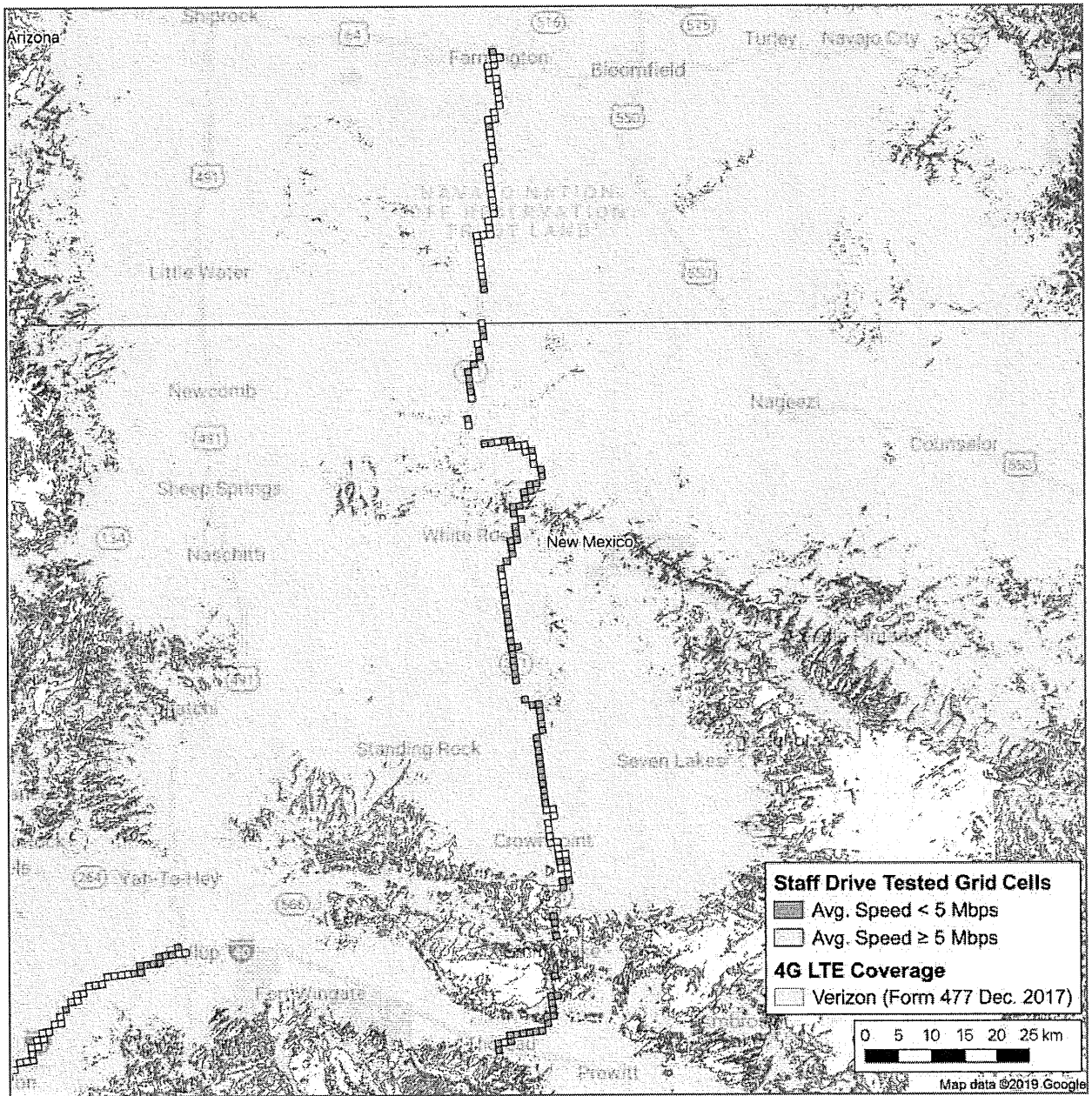


Figure 7. Western Portion of Staff Drive Test Route for Oklahoma (Verizon)

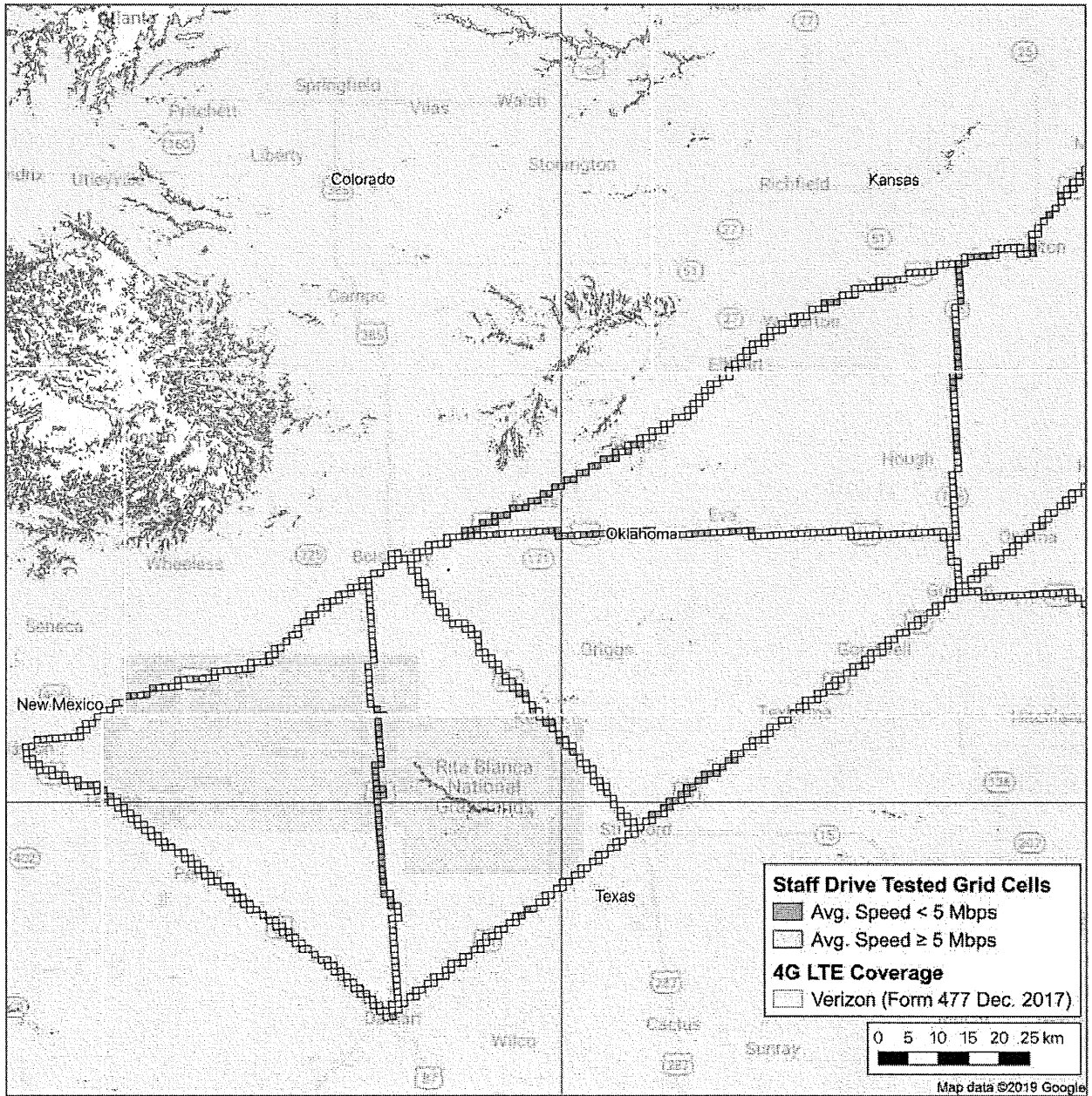


Figure 9. Northern Portion of Staff Drive Test Route for Alabama (Verizon)

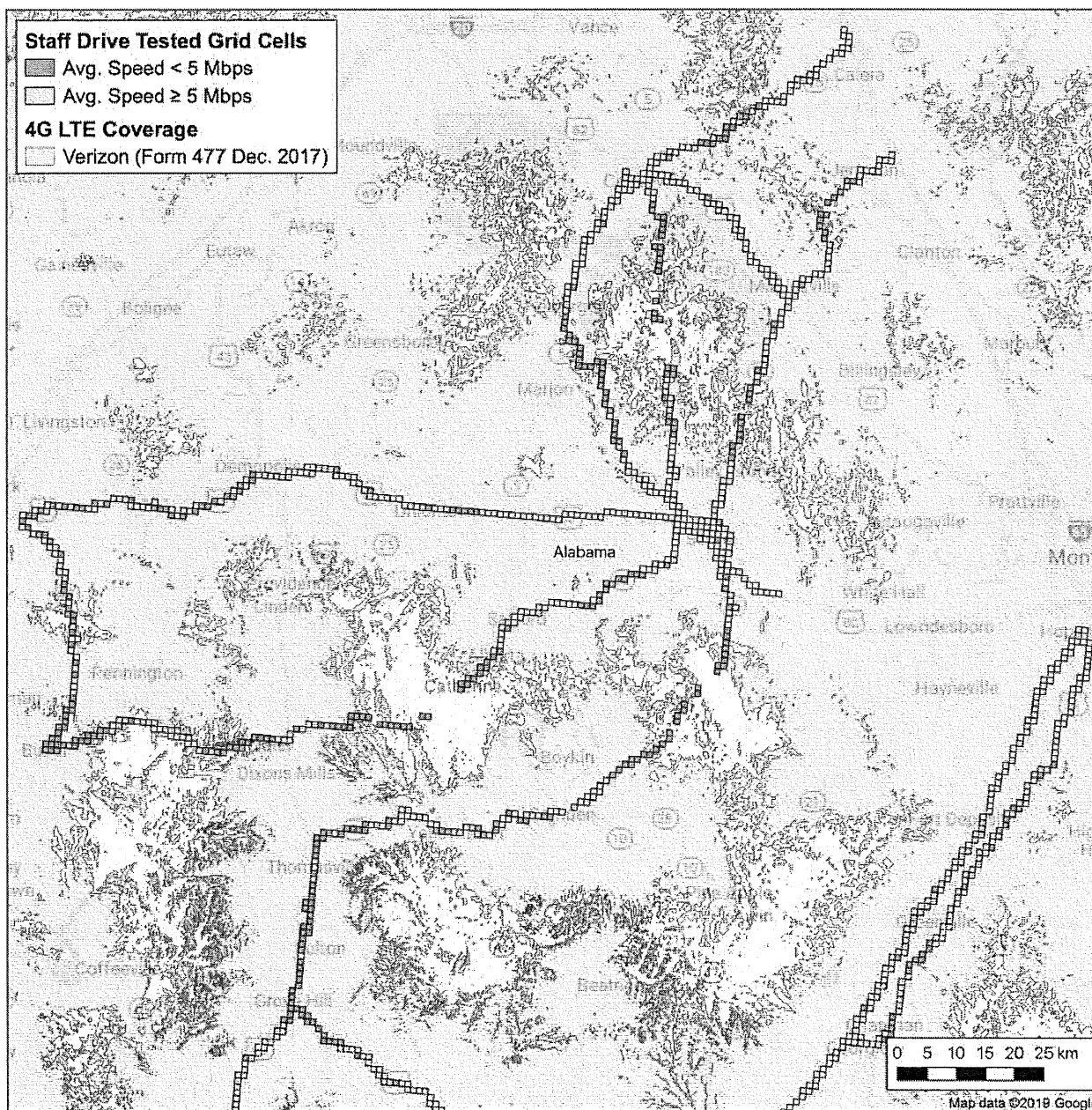


Figure 10. Southern Portion of Staff Drive Test Route for Alabama (Verizon)

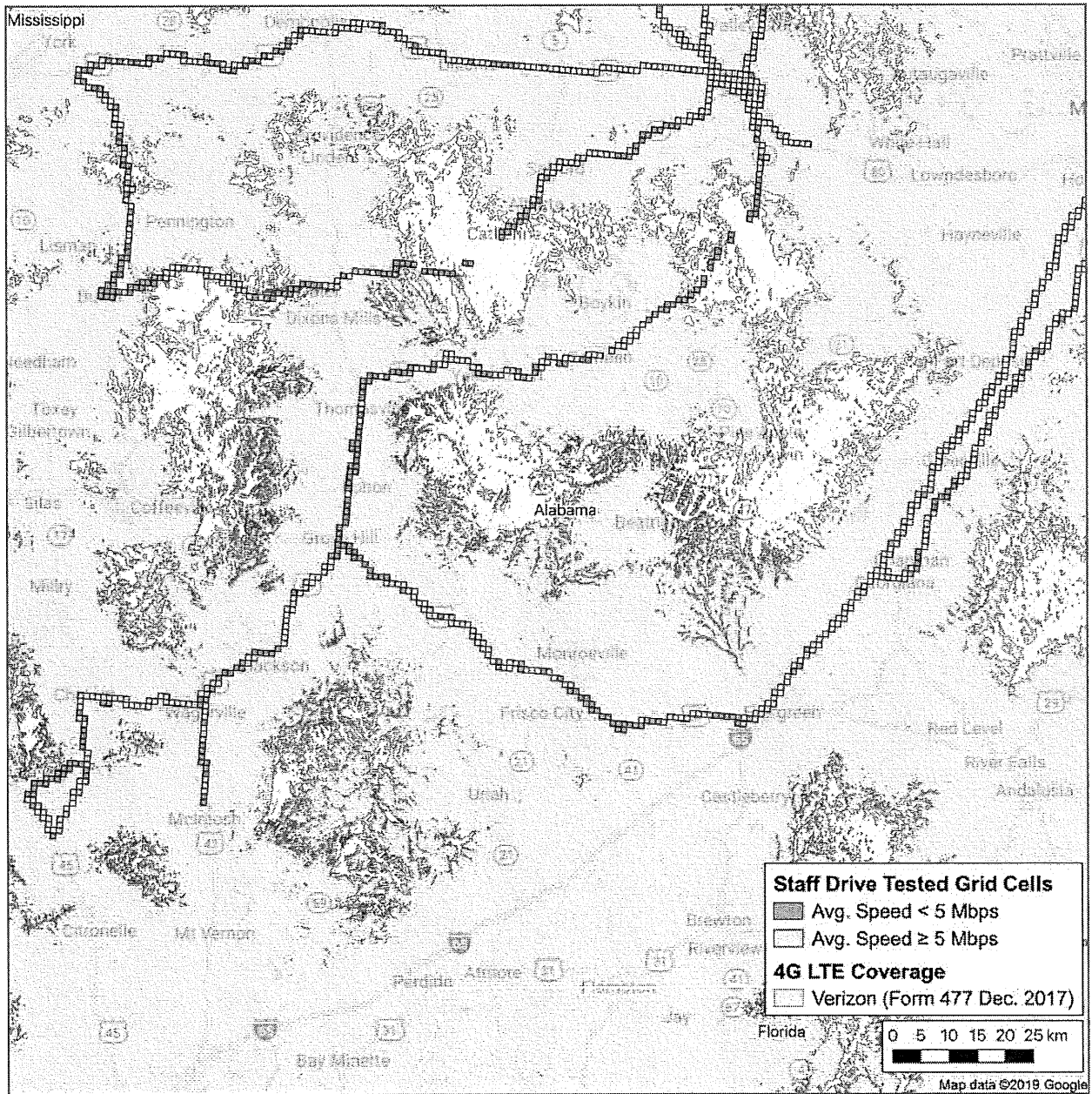


Figure 11. Staff Drive Test Route for Vermont (Verizon)

