

**THE CENTER FOR MUNICIPAL SOLUTIONS**

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December 10, 2014

**VIA E-MAIL**

Mayor Timothy Cassidy and Members of the Board of Trustees  
c/o Robert Yamuder, Village Administrator  
Village of Pelham Village Hall  
195 Sparks Avenue  
Pelham, NY 10803

**Re:    Reply Report on Application of ExteNet for a Permit for  
Three DAS Nodes, Per Village Code Chapter 87**

Dear Mayor Cassidy and Members of the Board of Trustees:

In our prior Report, CMS concluded that (1) ExteNet's Application for a Chapter 87 permit failed to establish a significant gap in T-Mobile wireless service in the Village as Chapter 87 requires, (2) the placement of a DAS node on a new utility pole at 156 E. 2<sup>nd</sup> Street is not the least intrusive means of filling the alleged gap, and (3) suitable alternative node locations exist, including one at Corlies Street and 1<sup>st</sup> Avenue, which are less intrusive and use existing available attachment structures, as Chapter 87 requires. We have reviewed ExteNet's December 8, 2014 submissions responding to public comments and our report, and we conclude that those submissions provide no evidence or information that rebuts or alters our previous conclusions.

The December 8 submission fails to cure the Application's lack of evidence of a significant gap in either in-building or in-vehicle service. Although Chapter 87 requires "actual in-kind survey data" of a significant gap in wireless service, ExteNet concedes that it has not provided such evidence of the alleged gap in in-building service. ExteNet states that it "can't imagine" conducting in-building surveys, but made no attempt to do so and provides no support for the assertion that, on a technical basis, "there simply is no need for measurements inside" buildings to establish a gap in service. In our professional opinion, ExteNet's view that actual survey test data as required by the Village Code is not needed is wrong, because differences in building materials, foliage, and numerous other variables may affect actual in-building coverage but are not accounted for by ExteNet's computer propagation and drive test methodologies. Indeed, ExteNet acknowledges that the experience of our clients, who receive reliable T-Mobile coverage inside their home within the area of the alleged gap in in-building service, would "not necessarily be surprising" given such factors.

Nor does ExteNet contest our prior observation that its drive test data shows only a very small area without in-vehicle service. ExteNet merely argues, without any support, that that "a coverage gap itself is not defined by the scope of the geographic area to be served..." In our professional opinion, the view that the geographic extent of an alleged gap in service is irrelevant to the significance of that gap is illogical and simply incorrect. The geographic size of an alleged gap in service is most certainly a key factor in determining whether such a "gap" is "significant."

Furthermore, the December 8 submissions fail to address several technical deficiencies in ExteNet's evidence that were identified in the prior CMS report. Those include the failure to justify the signal strength thresholds which T-Mobile uses to define a gap in reliable service or to provide test data showing the coverage that can be achieved with only two or one DAS node(s) instead of three. The Village's consultant, CTC Technology & Energy, requested that ExteNet cure these deficiencies in a letter dated December 4, 2014. To date, ExteNet has not done so.

Moreover, even if the Village Board accepts as true all of ExteNet and T-Mobile's data, those materials: (1) do not show any area of the Village that entirely lacks T-Mobile service; (2) show a lack of in-vehicle service only in small and isolated pockets on a couple of blocks; and (3) contain no in-building measurements to establish any actual gap in in-building service. Such evidence is insufficient to demonstrate a significant gap in T-Mobile wireless service in the Village, and the Village Board would be acting rationally and based on substantial evidence in the record in so concluding.

Given ExteNet's failure to cure any of the foregoing failures relating to its showing of a gap in service, it would be rational and proper for the Village Board to conclude that the Application does not establish a significant gap in wireless service. Indeed, we do not think that the Village Board can rationally reach any other conclusion.

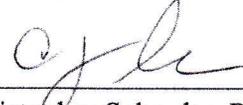
ExteNet's December 8 submission fails to provide any new evidence concerning the three alternatives discussed in the prior CMS report. Those alternatives are (1) eliminating the Node at 156 E. 2<sup>nd</sup> Street, (2) relocating that node to ExteNet's identified location at the corner of Corlies Street and 1<sup>st</sup> Avenue, or (3) relocating that node to ExteNet's identified location 650' north along Cliff Avenue. The failure to provide any further evidence on this issue is fatal to ExteNet's position, given that, as ExteNet discloses in its papers, ExteNet has previously identified at least one of those alternatives (Alternative 3) during settlement discussions as a location with potential to provide adequate coverage over the area of the alleged gap in service.

Furthermore, as explained in our prior report, the node proposed at 156 E. 2<sup>nd</sup> Street could be relocated to Corlies and 1<sup>st</sup> (the second alternative listed above), without causing the signal interference outside the target coverage area, by using available screening technologies. In its December 8 response, ExteNet does not contest the fact that screening could be used to avoid unwanted coverage outside the target zone, and fails to provide any rebuttal to our conclusion that Corlies and 1<sup>st</sup> is a suitable and less intrusive alternative to placement of the node on a new pole at 156 E. 2<sup>nd</sup> Street.

For those reasons, we conclude that ExteNet's December 8 submissions fail to cure the deficiencies in ExteNet's application or to alter our conclusions that the Application fails to demonstrate a significant gap in service as required by Chapter 87-8.A and that, even if it did do so, the 156 East 2nd Street location is not the least intrusive means to fill that gap because alternatives are available using existing support structures, as required by Chapter 87-8.B and E. In our opinion, the Village Board therefore must deny the Application or condition the requested permit on relocation of the proposed DAS node at 156 East 2nd Street.

Respectfully submitted,

  
Richard Comi

  
Cristopher Schrader, P.E.