

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-2931-PET

Limited Size and Scope Application)
of Vertex Towers, LLC and Bell Atlantic Mobile)
Systems, LLC d/b/a Verizon Wireless, for a Certificate)
of Public Good, pursuant to 30 V.S.A. § 248a,)
Authorizing the construction of a Telecommunications)
Facility in Rochester, Vermont)

**PETITIONER’S INITIAL RESPONSE TO PUBLIC COMMENTS AND NOTICE OF
INTERVENTION BY THE TOWN OF ROCHESTER PLANNING COMMISSION AND
TOWN OF ROCHESTER SELECTBOARD**

NOW COMES PETITIONER Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless (“Verizon”) and Vertex Towers, LLC (“Vertex”) (together, “Petitioner”), by their counsel, MSK Attorneys, and hereby submits this initial response to the comments and request for intervention filed the Town of Rochester Selectboard (the “Selectboard”) and Town of Rochester Planning Commission (the “Planning Commission”).

The Petitioner believes that the comments of both parties do not raise a significant issue under the criteria raised by the comments. The Petitioner believes its application and materials including the pre-filed testimony and exhibits included therein provide a basis for approval of this project. Those materials are incorporated herein by reference. The Petitioner further believes that should this Commission believe a significant issue exists that there is good cause as a matter of law and fact to overcome any specific recommendation for denial of this project. The Petitioner therefore requests a hearing in accordance with this Commission’s Rules of Procedure and the Vermont Administrative Procedures Act on any significant issue raised by the Selectboard and/or Planning Commission (or any other commenting party).

With this initial filing, the Petitioner seeks to preserve the record and lodge a formal response in opposition to the comments. It also articulates a response to the generalized comments set forth by the Planning Commission and Selectboard in their Notices to Intervene (which assert identical language). The Petitioner also herein requests an additional 21 days to file a more substantive response to the Planning Commission's comments. The Planning Commission's comments, filed on December 30, 2025, run a full 17-single spaced pages. The Petitioner is working on a comprehensive response but given the length of the comments, the Petitioner asks that the Hearing Officer set a deadline of not less than 21 days from the date of this response for the Petitioner to file a complete response to the Planning Commission's December 30th comments. Once that reply is completed, the Hearing Officer can thereafter determine what significant issues are raised by the Town and Planning Commission and set the matter to be heard, after discovery, on those issues.

I. Intervention of Planning Commission and Selectboard

The Petitioner does not object to the intervention of the Planning Commission and the Selectboard as both have a statutory right to intervene in these proceedings. 30 V.S.A. §248a(m). The question is whether (and what) significant issue is raised. *See* Standards and Procedures Implementing 30 V.S.A. §248a ("the Standards and Procedures") at VII. To the extent either party seeks to raise a significant issue by way of their Notice to Intervene, the Petitioner does not believe they have done so.