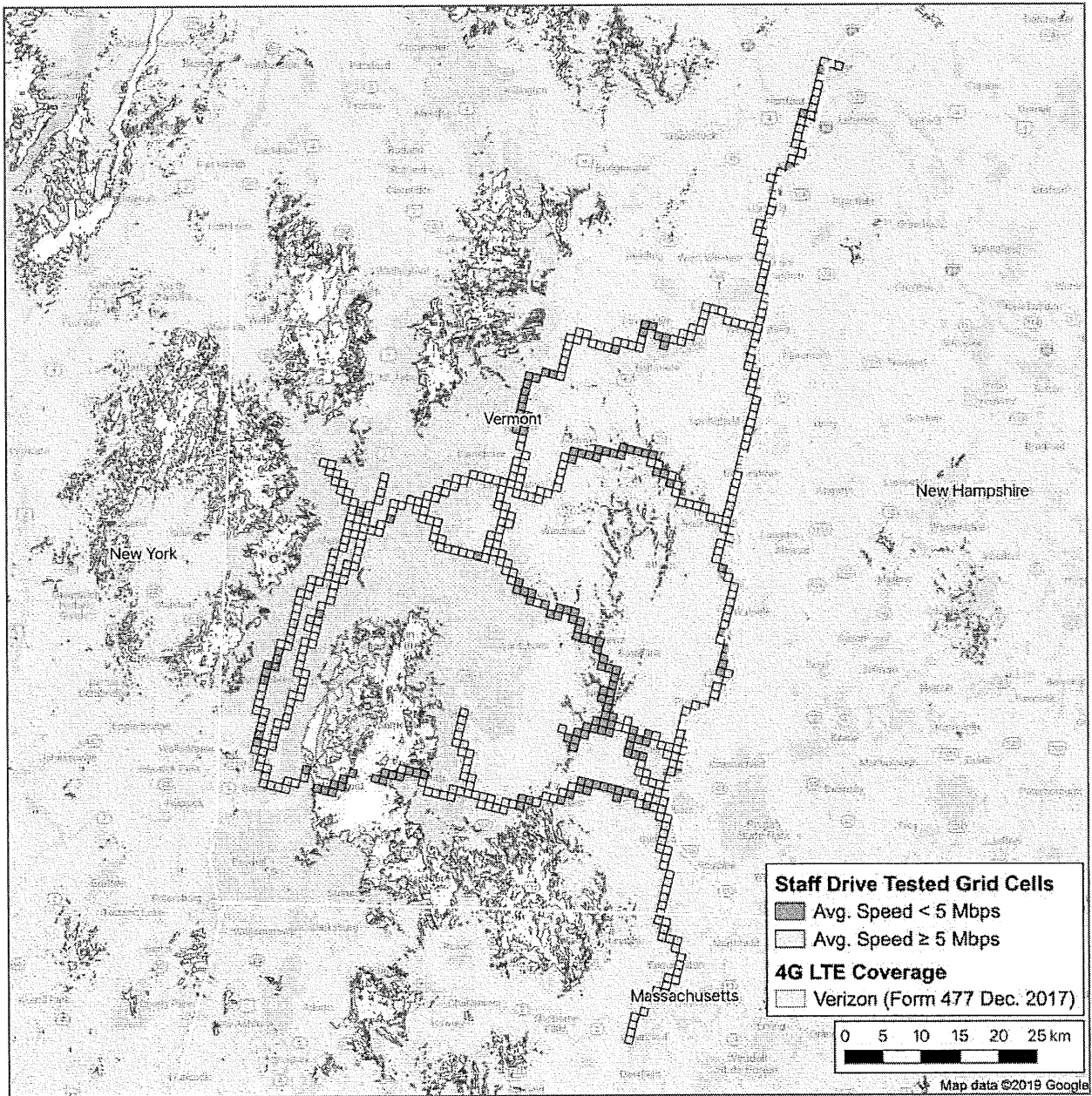


Figure 12. Southwestern Portion of Staff Drive Test Route for Montana (Verizon)

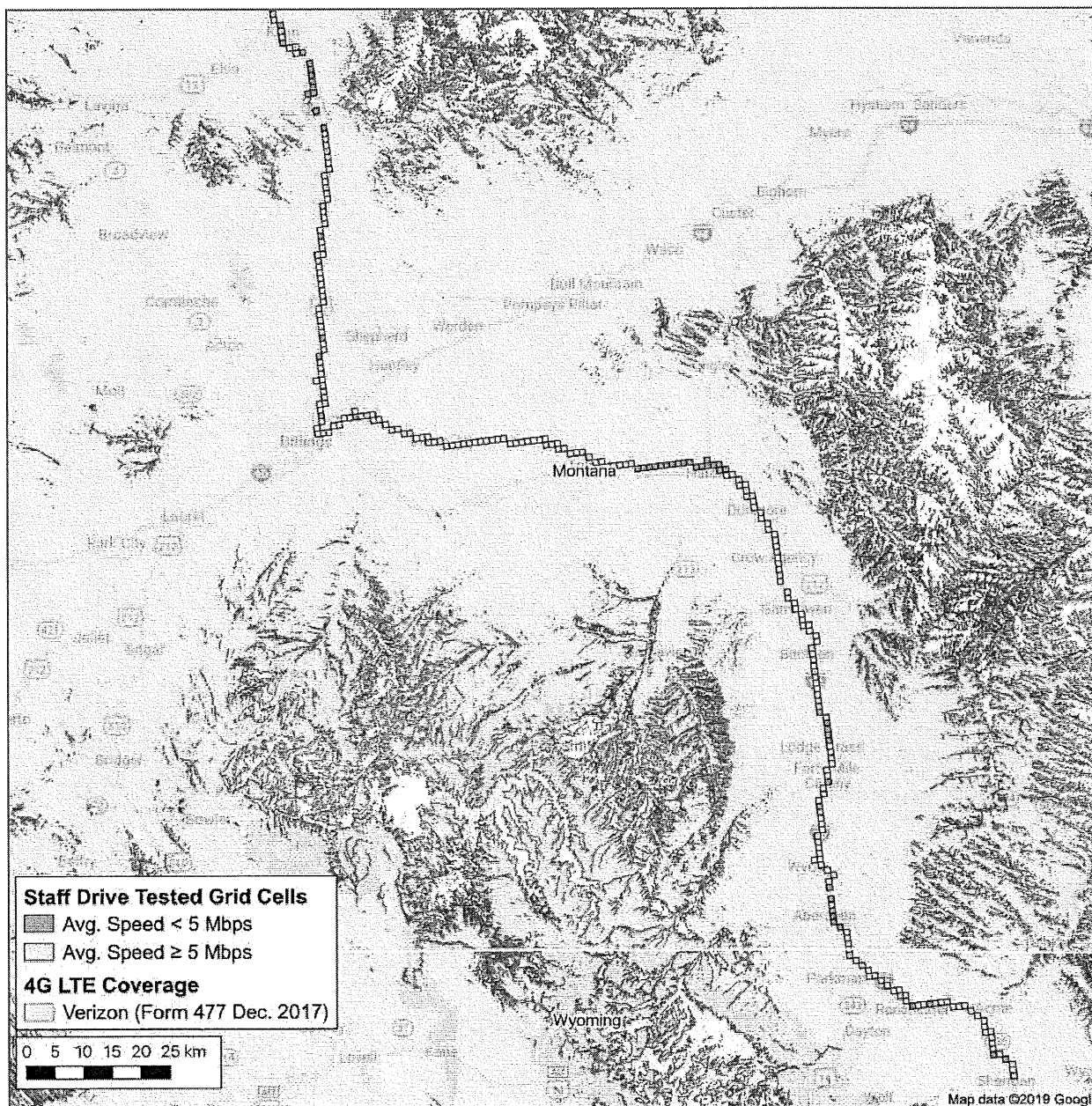


Figure 13. Western Portion of Staff Drive Test Route for Montana (Verizon)

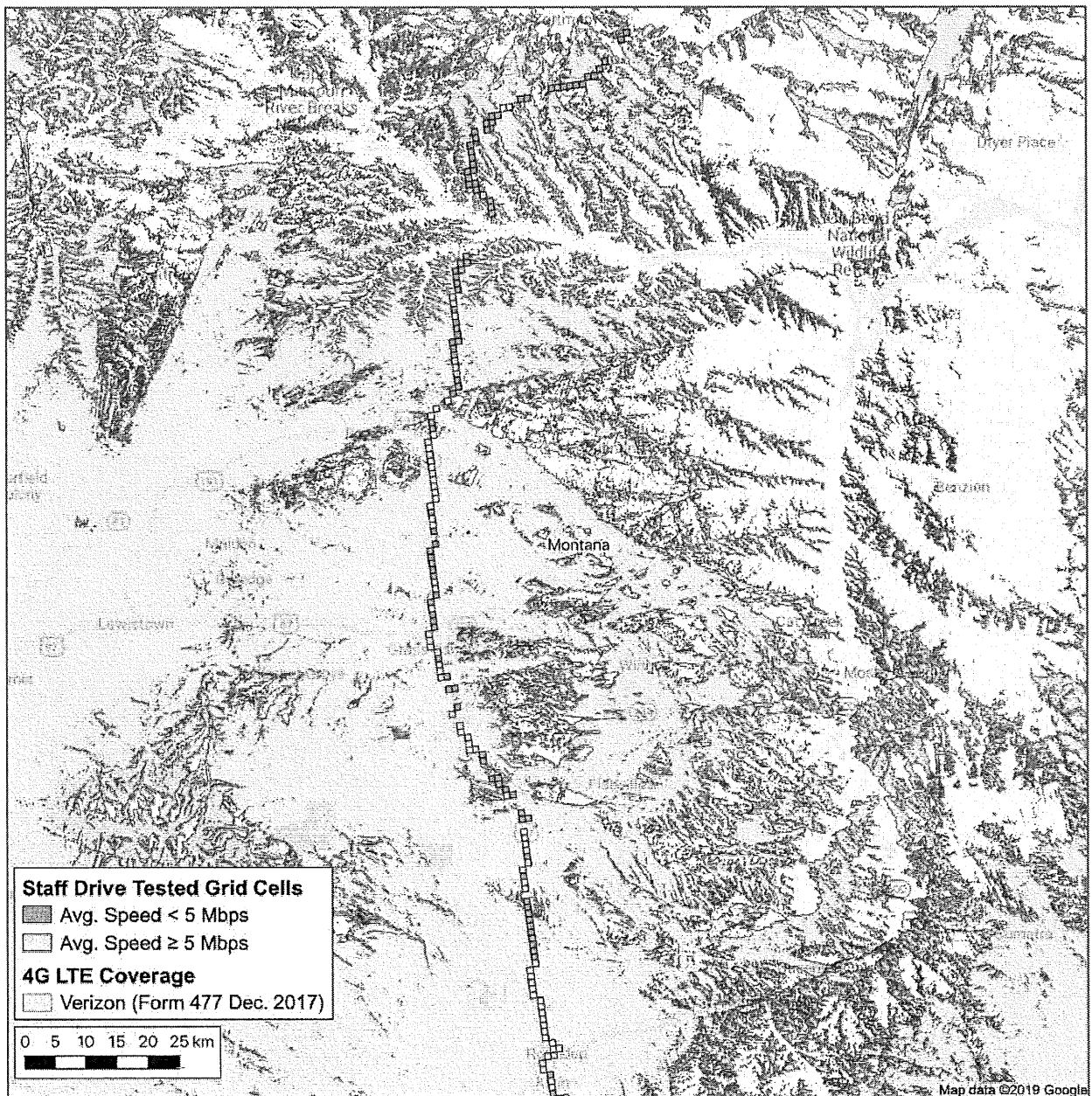


Figure 14. Northwestern Portion of Staff Drive Test Route for Montana (Verizon)

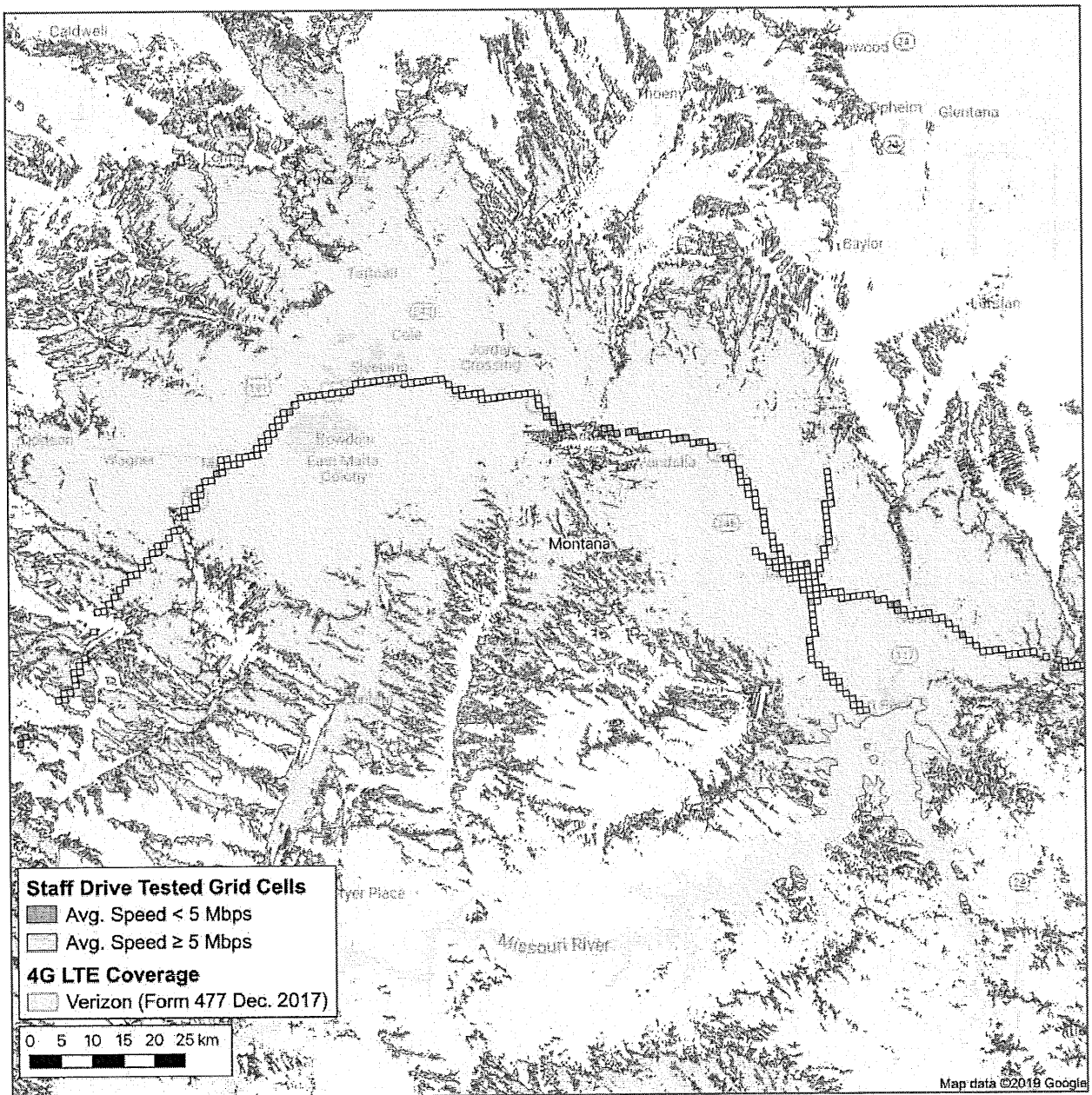


Figure 15. Northeastern Portion of Staff Drive Test Route for Montana (Verizon)

