Motion adopting findings related to the appeal of the Planning Commission's approval of Conditional Use Authorization No. 2002.0430C (which approved the installation of six panel antennas and related equipment on an approximately 53-foot tall commercial building as part of the AT&T Wireless Services telecommunications network within an NC-3 (Moderate-Scale Neighborhood Commercial Zoning) District and a 40-X Height and Bulk District), pursuant to Section 712.83 of the Planning Code, on property located at 378 10th Avenue (also known as 389 9th Avenue and/or 4500 Geary Boulevard), on the northwest corner of 9th Avenue and Geary Boulevard (Lot 035 in Assessor's Block 1441).

The appellant, Betty Chiao, filed a timely appeal on August 15, 2003, protesting the approval by the Planning Commission of an application for a conditional use authorization (Conditional Use Application No. 2002.0430C), which approved the installation of six panel antennas and related equipment on an approximately 53-foot tall commercial building as part of the AT&T Wireless Services telecommunications network within an NC-3 (Moderate-Scale Neighborhood Commercial Zoning) District and a 40-X Height and Bulk District), pursuant to Section 712.83 of the Planning Code, on property located at 378 10th Avenue (also known as 389 9th Avenue and/or 4500 Geary Boulevard), on the northwest corner of 9th Avenue and Geary Boulevard (Lot 035 in Assessor's Block 1441).

The San Francisco Planning Commission adopted the Wireless Telecommunications Services ("WTS") Facilities Siting Guidelines in August of 1996 ("Guidelines") to assist the Planning Department in its consideration of applications for conditional use authorization to install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The
Guidelines establish location preferences for installation of WTS facilities throughout the City. The location preferences set forth seven categories, with location preference one being the most preferred sites, and location preference seven being the most disfavored sites. This proposed site at 378 10th Avenue is within a location preference one because it is a publicly used structure and a collocation opportunity.

On September 16, 2003, the Board of Supervisors conducted a duly noticed public hearing on the appeal from the Planning Commission's approval of the conditional use authorization referred to in the first paragraph of this motion. Following the conclusion of the public hearing on September 16, 2003, the Board voted to disapprove the decision of the Planning Commission (Planning Commission Motion No. 16614 dated July 17, 2003) and denied the issuance of the requested Conditional Use Application No. 2002.0430C.

In considering the appeal of the approval of the requested conditional use authorization, the Board reviewed and considered the written record before the Board and all of the public comments made in support of and in opposition to the appeal.

NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and County of San Francisco hereby adopts as its own and incorporates by reference herein, as though fully set forth, the findings made by the Planning Commission in its Motion No. 16614 dated July 17, 2003, except as indicated below.

FURTHER MOVED, That the Board of Supervisors further took notice that the project was categorically exempt from environmental review as a Class I exemption under Title 14 of the California Administrative Code. The Board finds that there have been no substantial changes in project circumstances and no new information of substantial importance that would change the determination of categorical exemption issued by the Planning Commission.

FURTHER MOVED, That the Board of Supervisors finds that:
1. The written and oral information provided by the applicant to the Board was not persuasive or objectively verified, and the applicant was unable to demonstrate credibly that the proposed WTS facility is necessary for the neighborhood or the community, contrary to the requirements of Section 303(c)(1) of the Planning Code.

2. The public testimony at the public hearing and the public documentation submitted in support of the appellant's objections to the decision of the Planning Commission supported the appellant's position that there is no necessity for the proposed WTS facility to be approved and installed for residential or business purposes in the neighborhood or the community because the proposed WTS facility will only be used to provide an unnecessary and redundant service in the geographic area of the proposed site. The written and oral information provided by the appellant and her supporters at the September 16, 2003, public hearing showed that other wireless service providers, and the applicant, have adequate service in the geographic area of the proposed WTS facility.

3. The public testimony at the public hearing and the public documentation submitted in support of the appellant's objections to the decision of the Planning Commission also supported the appellant's position that there is no necessity for the proposed WTS facility to be approved and installed for residential or business purposes in the neighborhood or the community because the proposed WTS facility is not necessary to meet the applicant's present service demands within the geographic service area defined by the applicant.

4. The written and oral information provided by the applicant at the September 16, 2003, public hearing showed that, according to the applicant, the proposed WTS facility would increase capacity and allow the applicant to offer
enhanced services.

5. Notwithstanding this information submitted by the applicant, the written and oral information provided by the appellant and her supporters at the September 16, 2003, public hearing showed that the applicant had acceptable service in the geographic area of the proposed WTS facility from the applicant's nearby existing facility at 4300 Geary Boulevard (approximately two blocks away from the proposed site), as well as two other facilities in the surrounding area.

6. The public testimony at the public hearing and the public documentation submitted in support of the appellant's objections to the decision of the Planning Commission supported the appellant's position that the location of the proposed WTS facility is undesirable for the neighborhood or the community, contrary to the requirements of Section 303(c)(1) of the Planning Code. Persons owning more than 20% of the properties within 300 feet of the proposed site have subscribed to the appeal. Members of the public expressed overwhelming opposition to the proposed WTS facility during the September 16, 2003, hearing before the Board.

7. There is nothing in the record to suggest that the Board's decision to disapprove the decision of the Planning Commission in this case will unreasonably discriminate against the applicant in favor of providers of functionally equivalent services.