II. Whether the Notice to Intervene Raise Significant Issues

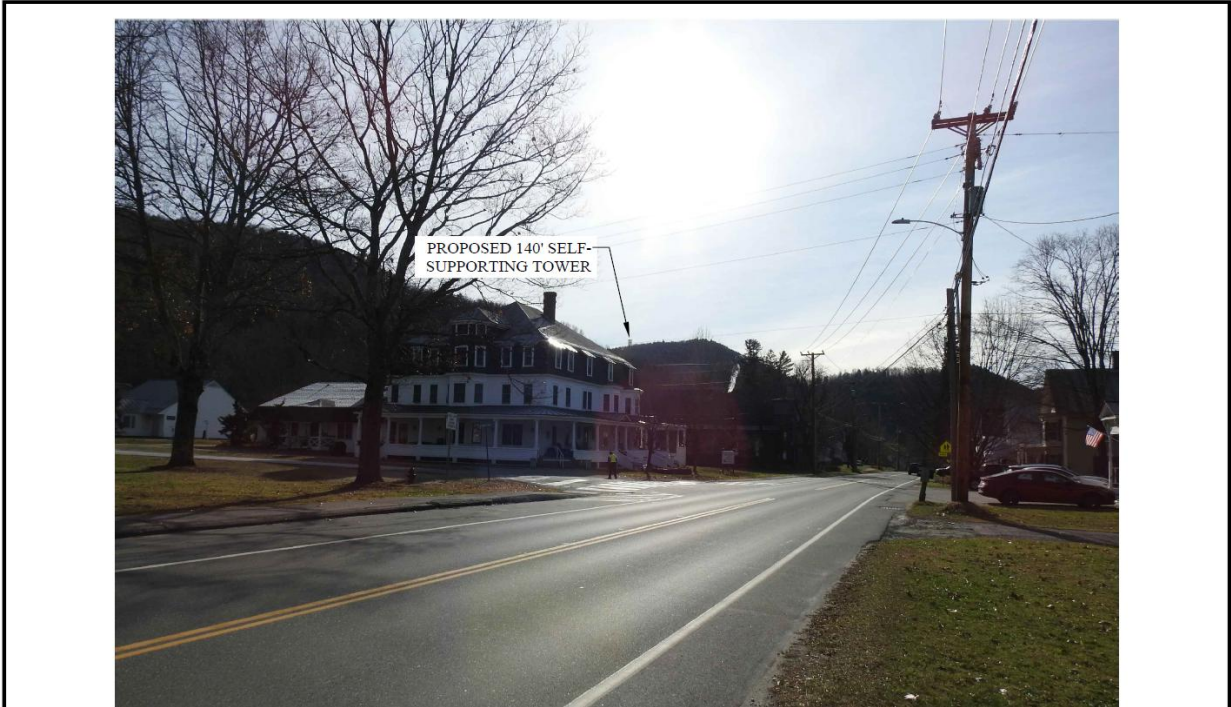
Both the Planning Commission and Selectboard filed identical statements in their Notices to Intervene. They stated that they were concerned about : "Historic Resource, Scenic Byway, Aesthetics [SIC], Parks/Trails/Recreation, Fluvial Erosion Hazards, Wetlands, Stormwater,

Dinking Water.” Further, they generally state that “The proposed cell tower does not comply with the Rochester Town Plan and as such would negatively impact the communities quality of life if constructed.” The Petitioner asserts that there are no undue adverse impacts on Historic Resources, Scenic Byways, Aesthetics, “Parks/Trails/Recreation”, Fluvial Erosion Hazards, Wetlands, Stormwater, and Drinking Water” nor any lack of compliance with the regulatory measures of the Town Plan. The Petitioner responds to each element of the above statement below.

i. No Adverse Impact to Historic Resources

The Tower does not adversely impact any Historic Resources. The State Office of Historic Preservation reviewed the project at its proposed location. The State’s Office of Historic Preservation (“SHPO”) determined that at the height of 140’, no historic properties would be affected by the project. As there seemed to be uncertainty regarding the level of review conducted by SHPO, attached as Exhibit 1 to this response is the initial filing submitted to SHPO for the 176’ AGL tower. Following the design change, SHPO concurred with the finding “no historic properties affected” as shown on Exhibit SA-6.

The Planning Commission articulated a number of historic locations it was concerned about. Those appear to be centered around the historic Rochester Village Center. The center of Rochester is almost 1.5 miles away from the tower site. At that distance the tower is very difficult to see. On any cloudy or overcast day, the tower would not be visible at all. On the sunniest of days, with clear skies, the tower is barely visible. The Petitioner’s photo simulations (See Exhibit SA-4) show a proposed view from the center of Rochester near many of the historic properties noted. That simulation shows only the upper portions of the tower being visible and it is hardly distinguishable from the treed hillside that surrounds it.



From this view, the historic characteristics of the village center, and the historic buildings and properties around it, are not unduly and adversely affected. One can fully appreciate the historic properties around the town green with the tower in place. The top of the tower is approximately 7,500 feet away and does not loom over the center of town or dominate the view. It does not shock a viewer with its scale and scope. Rather it appears to the viewer as what it is – a common element of a modern utility like the utility poles in the foreground and overhead wires which dominate the view and introduce utilities into the viewshed.

ii. No Undue Adverse Impact to Scenic Byways

The project will not unduly and adversely impact any Scenic Byway. It is true that the tower is visible from portions of Route 100 which for most of its entire length in Vermont is designated as some level of scenic byway. However, the view of this tower does not unduly and adversely impact this scenic byway. First, there is no functional way to provide coverage to the

heavily traveled and critical Route 100 corridor without visible towers. Given the topography in the area – with Route 100 sunken below abutting ridges, any tower filling this gap is visible from Route 100. For that reason, in many places along Route 100, a traveler will see towers. For example, south of the project site, in Stockbridge, this Commission approved a 180’ tower that is visible from Route 100, in another section classified as a scenic byway. Like this tower, that tower’s visibility was limited by the existing forest screening and topography such that it would only be partially visible from vantage points in the area. *See* Petition of Green Mountain Realty Holdings and New Cingular Wireless PCS, LLC, 22-1649-PET.