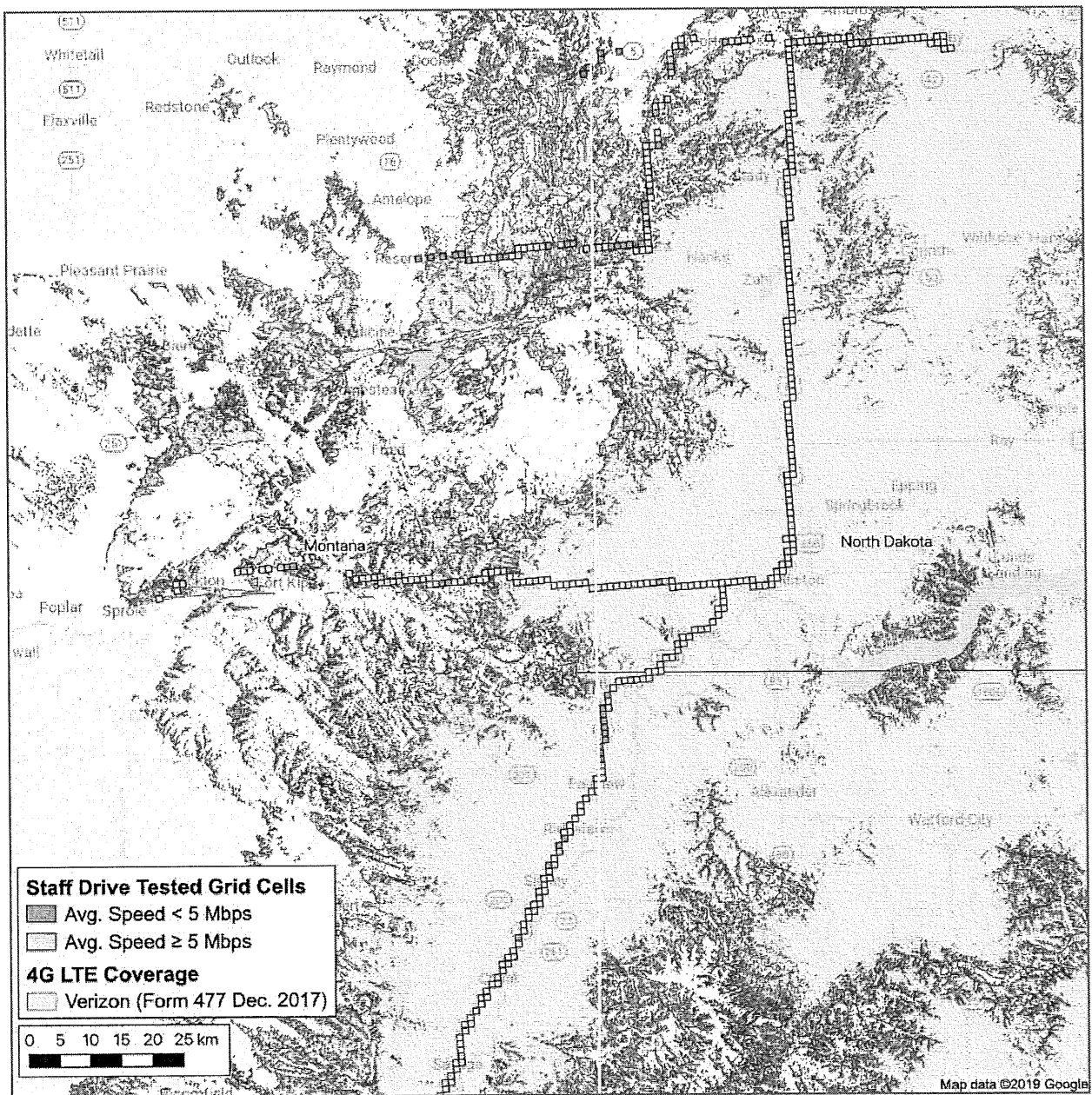


Figure 16. Southeastern Portion of Staff Drive Test Route for Montana (Verizon)

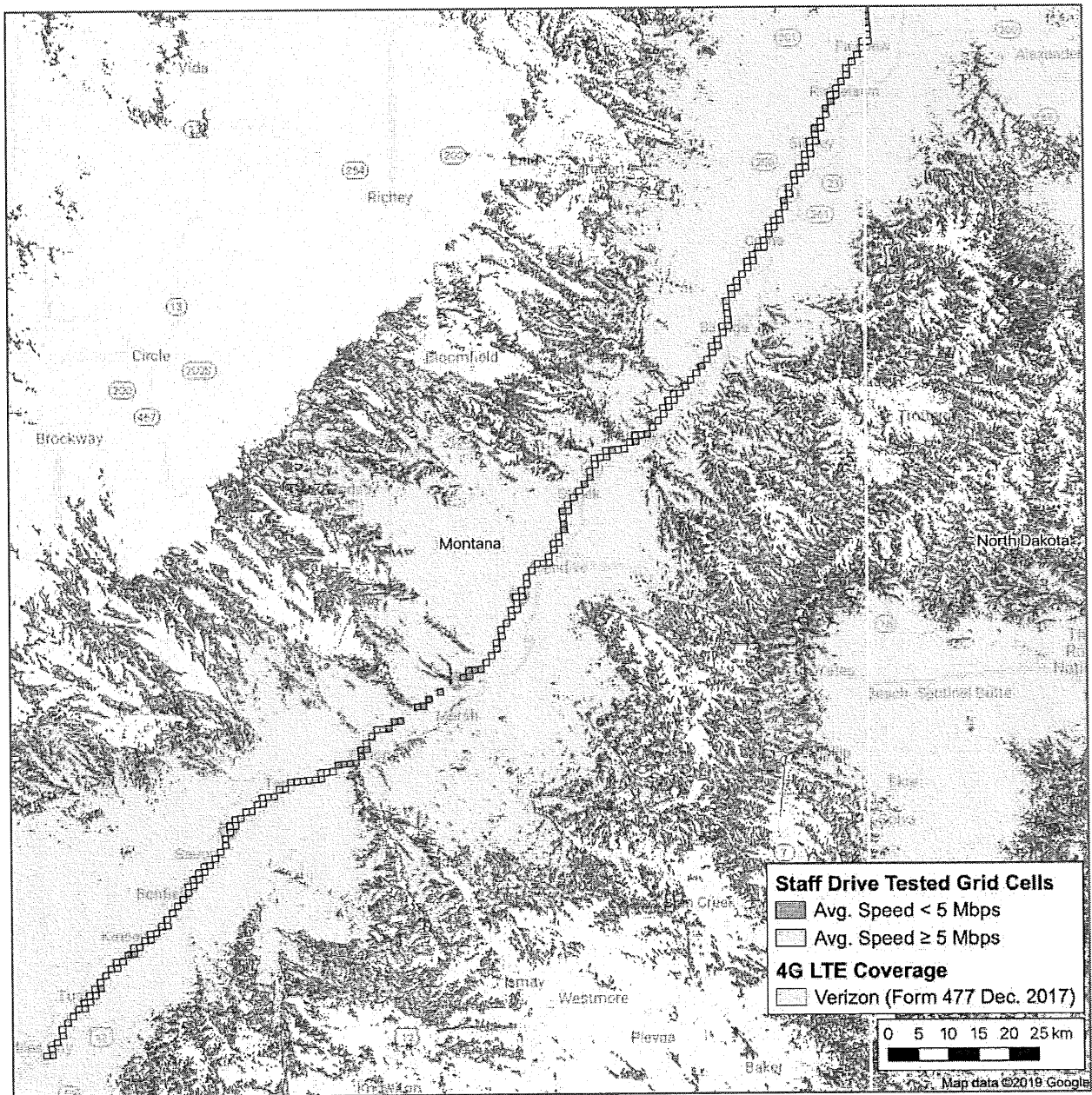


Figure 17. Staff Drive Test Route for Vermont (U.S. Cellular)

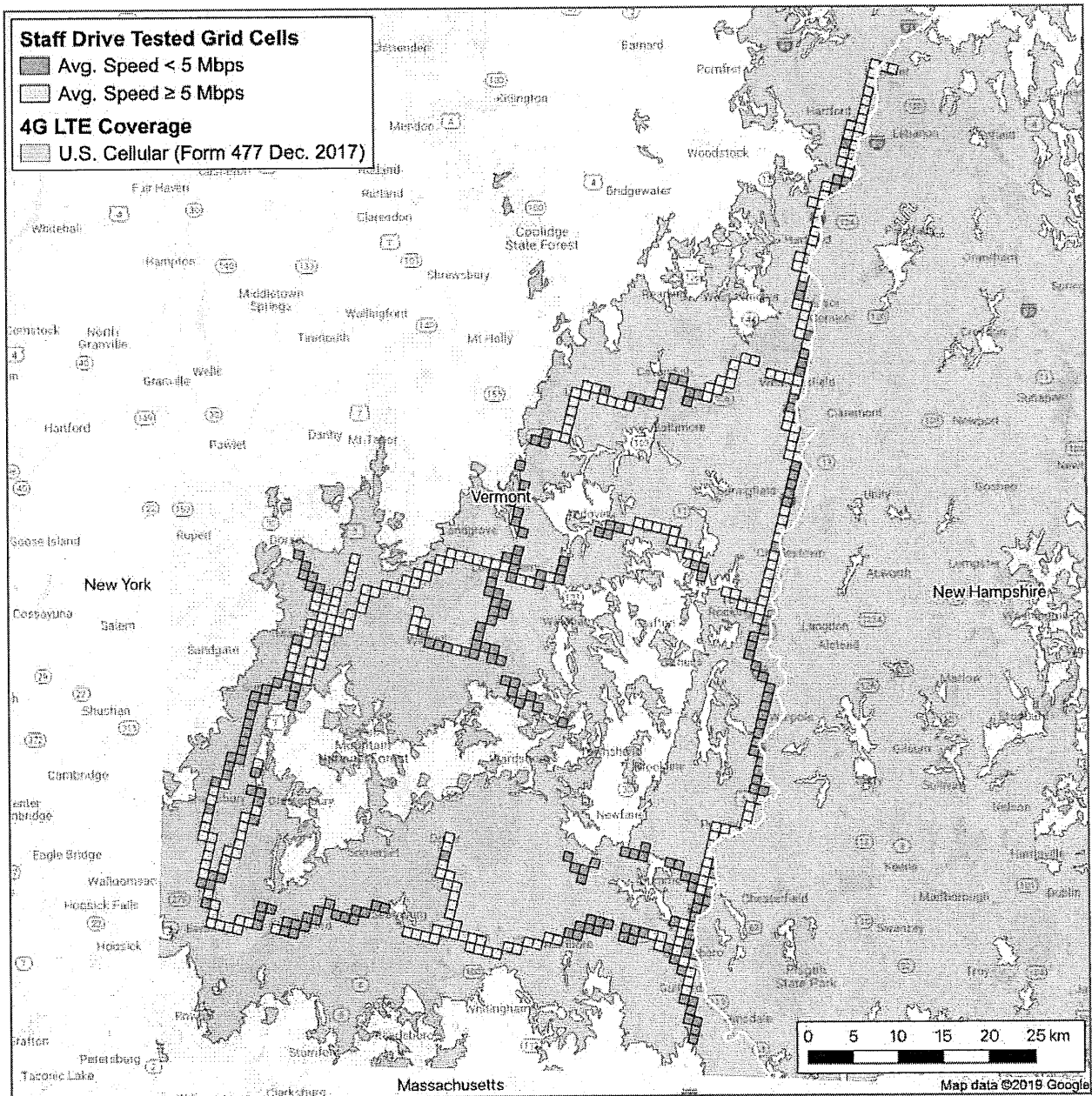


Figure 18. Northern Portion of Staff Drive Test Route for Alabama (T-Mobile)

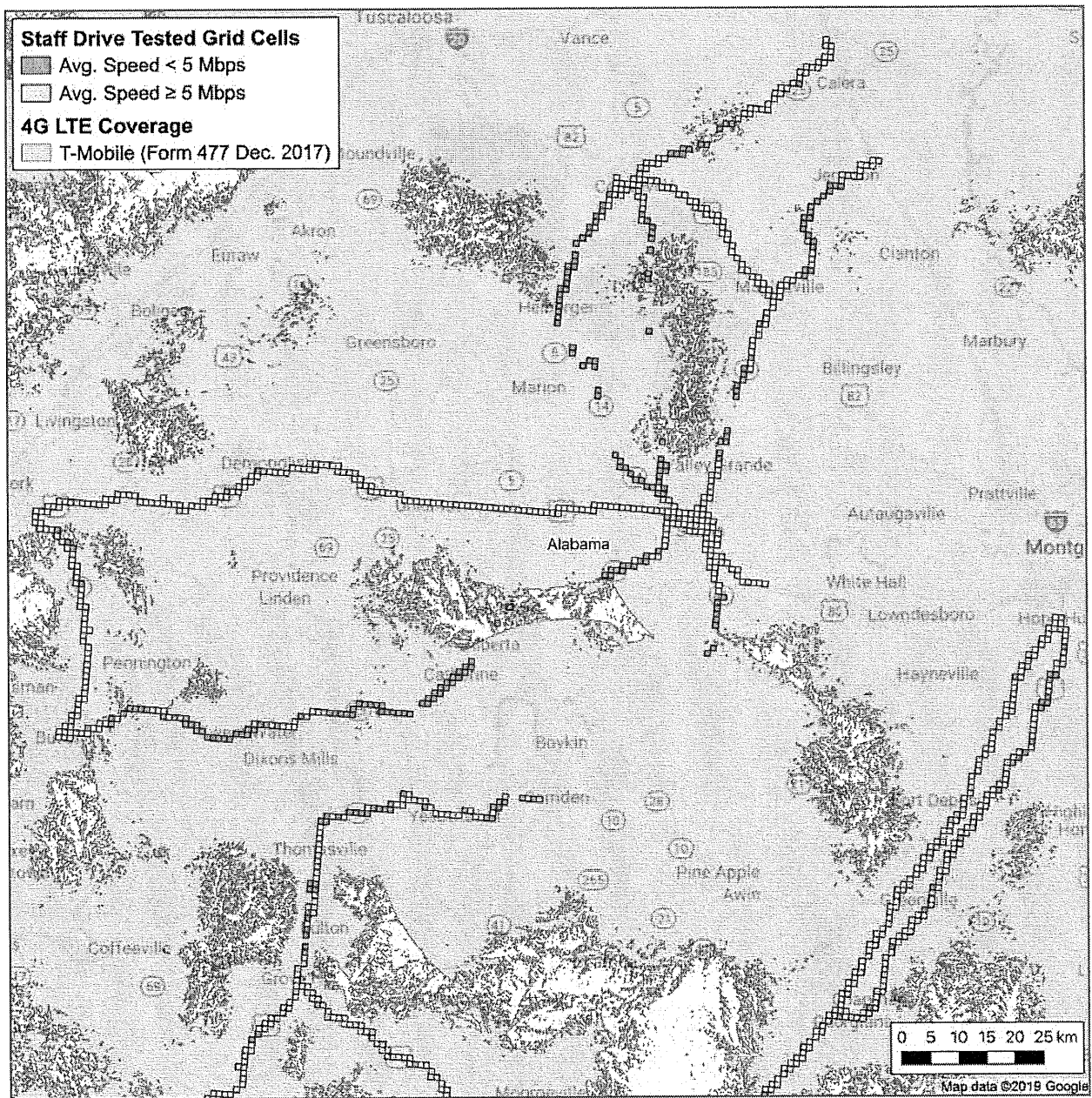


Figure 19. Southern Portion of Staff Drive Test Route for Alabama (T-Mobile)

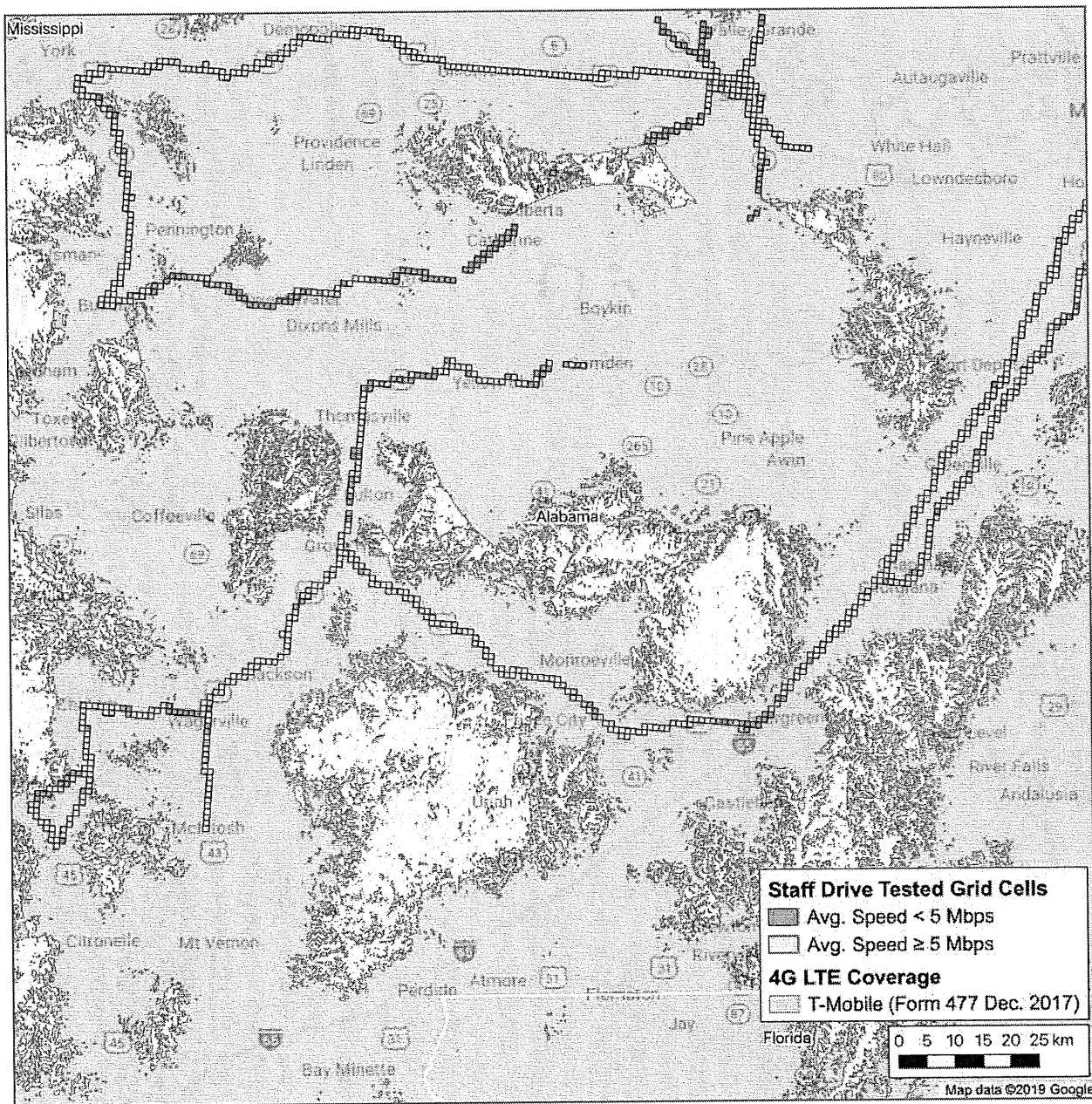


Figure 20. Big Horn and Yellowstone County Portion of Staff Drive Test Route for Montana (T-Mobile)