8. There is nothing in the record to suggest that the Board's decision to disapprove the decision of the Planning Commission in this case will limit or prohibit access to wireless telecommunications services in the geographic area of the proposed site.

9. There is nothing in the record to suggest that the Board's decision to disapprove the decision of the Planning Commission in this case will prevent the
filing of a significant gap in wireless telecommunications services provided to remote users of those services in the geographic area of the proposed site, whether those remote users obtain service from the applicant or from other wireless service providers serving the City.

10. There is nothing in the record to suggest that the applicant exhausted its search for alternative sites for the proposed WTS facility or that the proposed WTS facility would be the least intrusive means for the applicant to improve its service quality in the geographic area of the proposed site.

11. In the written and oral information provided at the September 16, 2003, public hearing, members of the public expressed concern that radio frequency emissions from the proposed WTS facility would have adverse health effects on persons residing in the vicinity. In making these statements, members of the public exercised their constitutional right to petition the government. However, there is evidence in the record that the proposed WTS facility would comply with Federal Communications Commission safety standards for radio frequency radiation exposure. Thus, in disapproving the decision of the Planning Commission and denying the issuance of the requested conditional use authorization, the Board has not relied on the public testimony or public documentation concerning this issue and the Board has not based its determination on such a ground.

FURTHER MOVED, That based upon the findings made in the preceding paragraphs, the Board of Supervisors finds that Finding 10 made by the Planning Commission was incorrect and without substantiation. The Board finds that the installation of the proposed WTS facility is not necessary for the neighborhood or the community. The neighborhood and the community are adequately served both by the applicant and by other wireless service providers from existing WTS facilities in the area of the proposed site.
FURTHER MOVED, That based upon the findings made in the preceding paragraphs, the Board of Supervisors finds that Finding 10 made by the Planning Commission were incorrect and without substantiation. The Board finds that the installation of the proposed WTS facility is not desirable for and compatible with the neighborhood or the community. The construction of the proposed WTS facility would result in an additional intrusion of unnecessary, noticeable equipment into a neighborhood that contains residential property.

FURTHER MOVED, That based upon the findings made in the preceding paragraphs, the Board of Supervisors finds that Finding 11 made by the Planning Commission was incorrect and without substantiation. The Board finds that the installation of the proposed WTS facility is not in conformity with, and would not implement the policies of, the City's General Plan, in that the installation of the proposed WTS facility will not further any of the objectives referred to by the Planning Commission.

FURTHER MOVED, That based upon the findings made in the preceding paragraphs, the Board of Supervisors finds that Finding 12 made by the Planning was incorrect and without substantiation. The Board finds that the installation of the proposed WTS facility does not conform with the priority planning policies established by Section 101.1(b) of the Planning Code because the proposed WTS facility is not necessary to: (i) preserve and enhance existing neighborhood-serving retail uses and to preserve and enhance future opportunities for resident employment in and ownership of such businesses (see Section 101.1(b)(1)); (ii) conserve and protect existing housing and neighborhood character (see Section 101.1(b)(2)); (iii) preserve and enhance the City's supply of affordable housing (see Section 101.1(b)(3)); (iv) maintain a diverse economic base by protecting the City's industrial and service sectors from displacement due to commercial office development or to enhance future opportunities for resident employment and ownership in these sectors (see Section 101.1(b)(5)); (v) add to the City's preparedness to protect against injury and loss of life in an earthquake (see Section...
101.1(b)(6)); (vi) preserve any landmarks and historic buildings (see Section 101.1(b)(7)); and
(vii) protect City parks and open space and their access to sunlight and vistas from
development (see Section 101.1(b)(8)).

FURTHER MOVED, That based upon the findings made in the preceding paragraphs,
the Board of Supervisors finds that Finding 13 made by the Planning Commission was
incorrect and without substantiation, and the Board finds that the conditional use authorization
would not promote the health, safety and welfare of the City, and will only add an unnecessary
and redundant service, and will result in an additional intrusion of unnecessary, noticeable
equipment into a neighborhood that contains a high proportion of residential units.

FURTHER MOVED, That the Board of Supervisors, after carefully balancing the
competing public and private interests, disapproved the decision of the Planning Commission
by its Motion No. 16614 dated February July 17, 2003, and denied the issuance of Conditional
Use Authorization No. 2002.0430C.
Motion adopting findings related to the appeal of the Planning Commission's approval of Conditional Use Authorization No. 2002.0430C (which approved the installation of six panel antennas and related equipment on an approximately 53-foot tall commercial building as part of the AT&T Wireless Services telecommunications network within an NC-3 (Moderate-Scale Neighborhood Commercial Zoning) District and a 40-X Height and Bulk District), pursuant to Section 712.83 of the Planning Code, on property located at 376 10th Avenue (also known as 389 9th Avenue and/or 4500 Geary Boulevard), on the northwest corner of 9th Avenue and Geary Boulevard (Lot 035 in Assessor's Block 1441).

September 24, 2003  Board of Supervisors — REFERRED: Board of Supervisors

September 30, 2003  Board of Supervisors — APPROVED

Ayes: 10 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

Absent: 1 - Ammiano
I hereby certify that the foregoing Motion was APPROVED on September 30, 2003 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board