Given that the tower must be visible from Route 100, the Petitioner’s objective was (and is) to minimize the views of this tower and towers overall. It tried to locate this tower in a place that allows one tower to fill in a large coverage gap while also concealing as much of the tower as possible. Here, the Petitioner has minimized the views by lowering the tower to the lowest height possible that still allows the tower to meet Verizon’s coverage needs. It has also located the tower in such a way that the views of it are sporadic and limited around town. It also located and designed the site to allow the existing forest cover provide substantial screening to the compound, tower base and access road.

iii. No Undue and Adverse Impact to Aesthetics

The Town asserts a generalized “aesthetic” complaint about the project, but the visible impacts of the project are not undue and adverse. This tower’s aesthetics are relatively standard and far from shocking or offensive. Like other approved towers in this area, this is a grey lattice tower of medium height. It is well screened by the existing forest canopy and only the upper portions are visible. The views of these portions are also limited and sporadic given the

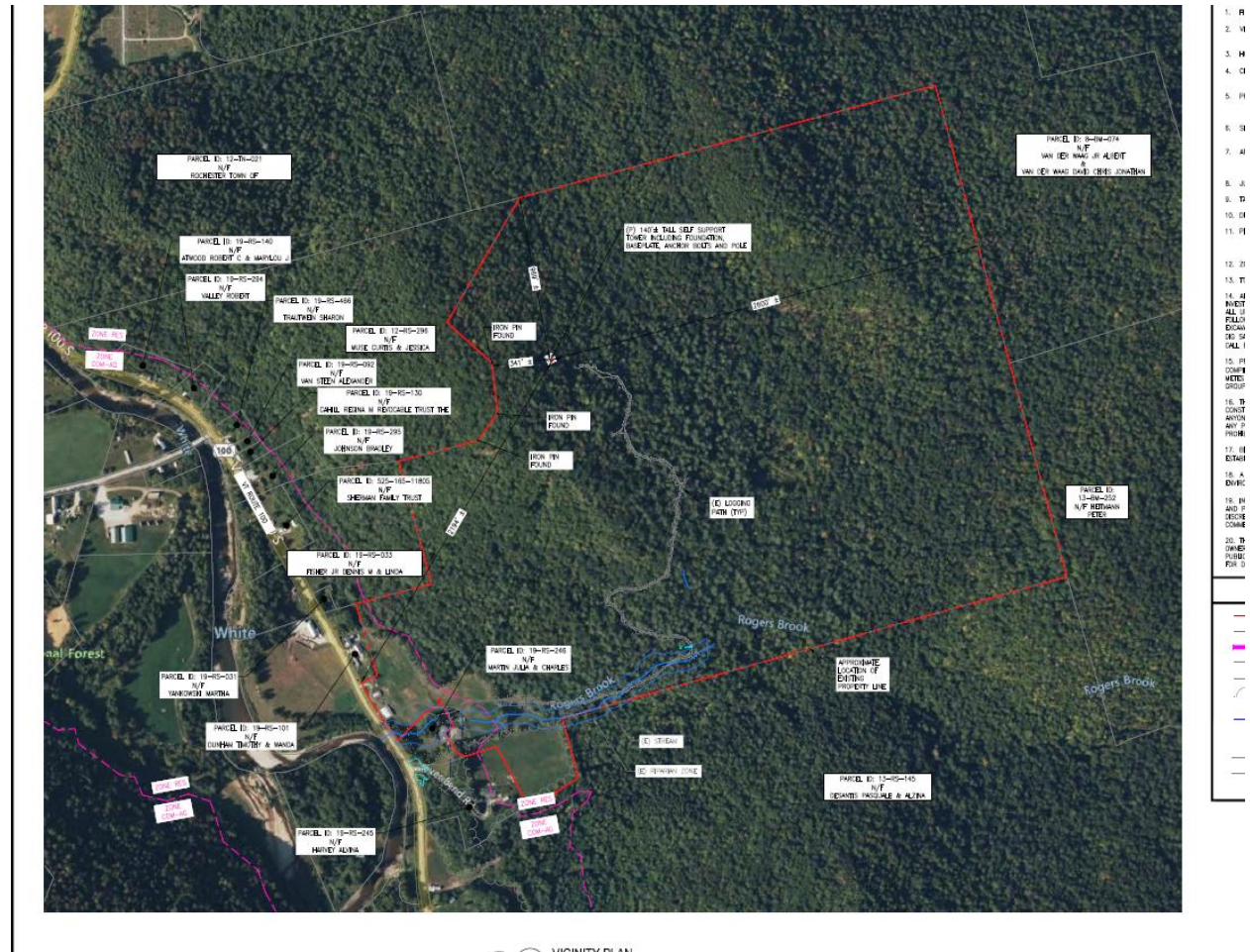
topography of the area. The tower appears matte grey and generally blends in with the sky. For all intents and purposes, it appears as a standard telecommunications tower of the kind that has been approved time and time again across the State.