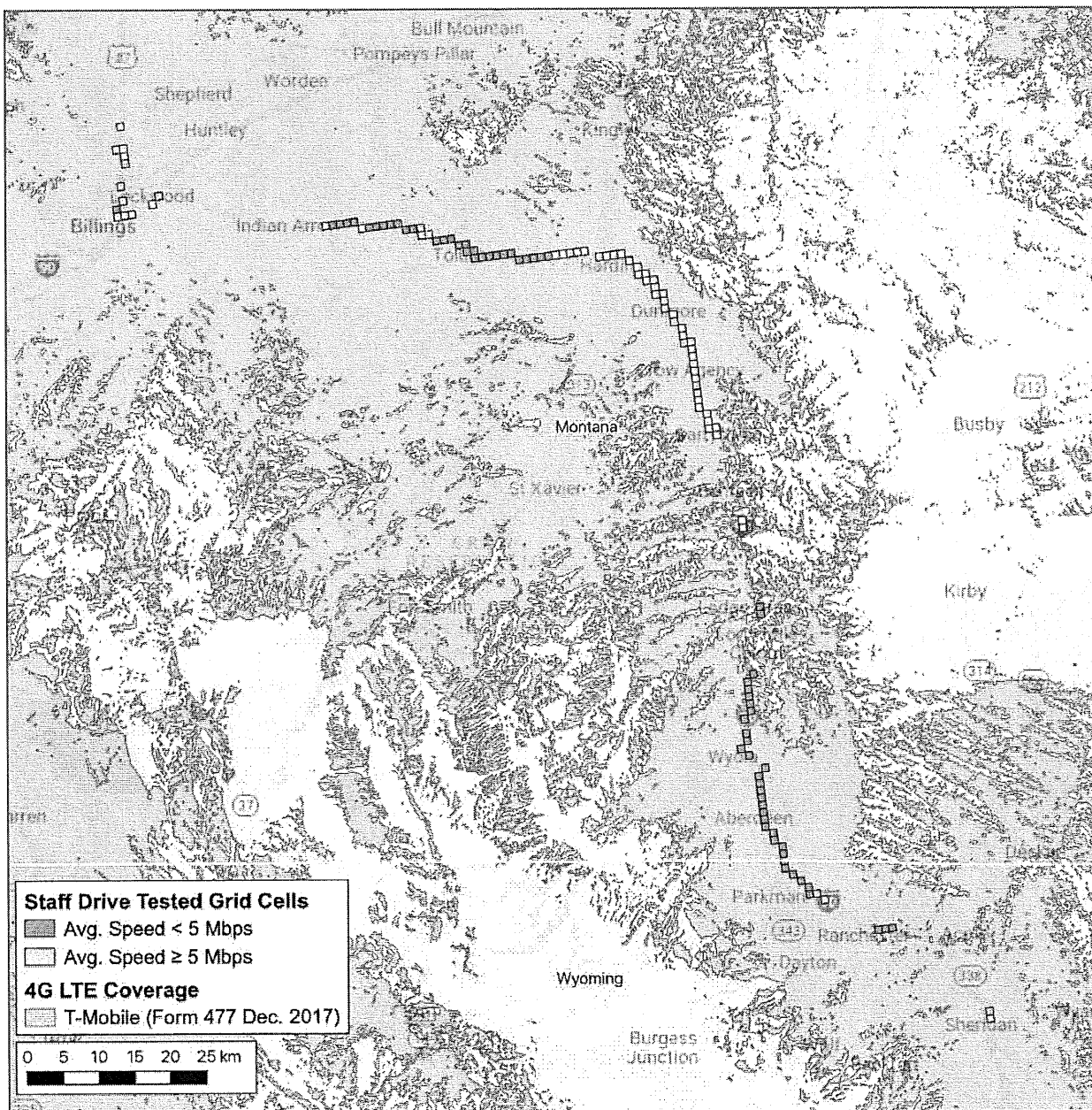


Figure 21. Phillips and Valley County Portion of Staff Drive Test Route for Montana (T-Mobile)

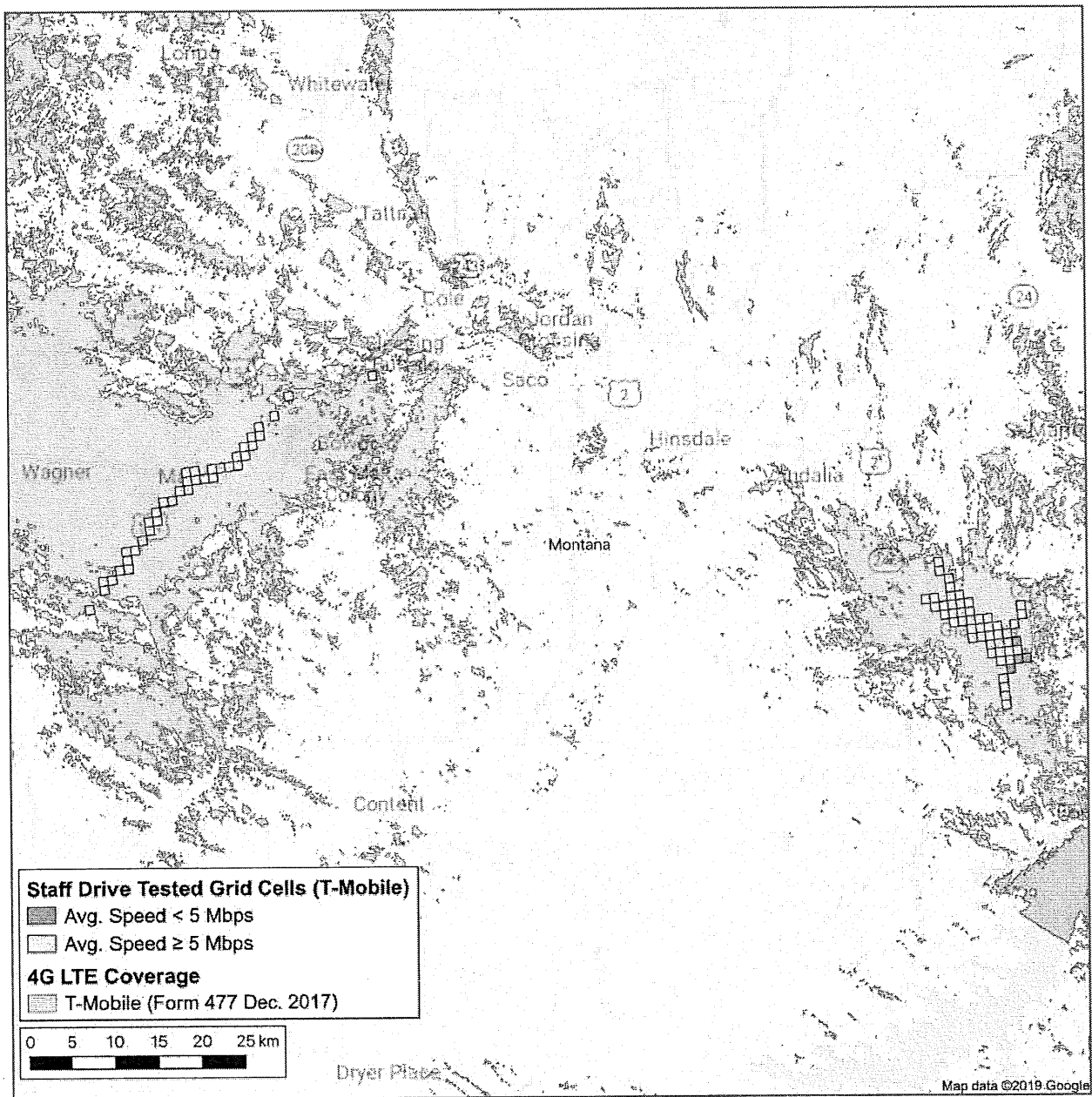


Figure 22. Northeastern Portion of Staff Drive Test Route for Montana (T-Mobile)

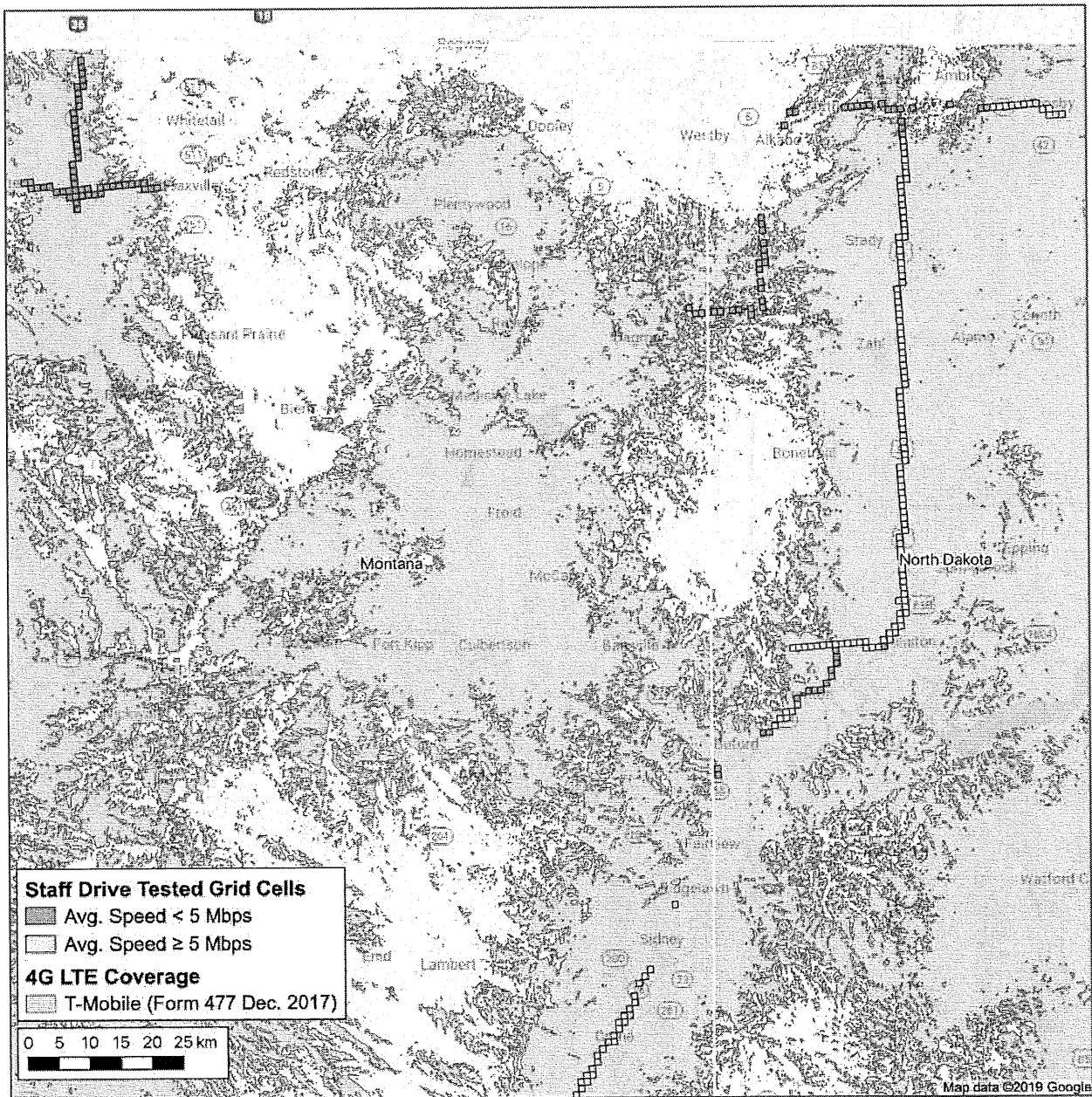
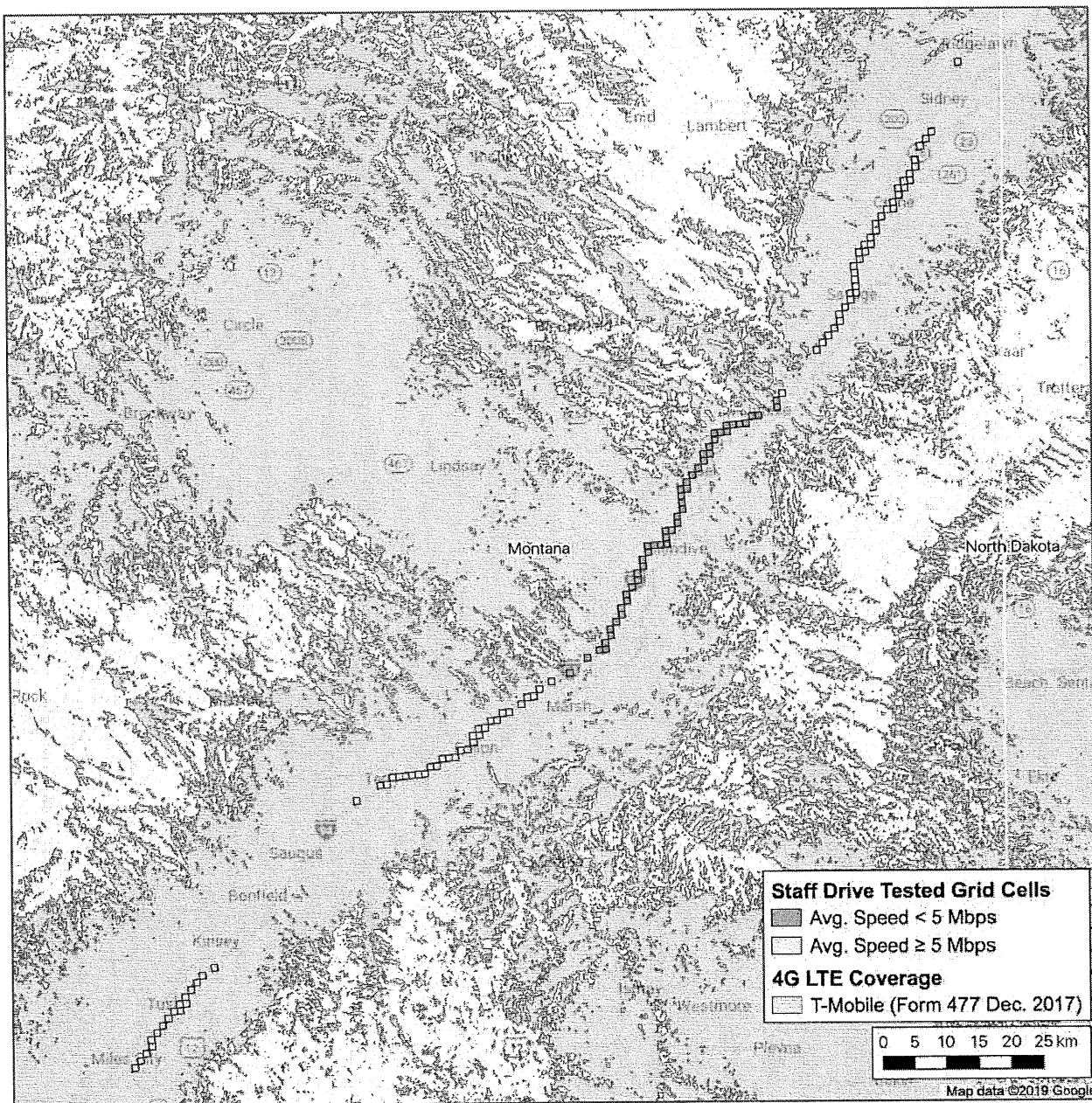


Figure 23. Interstate 94 Portion of Staff Drive Test Route for Montana (T-Mobile)



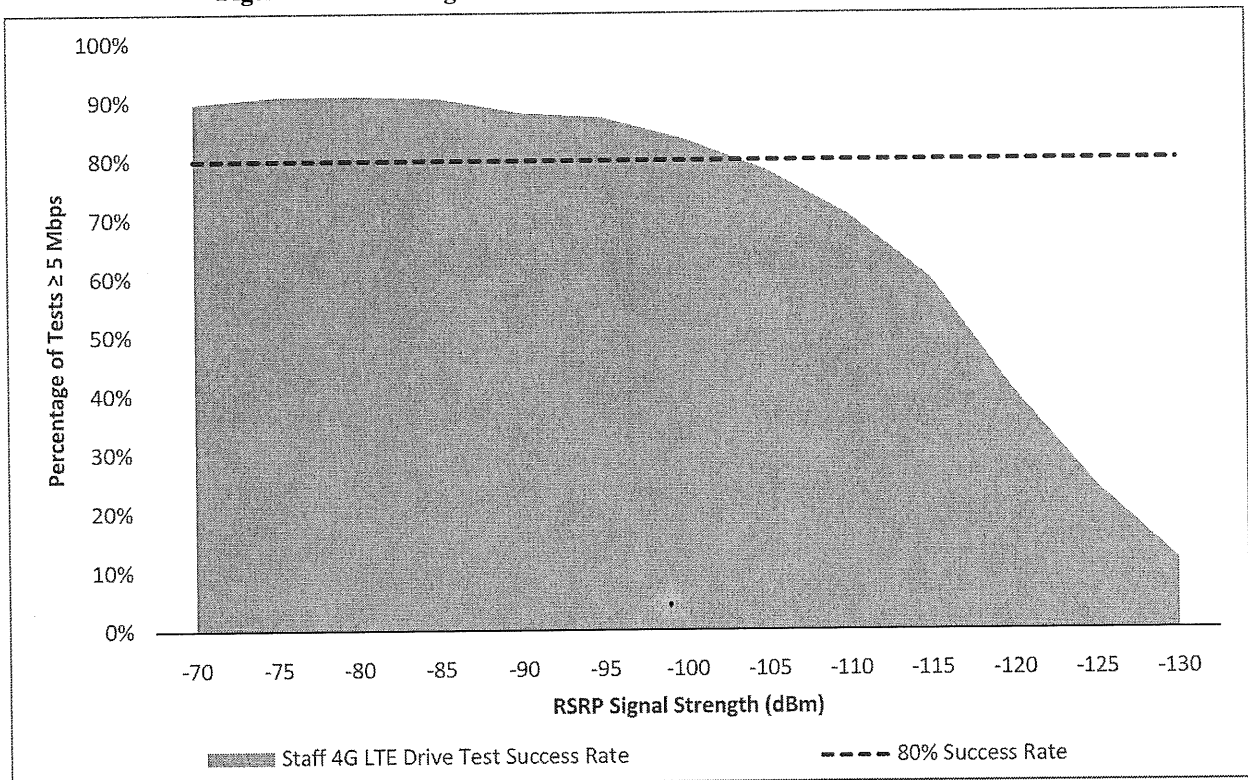
64. *Relationship Between RSRP Signal Strength and Success Rate.*—In addition to download speed, the staff speed tests recorded the RSRP signal strength value in decibel-milliwatts (dBm) received by the handset with each speed test on a 4G LTE network.¹¹⁷ Among other analyses, we analyzed

¹¹⁷ The RSRP value recorded by handsets is a standard measurement of signal strength indicative of cell coverage of 4G LTE networks. See Stefania Sesia et al., *LTE—The UMTS Long Term Evolution: From Theory to Practice* § 22.3.1.1, at 513 (Wiley 2nd ed. 2011). RSRP as a metric for signal strength only pertains to 4G LTE networks. Accordingly, for these purposes we excluded tests that did not include a recorded RSRP value, either because the test was conducted on a non-4G LTE network (e.g. 3G) or because the handset was unable to detect a 4G LTE signal.

whether the measurements helped explain the discrepancies found between model-predicted download speeds and on-the-ground tests.

65. We found a strong positive relationship between the RSRP signal strength recorded and the percentage of 4G LTE speed tests that achieved a download speed of at least 5 Mbps (see Figure 24). Across all 4G LTE staff drive tests, when RSRP values were -80 dBm or higher, the observed success rate was at least 90%. An 80% or better success rate was found with RSRP values of -105 dBm or higher. We saw a sharp drop off in success rates at RSRP values below -105 dBm.

Figure 24. Percentage of Successful 4G LTE Staff Drive Tests by RSRP



66. To compare these signal strength observations to the Commission’s coverage map standards, we refer to the RSRP signal strength at which an 80% success rate is achieved as the “observed cell edge.” While the observed cell edge RSRP was -105 dBm across all staff drive tests that obtained a 4G LTE signal within the coverage area, it varied considerably among the three providers tested. T-Mobile’s observed cell edge RSRP was approximately -115 dBm, while Verizon’s was approximately -105 dBm and U.S. Cellular’s was approximately -100 dBm.

67. The Commission also required each provider to report the minimum cell edge RSRP signal strength values that its propagation model predicts a device would receive for its coverage maps (the “reported cell edge”).¹¹⁸ The reported cell edge RSRP values reported by the three providers were {[]} dBm for T-Mobile, {[]} dBm for U.S. Cellular, and {[]} dBm for Verizon. As a benchmark, we compared the recorded signal strength of staff speed tests to the lowest of these

¹¹⁸ The MF-II LTE coverage data include an RSRP value that represents the minimum signal strength that each provider used to determine the cell edge in its propagation model. *See How Should I Format My LTE Coverage Data?* (Nov. 28, 2017, 10:04 AM), <https://www.fcc.gov/MF2-LTE-Collection> (follow “Description & Formatting” hyperlink under “Mobile LTE Coverage Maps”).

reported cell edge RSRP values in performing our analysis.¹¹⁹ We found that the recorded signal strengths were sometimes inconsistent with the provider's filings, recording values below the lowest reported cell edge RSRP of the tested provider. More specifically, we found that {[]}, {[]}, and {[]} of 4G LTE drive tests conducted within the reported coverage areas of T-Mobile, U.S. Cellular, and Verizon, respectively, had an RSRP value below the provider's reported cell edge RSRP value (see Table 7). In cases where the handset recorded signal strength values below the minimum predicted by the provider's propagation model, that suggests that its model may not be properly considering on-the-ground factors such as clutter or terrain.

Table 7. Reported versus Observed Cell Edge by Provider

Provider Name	Percentage Non-4G LTE Tests	Percentage 4G LTE Tests with RSRP Below Reported Cell Edge RSRP	Reported Cell Edge RSRP	Observed Cell Edge RSRP
T-Mobile	21.3%	{[]}	{[]} dBm	-115 dBm
U.S. Cellular	38.0%	{[]}	{[]} dBm	-100 dBm
Verizon	16.2%	{[]}	{[]} dBm	-105 dBm

68. We further compared the observed cell edge RSRP value for each provider with its reported cell edge RSRP and found the reported cell edge values to be lower than the observed cell edge values in some cases. For example, the staff drive test data indicate an observed cell edge RSRP—that is, the RSRP signal strength at which an 80% success rate is achieved—on Verizon's 4G LTE network of approximately -105 dBm, which is higher than Verizon's reported cell edge RSRP value of {[]} dBm.

69. In cases where the reported cell edge RSRP is lower than the observed cell edge RSRP for a particular provider, it suggests that the RSRP value used by the provider to determine the cell edge in its propagation model may have been too low to allow for handsets to achieve the required download speed with sufficient probability to meet the MF-II specification. In these cases, prescribing a higher minimum RSRP value may provide a more accurate depiction of actual coverage meeting the Commission's standard for the 4G LTE data collection. We also note that even if the reported cell edge RSRP for one of the three providers were equal to the observed cell edge RSRP, the submitted coverage maps would still not accurately reflect actual network performance due to the large number of tests that did not record a 4G LTE signal and had no RSRP values.

¹¹⁹ Providers that submitted coverage data for multiple spectrum bands generally reported different RSRP values for different spectrum bands. Because the staff speed test data did not record which spectrum band the handset used for each test or in each location, we compared the test data to the lowest value in the range of RSRP values in cases where the provider reported different RSRP values for different spectrum bands. We also acknowledge that the providers for which staff conducted speed tests may have networks that used carrier aggregation—a technology by which the handset is able to receive and transmit over multiple spectrum bands simultaneously. The staff speed tests recorded only a single RSRP signal strength value associated with each test and did not record which spectrum band or bands were in use at the time of the test. As a result, it is possible that the test handset measured multiple RSRP signal strengths on different bands despite only recording the RSRP signal strength associated with the primary band.

C. Stationary Test Results

70. The results of the stationary tests conducted by Commission staff vary widely based upon the specific location at which the tests were run (see Table 8 and Table 9).¹²⁰ Locations were selected based upon the planned drive test route and staff analysis of each provider's 4G LTE coverage maps identifying areas close to the edge of coverage. As a result, we would likewise expect that the percentage of stationary tests at each location that were successful—i.e., recorded a download speed of at least 5 Mbps—would be at least 80%. Additionally, because staff stationary testing recorded numerous tests at the same location over an extended time, the success rate should be more representative of performance at a particular location than a single drive test point.

71. Out of the 42 stationary test locations, nearly half (20) measured a success rate of 80% or better—and, for slightly more than a third (15) of the locations, the 92% benchmark was met—indicating that in at least those areas the provider's coverage map appeared to be accurate. However, the success rates for the remaining locations were generally considerably lower than the 80% benchmark, including eight locations for which no stationary test achieved download speeds of at least 5 Mbps. Such results indicate that the provider's coverage data may not be an accurate representation of the on-the-ground consumer experience in these 22 locations.

Table 8. Staff Stationary Test Results by Route, Location, and Provider

Provider Name	Test Route	Location	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
T-Mobile	Alabama	Federal Rd., Hope Hull, AL	149	170	87.6%
T-Mobile	Alabama	Four Points Rd., Fruitdale, AL	75	175	42.9%
T-Mobile	Alabama	Rt. 10, Camden, AL	147	170	86.5%
T-Mobile	Alabama	Rt. 16, Sweet Water, AL	164	165	99.4%
T-Mobile	Alabama	Marvel Rd., Brierfield, AL	93	156	59.6%
T-Mobile	Montana	Hwy. 248, Scobey, MT	0	143	0%
T-Mobile	Montana	Scotty Pride Dr., Glasgow, MT	171	172	99.4%
U.S. Cellular	Vermont	Rt. 9, Bennington, VT	80	165	48.5%
U.S. Cellular	Vermont	N. Hartland Rd., White River Junction, VT	142	169	84.0%
U.S. Cellular	Vermont	S. Main St., Chester, VT	169	169	100%
U.S. Cellular	Vermont	Bonnet St., Manchester Center, VT	175	175	100%
U.S. Cellular	Vermont	Putney Rd., Brattleboro, VT	0	164	0%
Verizon	Alabama	Federal Rd., Hope Hull, AL	165	165	100%
Verizon	Alabama	Four Points Rd., Fruitdale, AL	10	146	6.8%
Verizon	Alabama	Rt. 10, Camden, AL	88	154	57.1%
Verizon	Alabama	Rt. 16, Sweet Water, AL	41	155	26.5%

¹²⁰ We have again excluded from our analysis any stationary test points that fell outside of the tested provider's coverage maps.

Federal Communications Commission

Provider Name	Test Route	Location	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
Verizon	Alabama	Marvel Rd., Brierfield, AL	167	170	98.2%
Verizon	Arizona ¹²¹	E. Woolford Rd., Show Low, AZ	2	4	50.0%
Verizon	Arizona	S. Penrod Ln., Pinetop-Lakeside, AZ	30	30	100%
Verizon	Arizona	Winners Cir., McNary, AZ	0	5	0%
Verizon	Arizona	Farm Rd., Canyon Day, AZ	9	13	69.2%
Verizon	Arizona	Faught Ridge Rd., Show Low, AZ	0	5	0%
Verizon	Arizona	Rim Rd., Show Low, AZ	0	3	0%
Verizon	Arizona	W. Whipple St., Show Low, AZ	0	4	0%
Verizon	Montana	4th Ave. SE, Crosby, ND	169	169	100%
Verizon	Montana	Scotty Pride Dr., Glasgow, MT	154	162	95.1%
Verizon	New Mexico	Rt. 371, Thoreau, NM	0	221	0%
Verizon	New Mexico	Rt. 371, Crownpoint, NM	147	220	66.8%
Verizon	New Mexico	Rt. 371, Bloomfield, NM	56	221	25.3%
Verizon	New Mexico	W. Main St., Farmington, NM	193	216	89.4%
Verizon	Oklahoma	Rt. 287, Stratford, TX	163	165	98.8%
Verizon	Oklahoma	N0350 Rd., Boise City, OK	162	172	94.2%
Verizon	Oklahoma	Rt. 412, Guymon, OK	167	168	99.4%
Verizon	Oklahoma	Rt. 56, Dodge City, KS	171	171	100%
Verizon	Oklahoma	Rt. 412, Felt, OK	124	167	74.3%
Verizon	Oklahoma	Rt. 54, Tyrone, OK	125	168	74.4%
Verizon	Oklahoma	Rt. 385, Dalhart, TX	106	170	62.4%
Verizon	Vermont	Rt. 9, Bennington, VT	169	169	100%
Verizon	Vermont	N. Hartland Rd., White River Junction, VT	102	168	60.7%
Verizon	Vermont	S. Main St., Chester, VT	0	155	0%
Verizon	Vermont	Bonnet St., Manchester Center, VT	25	26	96.2%
Verizon	Vermont	Putney Rd., Brattleboro, VT	143	161	88.8%
Total			4,053	5,916	68.5%

¹²¹ We note that stationary tests for locations in Arizona did not follow the same methodology as for stationary tests along subsequent test routes. Specifically, see *supra* note 111, stationary tests in Arizona were conducted for a duration of one-to-two minutes compared to one-to-two hours for later stationary tests. Staff thus recorded far fewer tests for stationary test locations in Arizona.

Table 9. Staff Stationary Test Results by Route and Provider

Provider Name	Test Route	Test Count Zero Mbps	Test Count > 0 & < 5 Mbps	Test Count ≥ 5 Mbps	Test Count Total	Percentage ≥ 5 Mbps
T-Mobile	Alabama	5	203	628	836	75.1%
T-Mobile	Montana	4	140	171	315	54.3%
US Cellular	Vermont	96	180	566	842	67.2%
Verizon	Arizona	12	11	41	64	64.1%
Verizon	New Mexico	1	481	396	878	45.1%
Verizon	Oklahoma	1	162	1,018	1,181	86.2%
Verizon	Alabama	4	315	471	790	59.6%
Verizon	Vermont	41	199	439	679	64.7%
Verizon	Montana	0	8	323	331	97.6%
Total		164	1,699	4,053	5,916	68.5%

72. The staff stationary testing results additionally underscore some of the temporal variability of mobile networks that complicates attempts to accurately measure performance. Even at locations where stationary tests met or exceeded the threshold success rate of 80%, a small percentage of tests nevertheless failed. For example, despite an overall success rate of 89.4% on Verizon's network at the Farmington, NM stationary test location, 21 speed tests recorded download speeds below 5 Mbps. As such, due to the inherent variability of mobile networks, we would expect that drive tests would similarly fail periodically to achieve download speeds of at least 5 Mbps even for areas that meet the 80% cell edge probability. While this implies that the results of any particular speed test are not dispositive for a specific location, the likelihood of false positives decreases with additional measurements, and a more accurate measurement of performance emerges.¹²² The numerous stationary test locations that fall within the provider's 4G LTE coverage maps where staff recorded success rates well below 80%, which appear consistent with the results from nearby staff drive tests, bolsters our conclusion that the coverage maps do not accurately represent the areas where consumers can expect to receive 4G LTE download speeds of at least 5 Mbps.