No person traveling on a busy state highway (Route 100) would be surprised, offended or shocked to see a tower in this location. Rather, that objective person would register this tower as they have many others along their way of similar size, scope and design. An objective viewer would pay it little to no regard. The same is true of any person standing in the center of Town. To that objective person, the tower, if it was even visible and not shielded by clouds, snow, rain, or darkness, would appear very small in the distance. It would not loom over the town, or dwarf any historic structure in the foreground. It would appear as a grey stick 7,5000 feet away and register as a common and necessary element of the modern landscape.

Notably neither the Planning Commission or Selectboard offer any additional mitigation measures that could be undertaken. Rather both appear to take the position that not building the tower is the only acceptable mitigation. This, however, is not the law. Mitigation does not equal “don’t build it.” The Petitioner believes that it has taken all reasonable mitigation measures to limit the aesthetic impacts of this tower while still allowing it to provide coverage. If either the Selectboard or Planning Commission would ever offer tangible and reasonable additional mitigation measures the Petitioner would be open to those measures. Furthermore, the Department of Public Service indicated it intends to retain an independent aesthetics expert to review the project. Petitioner consented to the DPS’s request for independent review.

iv. There are No Adverse Impacts to Wetlands

The Town and Planning Commission also raised a concern that the Petitioner’s wetland maps were inaccurate. The Planning Commission fixates on pages 14 and 15 of Petitioner’s Natural Resource Review (Exhibit SA-5). Those pages contain maps where the “project site” is inaccurately placed on the map. This was a program error and the Petitioner didn’t catch it before the filing. It is unclear why the program it used printed on the wrong property. This is not a substantive error. The resource review was performed accurately and did evaluate the wetlands *of the subject property*. This is from page 16 – the next page- of the resource review:



This, as well as the subsequent analysis include photos from the site visit, show that the Natural Resource Review, and underlying wetland and natural sites review, was properly conducted.

As shown in the Natural Resources Review (SA-5), the project has no impact on any jurisdictional wetland or its buffer. All Class-II wetlands are avoided. To the extent the Town Plan seeks to assert that any impact to *any wetland and buffer*, whether they be jurisdictional (Class I or II) or an unregulated Class III wetland is impermissible, that is a standard which has no basis in law that the Petitioner can find. The Petitioner is not aware of this Commission ever regulating development in or around Class-III wetlands which are not regulated by the State of Vermont. In fact, such a holding would appear to extend wetland regulation far beyond the State's reach in a manner likely blocked countless developments elsewhere in Rochester and aboard.

v. There are No Flood Hazard Risks

The concerns raised about the project affecting flood risks have no tether to reality. The site is well outside any floodplain, or flood hazard zone. There is little impervious surface to create additional runoff. There is no basis whatsoever to conclude the project has any flood impact.

vi. There are no adverse stormwater impacts.

There is no significant issue regarding stormwater runoff. The current existing access road is classic Vermont logging-style road. It's sunken down packed dirt with leaf litter cover.