¹²² For the same reason, staff therefore made multiple passes, conducting drive testing along the same roads at different times, for most drive test routes. Moreover, there are clear patterns that emerge from analyzing the drive test data indicating insufficient coverage across large areas. Because we would expect that speed tests would fail in a coverage area that meets the cell edge probability only a small percentage of time, lengthy stretches of roadways where speed tests record download speeds below 5 Mbps (especially taken at different times) are unlikely due to any inherent variability.

VI. CONCLUSIONS

73. Accurate broadband data is essential to bridging the digital divide, and bridging the digital divide is the Commission's top priority. Mobile providers are legally responsible for submitting accurate and reliable coverage maps to the Commission. It is incumbent upon mobile providers to accurately model their networks, to test and retest these models, and to improve continually the accuracy of their projections so that their submissions can be confidently relied upon by the Commission, USAC, and the public.¹²³

74. Our analysis and speed tests suggest that the submitted MF-II coverage maps did not match actual coverage in many instances. Accordingly, the Commission has sought comment in another proceeding on how it can improve the reliability of the data submitted by mobile service providers.¹²⁴ This staff report documents the extensive efforts of staff to investigate the coverage maps submitted by providers for the MF-II data collection and, in doing so, to provide insights into potential ways the Commission can improve the accuracy of mobile coverage going forward.

75. Specifically, staff recommends that the Commission terminate the MF-II challenge process. Despite the extensive efforts of staff and challengers that contributed to the challenge process, the submitted coverage maps are not a sufficiently accurate basis upon which to continue a process meant to address coverage disputes at the margins. The challenge process was not designed to correct generally overstated coverage maps.

76. Staff recommends that the Commission issue an Enforcement Advisory on broadband data accuracy in the Form 477 filing, and, separately, for future Digital Opportunity Data Collection filings. Broadband data accuracy should be made a top priority going forward and providers should be put on notice of the penalties that could arise from coverage filings that violate federal law.

77. Staff recommends that the Commission assemble a team with the requisite expertise, resources, and capacity to audit, verify, and investigate the accuracy of mobile broadband coverage maps submitted to the Commission. The Commission should further consider seeking appropriations from Congress to carry out any necessary drive testing. This team should specifically analyze the most recent Form 477 filings of Verizon, U.S. Cellular, and T-Mobile to determine if they complied with the Form 477 requirements. The Form 477 rules prohibit providers from reporting coverage where they provide none.

78. Additionally, staff recommends that the Commission adopt several changes in its mobile data collections. For MF-II, the Commission adopted the most granular and standardized mobile coverage collection it had ever undertaken. The staff analysis in this report, and the staff and challenger speed tests upon which the analysis relies, are an unprecedented examination into how accurately the coverage maps submitted by mobile providers to the Commission reflect on-the-ground, consumer experiences. This analysis indicates that the coverage data submitted by several providers did not accurately reflect actual on-the-ground coverage in many cases, and thus indicates that our mobile data coverage collections should become more standardized, more detailed, and include actual speed test data. Providers should submit more than just projections of coverage; providers should be required to submit actual speed test data sampling that verifies the accuracy of their propagation models. The Commission should adopt policies, procedures, and standards that allow for submission, verification, and disclosure of

¹²³ The Commission requires truthful and accurate statements in its proceedings. *See, e.g.*, 47 CFR § 1.17(a)(1).

¹²⁴ *See, e.g., Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, 7549-52, paras. 112-20 (2019) (proposing to require mobile service providers to submit "infrastructure information sufficient to allow for verification of the accuracy of providers' broadband data" upon request).

mobile coverage data and also convene a workshop of stakeholders on best practices for the generation and submission of accurate mobile broadband data.

79. Staff is unable to determine the specific reasons for every difference between providers' model-predicted and on-the-ground coverage. Our speed testing, data analyses, and inquiries, however, suggest that some of these differences may be the result of some providers' models: (1) using a cell edge RSRP value that was too low, (2) not adequately accounting for network infrastructure constraints, including backhaul type and capacity, or (3) not adequately modeling certain on-the-ground factors—such as the local clutter, terrain, and propagation characteristics by spectrum band for the areas claimed to be covered.

80. For proceedings in which the Commission collects mobile broadband deployment data, staff recommends that the Commission standardize the propagation map parameters and assumptions that providers use to generate their coverage data. The propagation map parameters adopted in the *MF-II Challenge Process Order*, as well as the coverage and other data required by that Order, should serve as the starting point, but key elements could be further standardized to determine more accurately where consumers can expect to obtain a mobile broadband connection.¹²⁵ Based on what we have learned from this process, in the future the Commission should be able to obtain more accurate mobile coverage data by specifying additional technical parameters. Specifically, the Commission should adopt mobile broadband coverage data specifications that include, among other things, minimum throughput and/or signal strength (as appropriate), standard cell loading factors and cell edge probabilities, maximum terrain and clutter bin sizes, and standard fading statistics. For any modeling with minimum throughput parameters, the Commission should require that providers assume the minimum values for whatever additional propagation model parameters would be necessary in order to accurately determine the area where a handset is demonstrated to achieve performance with download and upload speeds no less than the requirement meeting the cell edge probability. The Commission should allow for refinements of propagation models based on experience in any given area but should not allow elimination of elements such as clutter and fading that play a major role in the likelihood of connectivity. Additionally, all data submissions should require an engineering certification.¹²⁶

81. The Commission should collect additional, more detailed data from mobile providers on the inputs and assumptions that underlie their propagation models, including the locations and specific characteristics of certain cell sites used for mobile wireless service, the modeling software that is being used, the entire link budget and values, and terrain data source.¹²⁷ To ensure the integrity and reliability of submitted maps, the Commission should also require that all filers submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.

82. Although a challenge process may seem capable of correcting inaccurate coverage maps, we caution that, as with coverage projections based on propagation models, there are inherent limits to

¹²⁵ Standardization should be implemented as appropriate for the purposes of the coverage data collection, taking into account relevant variations, for example in terrain.

¹²⁶ We understand that mobile providers closely monitor the performance of their networks including data that can provide insight as to whether service is actually available in an area. We note that the tests conducted for this project found there was no connectivity at all in many areas. We expect that providers should be aware of this from monitoring their networks or their own field tests.

¹²⁷ The Commission should adopt procedures for providers that use modeling programs that rely upon proprietary information, e.g., clutter loss values, that would allow for such providers to disclose information necessary to validate their model assumptions. The Commission should consider requiring submission of traffic models to validate the relevant assumptions.

how accurately individual speed tests reflect network performance because performance on mobile broadband networks is inherently variable. Managing a granular challenge process is highly time- and resource intensive and may not significantly improve the accuracy of the underlying maps. Accordingly, staff does not recommend adoption of granular mobile challenge processes as a means of improving the accuracy of mobile coverage maps. This recommendation is separate and aside from creating processes for stakeholders to provide the Commission with evidence that challenges the mapping and modeling assumptions of mobile providers, thus enabling the Commission to respond to evidence of generalized problems with submitted coverage maps, and thus increasing the legitimacy of a final assessment of coverage. While adoption of these staff recommendations should lead to improvements in the Commission's data collection processes, enforcement of data collection rules, and the accuracy of submitted data, mobile providers are ultimately responsible for the accuracy of the coverage data they file.

APPENDIX A:
Form 477 Filers that Submitted MF-II 4G LTE Coverage Data

MF-II Provider Name
Appalachian Wireless
ATN
AT&T
Bluegrass Cellular
Bluesky
C Spire
Carolina West Wireless
Cellcom
Central Texas Telephone Coop (CTTC)
Chariton Valley
Chat Mobility
Choice Phone
ClearTalk
Custer Telephone Cooperative
DoCoMo Pacific
FTC Wireless
GTA Wireless
Horizon Communications
Illinois Valley Cellular
Indigo Wireless
Inland Cellular
Iowa Wireless
James Valley Cooperative Telephone
MBO Wireless

MF-II Provider Name
MCG PCS
Mid-Rivers Cellular
Nex-Tech Wireless
Northwest Missouri Cellular
Panhandle Telephone
Pine Cellular
Pioneer Enid Cellular
PTI Pacifica
Sagebrush Cellular
Smith Bagley (d/b/a Cellular One)
Sprint
SRT Communications
Standing Rock Telecom
Strata Networks
Thumb Cellular
T-Mobile
Triangle
Union Telephone
United Telcom
US Cellular
Verizon Wireless
Viaero Wireless
VTel Wireless
Worldcall

APPENDIX B:

Additional Findings from the MF-II Challenger Data

1 Analysis of the MF-II Challenger Speed Test Data

1. The staff conducted an in-depth analysis of the MF-II challenger speed test data that passed the automated system validations, were certified by the close of the challenge window, and were recorded within the tested provider's coverage area.

2. This in-depth analysis reveals significant variance in the data among challengers and even among handsets used by the same challenger, as well as anomalous and problematic data that nevertheless passed automated system validations and were certified.¹ Examples of such anomalous and problematic data, all of which were certified and within-coverage, include: tests that recorded negative download speeds or positive signal strength values (171 tests); tests for a single challenger that were identified as being on different device models but which used the same device International Mobile Equipment Identity (IMEI) value (497,124 tests); and tests identified as conducted on the same device within a one-minute period but which included hundreds or thousands of points along multiple-mile stretches of road (approximately 228,107 tests). While such tests represent only 4.6% of certified challenger speed tests that were within the coverage map of the provider tested, they indicate that certain challengers may have submitted data without fully verifying their results.²

3. Anomalies within the challenger speed test dataset also call into question the reliability of challenger data in establishing actual on-the-ground consumer experience in specific areas. For example, unlike other challengers who reported connecting to servers within the U.S. and often within the same state, one challenger submitted 72,877 tests conducted in Kansas that reported connecting to a server in Roubaix, France, and every speed test that ran on this server failed—meaning that it recorded a download speed below 5 Mbps. Another challenger submitted and certified almost 1.7 million tests that were within the coverage of the providers tested, all of which failed. There are also several instances where challengers obtained only zero download speeds in the same geographic area where Commission staff obtained speed tests with much higher speeds.

4. In addition, data submitted by challengers were sometimes internally inconsistent. For example, one challenger submitted speed tests taken in and around two cities in Alabama on one day that had download speeds of zero but a strong signal, but also submitted data for speed tests taken the following week along a similar route that recorded download speeds far exceeding 5 Mbps, also with a strong signal. This same challenger also submitted speed test data that were inconsistent between devices of the same model. The challenger recorded speed tests taken by two distinct devices of the same model that show largely divergent results in the same general areas. For example, of the 187,182 speed tests

¹ We note that variance among challenger data could result from different testing methodologies, from the different networks tested and the varying quality of those networks across states, as well as from terrain, weather, or other factors. Similarly, significant variation in results from a single challenger between two different handset models could be due to the specific characteristics of a particular model (i.e., different cellular modems or device design) or could reflect differences in the quality of the network for different areas tested. Some variance, however, could reflect anomalies, such as a faulty device, especially when starkly divergent results were recorded on the same device model (but two separate devices as identified by IMEI codes) within the same state or even the same general area.

² Conducting the same analysis across all certified challenger speed tests, including those that were not within the coverage map of the provider tested, does not meaningfully change the results, with erroneous data representing 4.4% of all certified challenger speed tests.

taken with the device with IMEI ending 0755 (Device 0755), 95.3% recorded a download speed of zero, and only 35 tests achieved a download speed of at least 5 Mbps. In grid cells where Device 0755 recorded an average signal strength of -110 dBm or higher, the device consistently averaged download speeds of between 0 to 0.1 Mbps (see Figure B-1 and Figure B-2).³ The device with IMEI ending in 9244 (Device 9244) took 49,939 speed tests across a similar area and recorded similar average signal strength values but a wider range of download speed values (see Figure B-3 and Figure B-4).⁴ Nearly 19% of Device 9244's speed tests achieved a download speed of at least 5 Mbps.

5. Taken together, these errors, anomalies, and inconsistencies implicate at least 15.4% of the certified within-coverage speed test data submitted by challengers.⁵ Such issues raise concerns about using challenger speed test data as evidence that 4G LTE coverage is lacking in a specific area, particularly within the framework adopted in the *MF-II Challenge Process Order*. Without further information concerning the challenger's testing procedure and methodology or the state of the provider's network during that time period of the test, it is difficult to determine from inconsistent data which set of varying speed test results is more indicative of expected consumer performance in a particular area.⁶ Further, anomalies and inconsistencies suggest that a number of factors that were not addressed or specified by the Commission in the *MF-II Challenge Process Order* can affect speed test results in ways that may not reflect a consumer's typical on-the-ground performance.⁷

³ For Device 0755, the mean recorded signal strength per grid cell ranged from -168 dBm to -60 dBm.

⁴ For Device 9244, the mean recorded signal strength per grid cell ranges from -186 dBm to -60 dBm.

⁵ Further analysis of the data may reveal additional anomalies or inconsistencies. This calculation also does not include those speed tests recorded in areas where Commission staff speed tests were conducted that show significantly faster download speeds. Analyzing across all certified challenger speed tests, these erroneous, anomalous, and inconsistent speed tests represent 15.6% of such data.

⁶ However, as discussed in Section 2 of this appendix, results from the staff speed tests in the same area recorded download speeds meeting or exceeding 5 Mbps, indicating that the challenger speed tests with download speeds of zero were likely anomalous.

⁷ For example, if a challenger happened to purchase a device with faulty hardware, or if other conditions on the handset negatively impacted network performance, such results could accurately have recorded throughput on the particular handset while also being unrepresentative of typical performance.

Figure B-1. Device 0755 – Average RSRP Signal Strength by Grid Cell

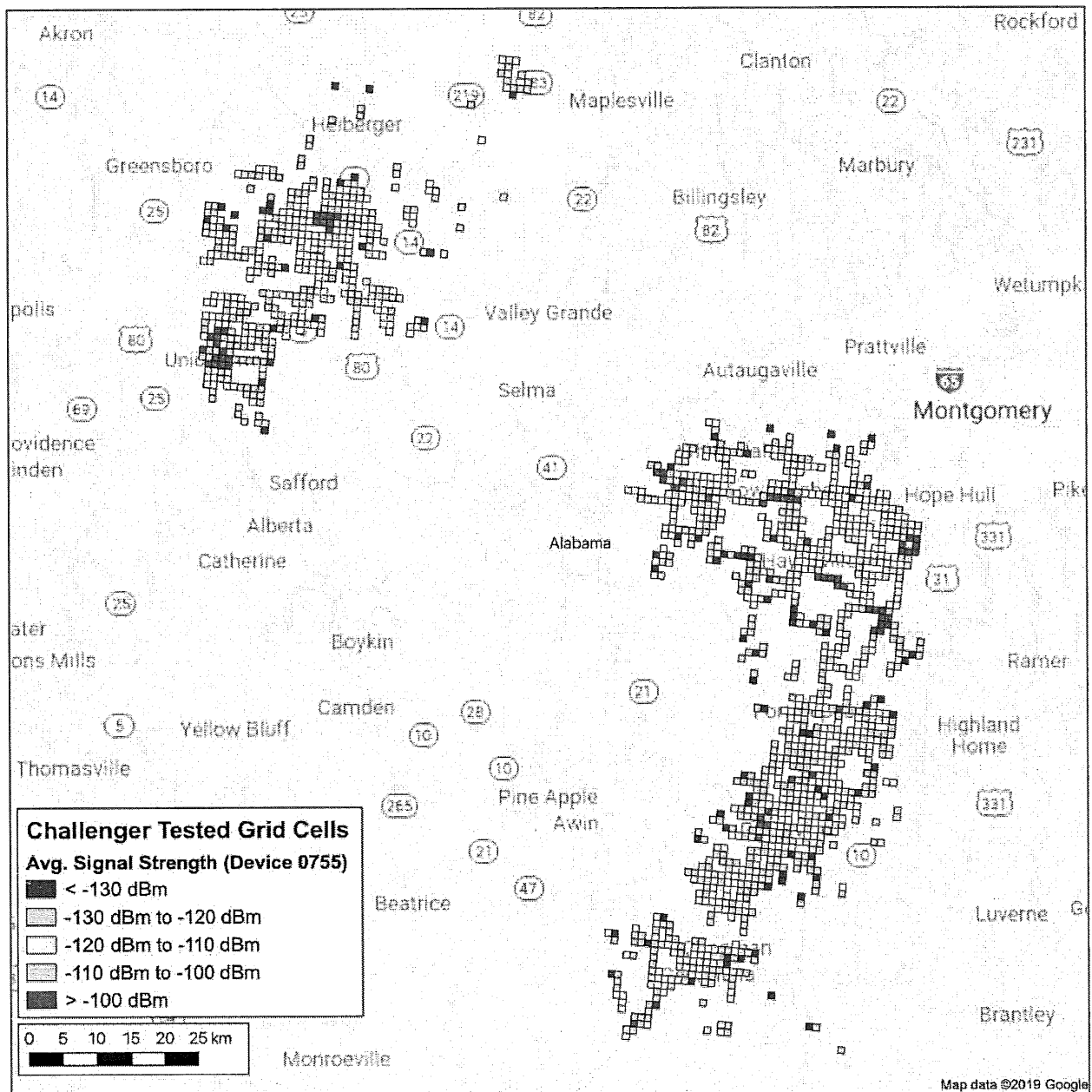


Figure B-2. Device 0755 – Average Download Speed by Grid Cell

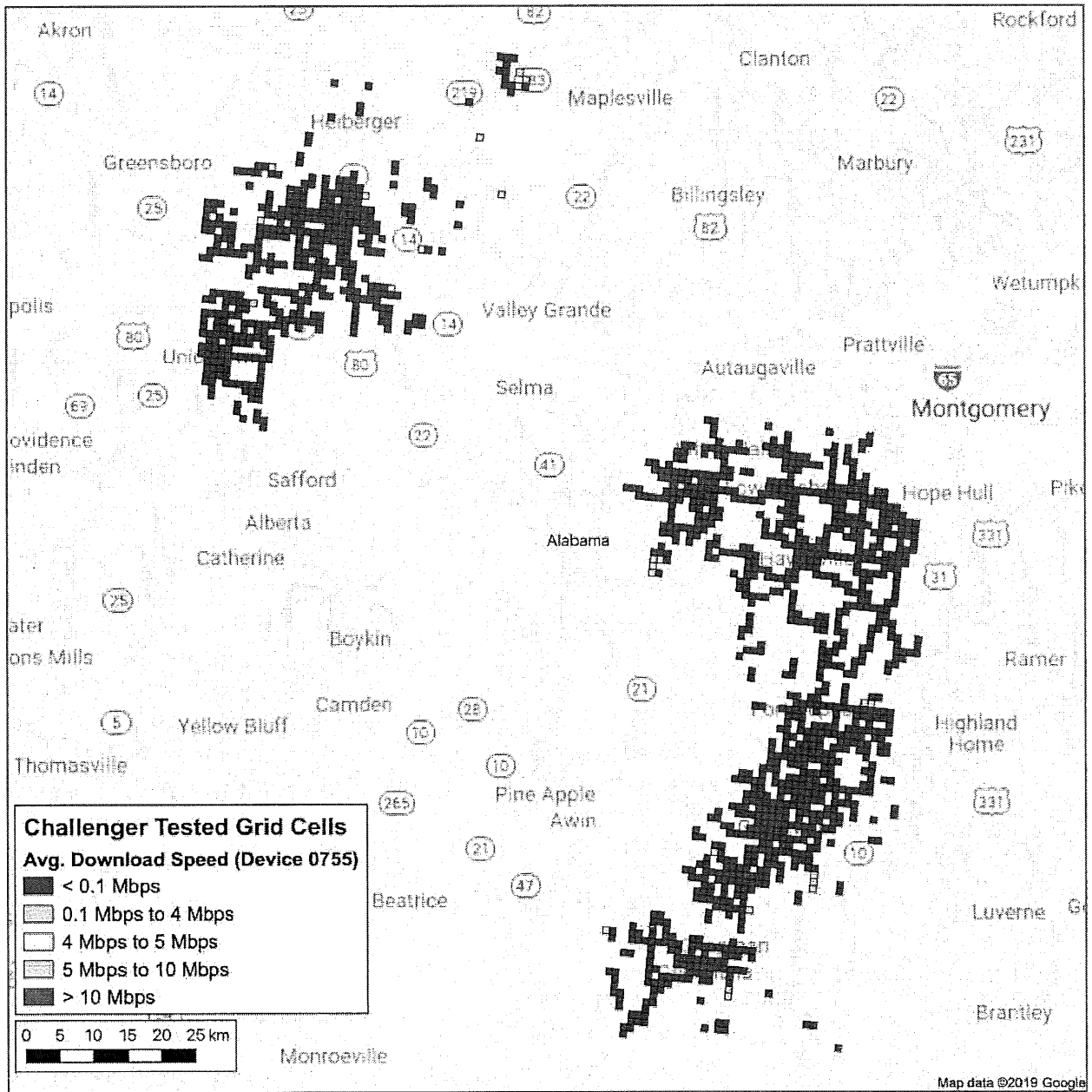


Figure B-3. Device 9244 – Average RSRP Signal Strength by Grid Cell

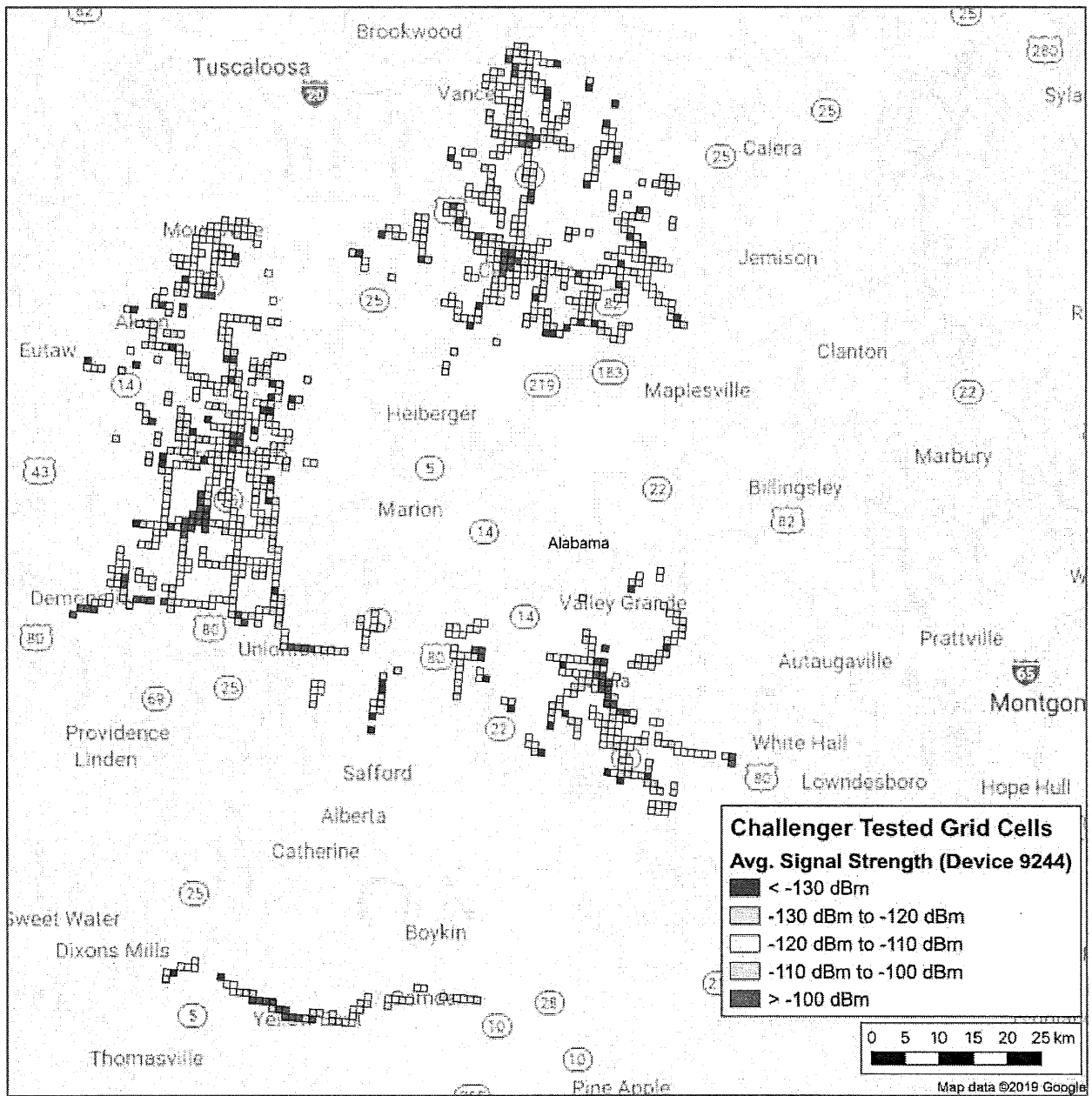
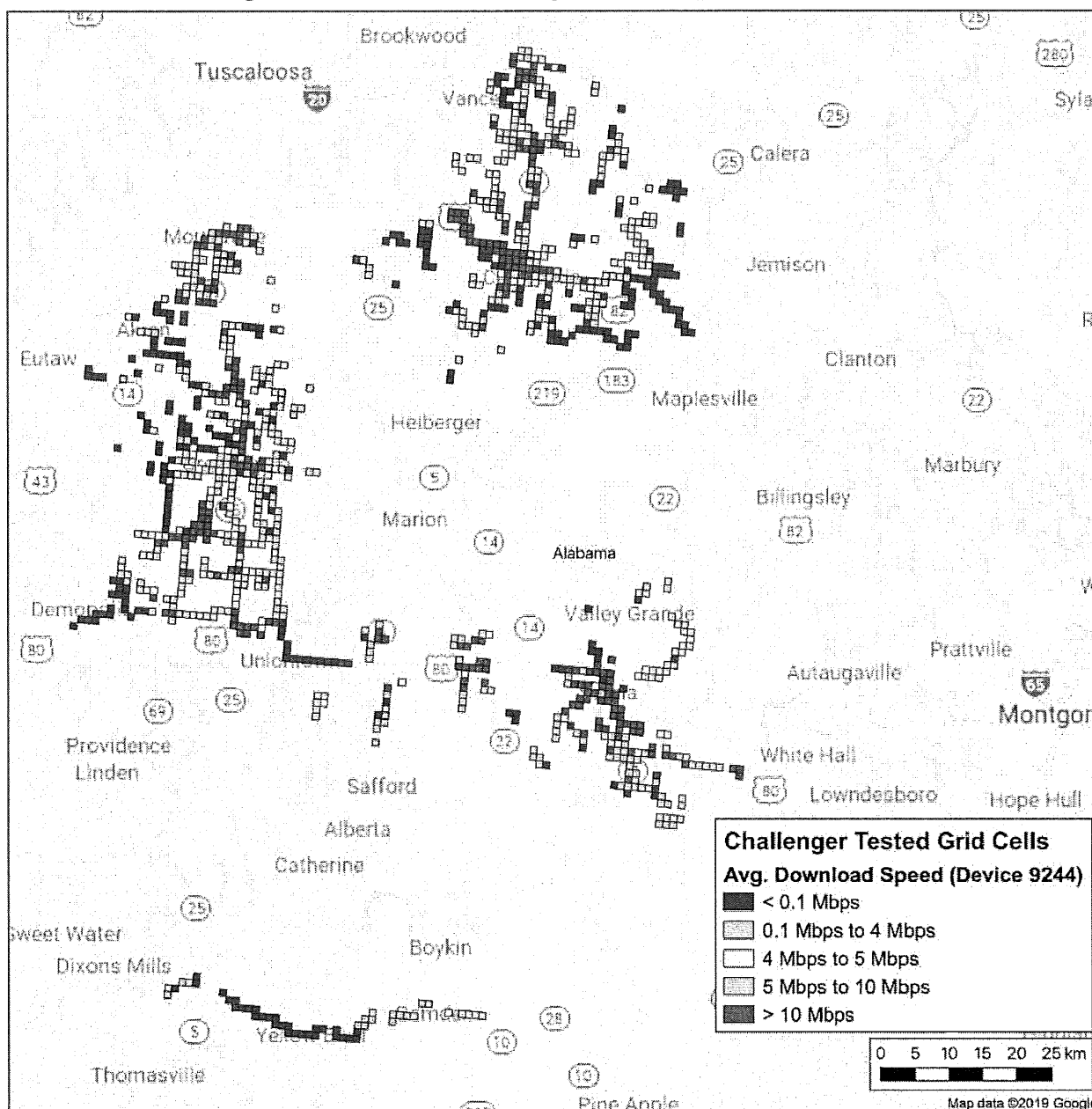


Figure B-4. Device 9244 – Average Download Speed by Grid Cell



6. Lastly, analyzing the challenger speed test data using the automated system processing framework adopted by the Commission highlighted some of the inconsistencies in the challenger speed test data even within the same one square kilometer area. After speed tests were submitted, the MF-II Challenge Portal system created a “buffer” (i.e., drew a circle) with a radius of 400 meters around each geographic point where a valid speed test recorded a download speed below 5 Mbps, and then, for each grid cell, calculated whether the area for all buffered points covered at least 75% of the ineligible area in the cell to determine its presumptive status—that is, whether the challenge was presumptively successful

or unsuccessful.⁸ While this approach may lead to a reliable determination of whether a challenger has established a lack of 4G LTE coverage in a grid cell when a challenger submits a small number of stationary speed tests conducted at different points within the grid cell, it is less reliable for data where a challenger conducted dozens of continuously recorded drive tests along roads within a grid cell.⁹ In particular, staff analysis revealed that, while the system calculated that 35.9% of challenged grid cells were presumptively successful, when conflicting evidence within those same grid cells was considered—that is, speed tests showing download speeds of 5 Mbps or greater—the percentage of presumptively successful grid cells dropped to 16.2%.¹⁰ This indicates that a large portion of challenger data include speed tests both above and below 5 Mbps within the same general area. We note that challengers were required to submit data for all speed tests, including those showing speeds greater than or equal to 5 Mbps, and Commission staff would adjudicate each challenge on a preponderance-of-the-evidence standard based on all the evidence submitted by challengers and challenged parties.¹¹ Nevertheless, the presumptive status as calculated may not provide an accurate assessment of where mobile 4G LTE coverage exists.

2 Comparison of Staff Drive Tests to MF-II Challenger Speed Tests

7. Commission staff conducted drive tests in certain areas that were also the subject of significant numbers of challenges. For more than half of the grid cells in which staff conducted drive tests, challengers had submitted speed tests as well. We were therefore able to compare the results of staff drive tests to challenger speed tests that were conducted in close proximity to one another.¹² For the analysis here, we chose to compare staff and challenger speed tests that were measured within 100 meters of one another. This comparison shows that the two sets of tests resulted in significantly different recorded download speeds in many cases.¹³ When compared to 4G LTE staff drive tests conducted within 100 meters, challengers generally reported much lower speeds at the same RSRP signal strength (see

⁸ *MF-II Challenge Process Order*, 32 FCC Rcd at 6310-11, paras. 55-56; *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration, 33 FCC Rcd 4440, 4441-42, para. 4 (WTB/WCB 2018); *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2002-03, para. 38.

⁹ For example, if a challenger submitted 100 drive tests within the same grid cell, most of which recorded download speeds greater than or equal to 5 Mbps but some of which recorded speeds below 5 Mbps, the challenge process framework as adopted considers only the tests below 5 Mbps in determining the presumptive status of the challenge. Instead, a more appropriate framework for processing a large number of speed tests recorded in a short time period over a limited area could be the use of statistical calculations (e.g., 90th percentile) to mitigate noise in the data due to the variability of wireless networks.

¹⁰ To perform this analysis, staff extracted all certified challenger speed tests that recorded download speeds of at least 5 Mbps and were otherwise valid. These extracted speed tests were then processed as if the data had been submitted by the challenged provider as respondent speed tests, and the system calculated a new presumptive status. See *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2024-26, App. B (outlining the methodology by which the system processes response evidence).