The project will use this existing access. The access will be improved to increase its stability, protect against erosion, and improve the drainage and permeability of the road. The project will construct the improved access with large boulders and stones as a base. The top will be dirt with forest cover and grass largely mimicking what exists today. These large rocks and surface cover are permeable. This construction method allows water to infiltrate from the road surface into the ground. This construction will reduce any erosion from the constructed condition.

The areas outside of the access that will be disturbed will be reseeded and covered with erosion control matting or hydroseed as soon as the final grade is established. The areas outside the access will be allowed to naturally revegetate to promote stability, slow runoff over the existing condition and increase water infiltration. Thus, the project will likely improve water drainage and runoff over the existing condition.

Because of these construction means and methods, the concerns about “Stormwater” are misplaced. The project is creating just 2500 square feet +/- of new impervious surface. With that increase, and the proposed construction techniques on the road, the project does not need a State of Vermont operational stormwater permit.

Notably, the Agency of Natural Resources which is charged with review of the impact on natural resources has proposed conditions to the Petitioner, which the Petitioner has consented to, to mitigate potential adverse impacts.

vii. There is no impact to any Drinking Water Source

The site is not near any drinking water source protection area and thus the statement that “drinking water” may be affected has no basis in fact. The ANR’s atlas identifies two source protection areas in Rochester. One is in the center of the village over a mile away. The other is located on State Garage Road which is several thousand feet away and separated by Route 100, several properties and the White River from the site. Neither can reasonably be imagined to be impacted by this project.

viii. There are no Undue Adverse Impacts to the “Quality of Life.”

Both the Selectboard and Planning Commission state that the project will negatively impact the “quality of life.” This statement is hyperbolic and unreasonable.

The project seeks to provide cell-coverage to an area lacking in cell coverage. This includes a long stretch of one of the most heavily traveled and important state highways – Route 100. Hardly anybody lost, stuck, or even using a mapping program on Route 100 would agree that providing cellular coverage to the area negatively impacts the quality of life. Nor would somebody seeking to make a phone call in an emergency, Facetime their family, or conduct

business in the area, feel that the extension of coverage to unserved area negatively affects the quality of life.

To the extent this statement is a veiled concern about RF emissions, those concerns are unfounded and outside of this Commission's jurisdiction.

ix. The project Complies with the Town Plan

Both Notices of Intervention state in general terms that the project does not comply with the Town Plan. Yet, neither cites to any provisions of the plan which the project violates or offends. The Petitioner obviously disagrees and believes that the project meets the objectives of the Town Plan. The Petitioner understands that the Planning Commission's "comments" raise a number of challenges to the project under the Town Plan. The Petitioner will respond to those consistent with the schedule set by the Hearing Officer as requested above. The Selectboard's comments appear to incorporate the Planning Commission's 17 pages of comments. Thus, the Petitioner's more detailed response to the Planning Commission will also serve to address the Selectboard to the extent it incorporated by reference.

The Selectboard also stated that it needed more information to determine whether the project complies (or doesn't comply) with provisions of the Town Plan not cited by the Planning Commission. The Selectboard offers no information as to what those "other" provisions of the Plan may be and what information the Selectboard is lacking. The Petitioner therefore asks that the Hearing Officer require the Selectboard to identify what additional information it seeks and what "other aspects" of the Town Plan it needs that information to evaluate.

WHEREFORE while the Petitioner acknowledges the right of the Selectboard and Planning Commission to intervene, the Petitioner does not believe that the Notices of Intervention or

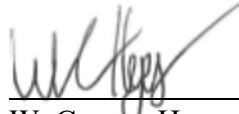
Selectboard Comments raise a significant issue. The Petitioner asks that the Hearing Officer set a deadline for 21 days from the date of this filing for the Petitioner to respond to the Planning Commission's comments. The Petitioner believes that it can establish that there is no significant issue with the Town Plan by that filing. The CPG should thereafter be issued.

Should however the Commission and/or this Hearing Officer decide that a significant issue does exist, the Petitioner seeks a hearing on the merits with discovery on the parties.

Dated: January 20, 2026
Burlington, Vermont

Respectfully submitted,

By:



W. Cooper Hayes
MSK Attorneys
275 College Street
Burlington, VT 05401
Phone: (802) 861-7000
Email: chayas@mskvt.com

Attorneys for Petitioner