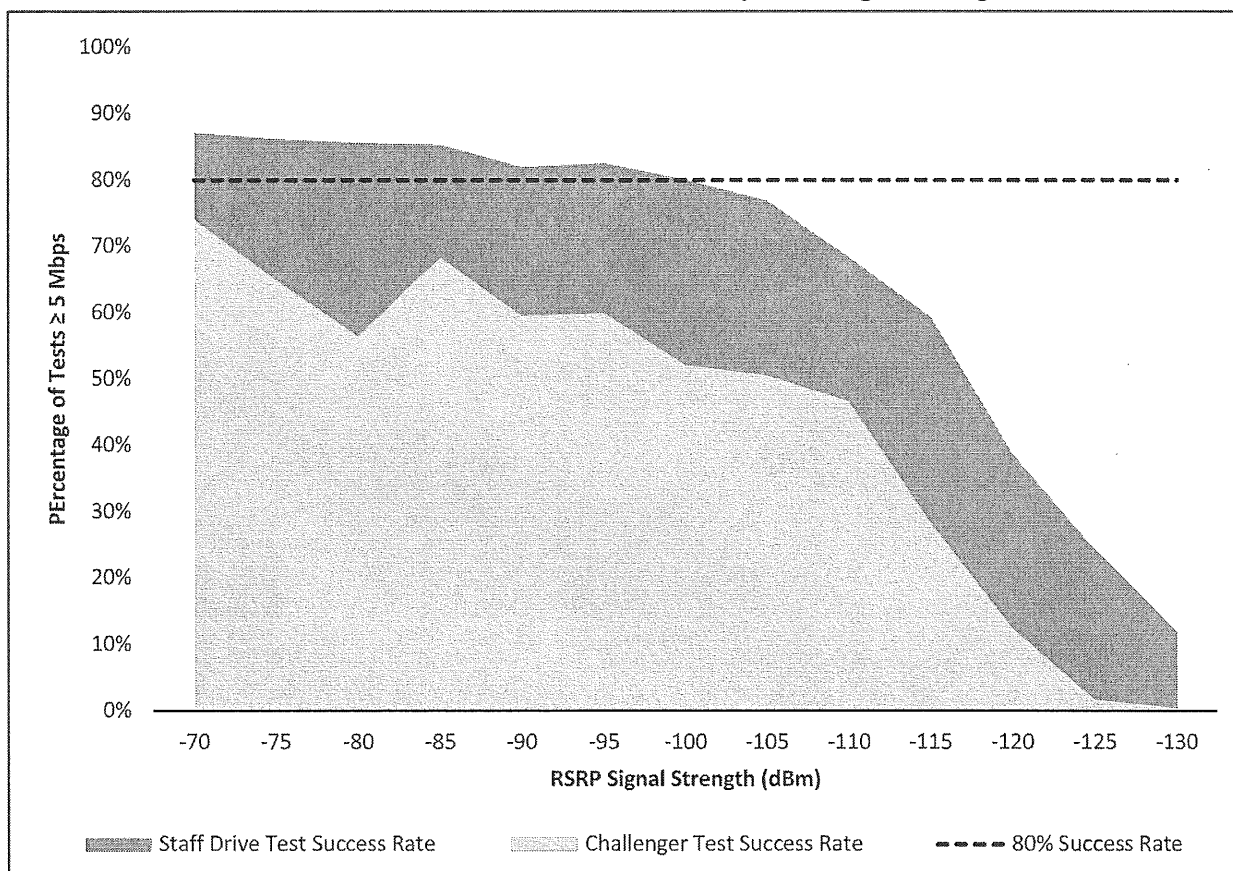
¹¹ *MF-II Challenge Process Order*, 32 FCC Rcd at 6313, para. 63; *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 2013-14, para. 66.

¹² Because challengers did not disclose whether tests were conducted while drive testing or while stationary, we are unable to identify which challenger speed tests were the results of drive tests. However, the patterns in the data (e.g., distance and time between tests) indicate that the vast majority of submitted tests were likely drive tests. For the analysis in this section, we have assumed that all challenger speed tests were drive tests to facilitate comparison with staff drive tests.

¹³ This analysis was also performed while restricting the sample to tests conducted within 25 meters and the results did not change in any meaningful way.

Figure B-5).¹⁴ Comparing across all staff drive tests, including tests that recorded no signal or were otherwise not on a 4G LTE network, a much higher percentage of challenger tests recorded no download speed (see Table B-1). The observed staff success rate (drive tests with a download speed of at least 5 Mbps) in the sample is 54.8%, while the observed challenger success rate is only 22.2% (see Figure B-6). This is in part due to the large number of tests in the challenger data that recorded a download speed of zero; just over 60% for challenger speed tests compared to only 23.2% of staff drive tests. Both the average (mean) and median download speeds are considerably lower in the challenger speed test data than the staff data.

Figure B-5. Success Rate of 4G LTE Staff Drive Tests and Challenger Speed Tests Conducted within 100 Meters of Each Other by RSRP Signal Strength¹⁵



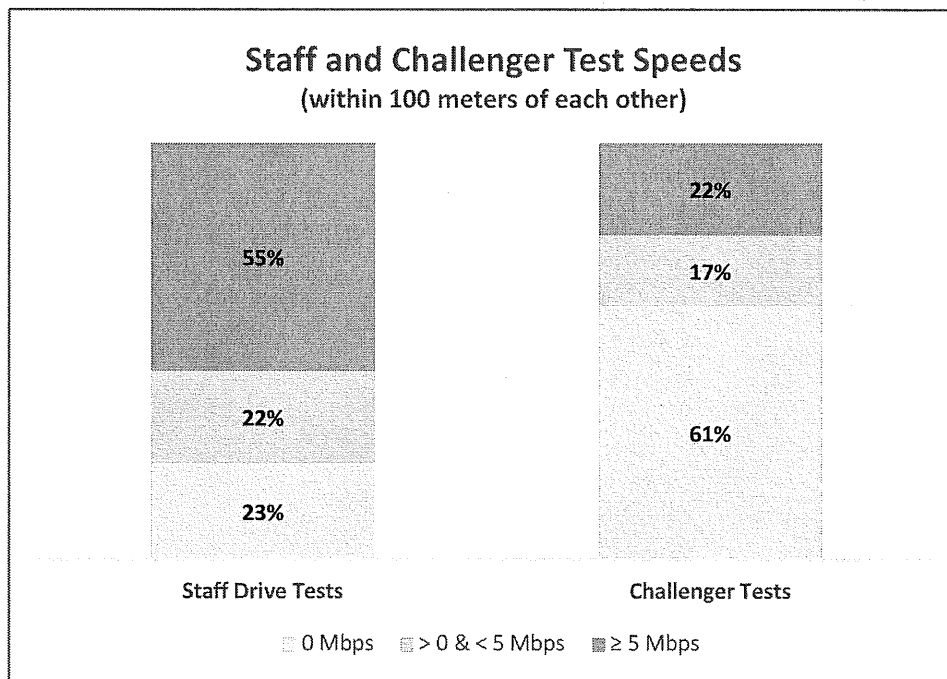
¹⁴ For the comparison in Figure B-5, as with our analysis in Section V.B, we have included only the staff drive tests that were recorded as conducted on a 4G LTE network, as there is no RSRP value for tests that recorded no signal or that were conducted on a non-4G LTE network. See *supra* note 117.

¹⁵ The 4G LTE staff drive test success rate portion of Figure B-5 (in blue) differs slightly from the graph in Figure 24 because the latter includes all of the 19,508 4G LTE staff drive tests within the signal strength range, while Figure B-5 includes only the 9,355 4G LTE staff drive tests within the signal strength range that were also conducted within 100 meters of challenger speed tests.

Table B-1. Staff Drive Tests and Challenger Speed Tests Conducted within 100 Meters of Each Other

Dataset	Test Count Total	Percentage Zero Mbps	Percentage ≥ 5 Mbps	Median Speed	Average Speed	Average Speed Excl. Zeros
Staff (Only 4G LTE)	9,355	4.4%	71.4%	11.1 Mbps	18.6 Mbps	19.5 Mbps
Staff	12,189	23.2%	54.8%	6.6 Mbps	14.3 Mbps	18.6 Mbps
Challenger	87,958	60.8%	22.2%	0.0 Mbps	4.1 Mbps	10.3 Mbps

Figure B-6. Staff Drive Tests and Challenger Speed Test Results by Download Speed Category



8. When tests with zero download speed are excluded from the challenger and staff data sample, challenger speed tests are still significantly slower, averaging 10.3 Mbps as compared to 18.6 Mbps in the staff data. Except for the Arizona route, the differences between the staff and challenger success rates are significant, but the differences are similar across test routes (see Table B-2). For example, the success rate of staff drive tests is at least double the success rate of challenger speed tests conducted within 100 meters of each other for five of the route-provider combinations. For no route was the success rate for staff drive tests lower than the challenger data.¹⁶ An example of these differences is the Alabama route, which contained the most staff drive tests and challenger speeds tests that were within 100 meters of each other. Along the Alabama route, staff recorded download speeds of zero no more than 20.5% of the time, as compared to between almost 44% and slightly more than half of the time with challenger data, depending on the provider tested. The discrepancy between datasets in Montana on Verizon's network is even starker, as more than 80% of staff drive tests achieved download speeds of at least 5 Mbps versus approximately 8% of challenger speed tests.

¹⁶ On only one route (Arizona) did the success rates match, with each staff drive test and challenger speed test recording a download speed of zero, albeit with fewer staff measurements than in other areas.

**Table B-2. Staff Drive Tests and Challenger Speed Tests
Conducted within 100 meters of Each Other by Route**

Test Route	Provider Name	Dataset	Median Speed	Average Speed	Percentage Zero Mbps	Percentage ≥ 5 Mbps	Test Count
Alabama	T-Mobile	Staff	10.5 Mbps	21.0 Mbps	20.5%	64.8%	3,390
		Challenger	0 Mbps	5.3 Mbps	50.3%	30.0%	25,444
	Verizon	Staff	5.2 Mbps	10.6 Mbps	15.1%	51.0%	3,413
		Challenger	0.9 Mbps	6.6 Mbps	43.7%	35.0%	21,167
Arizona	Verizon	Staff	0 Mbps	0 Mbps	100%	0%	187
		Challenger	0 Mbps	0 Mbps	100%	0%	2,529
Montana	T-Mobile	Staff	0.1 Mbps	15.5 Mbps	48.1%	26.8%	646
		Challenger	0 Mbps	0.4 Mbps	95.6%	1.8%	15,702
	Verizon	Staff	15.7 Mbps	21.3 Mbps	11.0%	80.5%	626
		Challenger	0 Mbps	1.5 Mbps	70.7%	8.1%	11,576
Oklahoma	Verizon	Staff	9.6 Mbps	13.7 Mbps	10.6%	68.2%	1,490
		Challenger	0 Mbps	5.2 Mbps	53.9%	28.2%	9,281
Vermont	U.S. Cellular	Staff	2.3 Mbps	6.5 Mbps	25.9%	42.9%	983
		Challenger	1.2 Mbps	2.6 Mbps	10.8%	19.7%	775
	Verizon	Staff	2.0 Mbps	11.6 Mbps	43.7%	43.1%	1,454
		Challenger	0.6 Mbps	5.4 Mbps	40.9%	31.5%	1,484

9. The causes of the large differences in measured download speed between the staff and challenger speed tests taken within the same geographic areas, as well as of the high percentage of tests with a download speed of zero in the challenger data, are difficult to determine. Discrepancies may be attributable to differences in testing methodologies, network factors at the time of test, differences in how speed test apps or drive test software process data, or other factors.¹⁷ We acknowledge that some aspects of conducting speed tests along with other parameters or factors that could affect the results were left unspecified by the Commission in the *MF-II Challenge Process Order* to provide flexibility to and reduce burdens on challengers.¹⁸ Had the Commission further standardized the methodology and speed test parameters, such results may have been less divergent from the staff speed tests. Given the large differences between challenger and staff results however, we are not confident that individual challenger speed test results provide an accurate representation of the typical consumer on-the-ground experience.

¹⁷ The factors could include, among others: (1) the characteristics of the server (or servers) that a speed test application connects to – including the server’s location, load, and Internet connection speed; (2) the method by which a speed test app measures the download speed portion of a speed test (e.g., network protocol or file size of transmitted data); and/or (3) the number of simultaneous downloads occurring on the test phone during the test. However, the speed test data required for the MF-II challenge process does not provide the granularity necessary to determine which of these factors may be potentially influencing the measurement results.

¹⁸ *MF-II Challenge Process Order*, 32 FCC Rcd at 6307-08, para. 49; *MF-II Challenge Process Procedures PN*, 33 FCC Rcd at 1999-2000, paras. 29-30.

APPENDIX C:

Resources

1. Additional information about the MF-II proceeding, one-time collection of 4G LTE coverage data, and the MF-II challenge process is available at the Mobility Fund Phase II website: <https://www.fcc.gov/mobility-fund-phase-2>.
2. Data referenced in this report, including the results of staff testing, as well as challenger speed tests submitted during the MF-II challenge process, can be downloaded at: <https://www.fcc.gov/mobility-fund-phase-2#data>.
3. Current and historical FCC Form 477 geographic information system data for mobile broadband deployment, including the December 2017 4G LTE coverage by mobile service providers discussed in Section IV and displayed as part of the maps in Section V.B, is available at: <https://www.fcc.gov/mobile-deployment-form-477-data>.
4. The maps shown in Section V.B are also available as part of an online, interactive map available at: <https://www.fcc.gov/reports-research/maps/mobility-fund-phase-ii-investigation-staff-report-map>.
5. Information on the Commission's efforts to improve broadband data mapping is available at the Digital Opportunity Data Collection website: <https://www.fcc.gov/digital-opportunity-data-collection-dodc>.
6. Additional information on the Commission's efforts to measure broadband performance is available at the Measuring Broadband America website: <https://www.fcc.gov/general/measuring-broadband-america>. The Commission also publishes the FCC Speed Test app, developed by SamKnows Ltd., which the public can use to conduct on-demand, user-initiated speed test measurements using mobile devices. The FCC Speed Test app can be downloaded on iOS devices from the Apple App Store (available at <https://apps.apple.com/us/app/fcc-speed-test/id794322383>) or on Android devices from the Google Play Store (available at <https://play.google.com/store/apps/details?id=com.samknows.fcc>).
7. Further information about the Commission's rural broadband auctions is available at: <https://www.fcc.gov/auctions/ruralbroadbandauctions>.
8. Questions about the MF-II Coverage Maps Investigation Staff Report may be emailed to the Commission's Rural Broadband Auctions Task Force at ruralbroadband@fcc.gov.

Chris Fagan & Cyndi Fagan

3653 N Hope Valley Ln

Eagle, ID 83616

March 3rd, 2022

RE: Application 202102816-CU

Dear Ada County Commissioners,

We are writing this letter in **STRONG OPPOSITION** to the proposed project in the above application for a 100 ft monopole 5G cellular tower at 5410 W Beacon Light Rd, Eagle, ID.

Recently making the decision to purchase our property in this stunning area of Eagle was extremely personal and something we did not take lightly. Along with our son who purchased property in this same small subdivision, we are in the process of building a dream home that will be a significant part of our estate and family legacy.

One of the most incredible aspects of owning property in this area are the absolute stunning views and now rare and the horrible thought of an unsightly, unnecessary 100 ft monstrosity of a tower spiking through the surrounding majestic views is not something we'd ever want as part of our future plans and everyday living experience. But more importantly we're trying to build a safe life for ourselves, our children, and our grandchildren, that we can all quietly enjoy for years and generations to come. Having another cell tower built in close proximity to our properties brings us grave concern, especially for our grandchildren.


We've had cell service with no issues in that area and believe any existing towers already servicing that area can be upgraded to the specifications of the proposed cell tower to provide updated sufficient services the company is seeking to deliver, while not sacrificing their long-term profitability goals.

Again, we strongly oppose this application and proposed project and believe there are reasonable workarounds for the applicant. Please strongly consider and weigh the value property owners should be able to maintain via the quiet enjoyment of property, which includes the serenity of largely unobstructed mountain views and safety. Thank you for taking the time to hear our concerns and we sincerely hope you reject this application.

Best regards,



Chris Fagan



Cyndi Fagan

EXHIBIT #32
202102816 CU
CLARK WARDLE LLP