

**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 )

**CONSOLIDATED RESPONSE OF PETITIONER TO PUBLIC COMMENTS AND  
MOTIONS TO INTERVENE**

NOW COMES Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless (“Verizon”) and Vertex Towers, LLC (“Vertex”) (together, “Petitioner”), by its counsel, MSK Attorneys, and hereby submits this consolidated response to the public comments and Motions to Intervene filed by various members of the public (collectively, “Motions to Intervene” or “Motions”). The comments and motions to intervene filed by the Town of Rochester Selectboard and Planning Commission have been initially addressed by separate filing.

**PRELIMINARY STATEMENT**

The following members of the public submitted comments: Lori Church, Reginal Cahill Poole, Ben Falk, Erica Koch, Hannah Smith, Alvina Risinger-Harvey, Jannah S. Murray, Steven Hoffman, Deborah E. Moore, David Swedick, Deborah Scherrer, Bradford Leathers, Sara and Michael Murphy, Carloyn Burkard, Sharon Solomon, Kate Seeger, Donald Murray, Tegan Kathleen Murray, Jean Murray, Bruce Danek, and Tara and Thomas Murray (collectively, “Commenters”). The following members of the public submitted motions to intervene: Jacob and Bonnie Wildwood & Mary and Bob Atwood, Bruce Jones, and Richard and Debbie Mathiesen, Deborah Scherrer, Tara and Thomas Murray, and Alvina Risinger-Harvey (collectively, “Movants”).

The Petitioner will respond generally to the issues raised in the public comments, then will address the motions to intervene.

**I. Public Comments**

The Commenters raise the following issues:

1. Conformance with the Town Plan.
2. Consideration of Alternatives.
3. Aesthetics
4. Natural Resources.
5. Historic Resources.
6. Erosion.
7. Groundwater,
8. Property Values, and
9. Health Concerns.

The Commenters concerns as to these issues are not based in sound fact and law. They fail to raise a Significant Issue.

**Conformance with the Town Plan**

The Town of Rochester Selectboard and Planning Commission (collectively, the “Town”) have already filed comments with respect to the project and moved to intervene in the proceeding. The Commenters mirror the concerns raised by the Town in its filing. Accordingly, Petitioner incorporates its response to the Town’s statements under the Town Plan in this response. Further, as the Town has voiced all the same concerns as the Commenters and Movants, the Town is the party best suited to prosecute these claims.

Consideration of Alternatives

Several public comments include a discussion of alternative locations and argue that there are alternative locations available to the Petitioner that could allow the Petitioner to meet its coverage objectives. Lori Church's comments discuss the AT&T antenna located in the Federated Church Steeple. As noted in the Prefiled Testimony of Scott Adams (see Pages 9-10) and Martin Lavin (see Pages 3-4), the Petitioner has examined this steeple to determine whether it could co-locate on the steeple.

It was the Petitioner's engineer's determination that the existing steeple could not support another carrier without a significant extension and replacement of the existing spire, as well as substantial structural modifications to the steeple tower. Further, even were those substantial modifications completed, the steeple would still not provide adequate coverage to the area that would be served by the Project. This is shown on the coverage maps filed with the application. See Exhibit ML-4 at Pages 1-2.

The statement that "other carriers utilize the antenna" and therefore the Petitioner should be able to use the antenna in the steeple is also incorrect. The antenna on the steeple belongs to AT&T and is exclusively for the use of its network.

In addition, many of the Commenters suggest that the Petitioner has not provided any evidence that it attempted to co-locate. That is demonstratively false. The Petitioner reviewed *all* existing telecommunications facilities within ten miles of the proposed project and determined that none of them would provide adequate coverage to the area to be served by this project. See Prefiled Testimony of Martin Lavin at 3-4 and Exhibits ML-2, ML-3, and ML-4.

One of the comments tries to support its arguments with an insert from Verizon's online "coverage map." The reference to Verizon's online map ignores the clear disclaimer provided on the website:

This map applies to voice and data plans and is a general prediction of where we expect to deliver outdoor service at the cell edge based on typical human walking speeds, without factoring in loading (i.e., the number of people simultaneously using the service in an area) or throughput. **This map is not a guarantee of coverage, contains areas of no service, and may not reflect actual customer performance. Actual coverage may vary. Many things can affect the availability and quality of your service, including, but not limited to, network capacity, your device, terrain, buildings, foliage, weather, topography, and other environmental considerations associated with radio technology.** Your service may vary significantly within buildings. Coverage areas may include networks run by other carriers; some of the coverage depicted is based on their information and public sources, and we cannot guarantee its accuracy. Some devices may not be compatible with extended coverage areas depicted in the map, and speeds may vary in extended coverage areas. (emphasis added).

It should be undisputed that there is limited existing Verizon coverage in the area proposed to be served by this facility. The Town of Rochester is situated in a valley which significantly impacts the ability of existing facilities to provide coverage to the Town. Other existing towers in the greater Rochester vicinity are blocked by terrain from reaching this valley. The Vermont Department of Public Service ("DPS") completed a mobile test drive through Rochester in an effort to evaluate what coverage actually exists. The maps created by the DPS demonstrate a lack of coverage and data services in the Town of Rochester consistent with the Petitioner's coverage maps. The DPS's maps are available at the following link: <https://experience.arcgis.com/experience/f072ce4627a747fcb7104898f1dfadd1/page/Program-Description-and-directory>

Other comments suggest that the Petitioner should have considered alternative technologies such as small cell antennas. The Petitioner always considers alternative means to

provide coverage. Small-cell antennas are not viable here. The goal of this project is to provide macro level coverage to a large portion of the area and to travelers on Route 100. This cannot be achieved with small cell antennas as they lack the necessary range to meet the coverage objectives for the project.

### Aesthetics

The Petitioner maintains that this proposed site will not have an undue adverse effect on aesthetics. The Tower has been sited such that is approximately 1.5 miles away from the Town center. The Tower has been sited such that it is **not** located on a ridgeline and the height of the proposed tower was reduced to 140' AGL to limit views. The Tower will extend 75' above the existing tree line around the Tower but will be backdropped by the ridgelines to the Northeast of the facility. It will be painted a dull grey to blend in with the sky.

Views of the Tower are sporadic. The prevailing topography and tree-cover in the area means that the Tower is only visible for brief periods to travelers in the area and only from select locations around the Rochester area. While the Tower will be visible from the center of Rochester, it does not loom over the center of town as it is located approximately 7500 feet away. From the center of Rochester, the Tower appears as a small grey line extending just above the tree line. It is hardly shocking or offensive. This also assumes one can *even see* the Tower. On any cloudy day, or dark moment, the Tower will be completely hidden. The Petitioner believes that given the reduced height, color, sighting design, and intervening tree cover, the Petitioner has taken all reasonable mitigating steps as well. Notably, no Commenter or Movant offers any additional mitigation measures. Rather their sole mitigation appears to be “no towers.”

The Petitioner also notes that the DPS has stated in their comments that they will retain an independent aesthetics expert to review the proposal and determine if it will have an undue adverse impact on aesthetics. The Petitioner welcomes this review and is more than open to additional reasonable, and practical, mitigation measures offered by the DPS's independent aesthetics expert.

### Natural Resources

Several comments raise concerns with respect to natural resources. While the Petitioner concedes that two pages contained in the Natural Resource Report (See Exhibit SA-5 at Pages 13-14) erroneously depict another property in Rochester, the remainder of the report, including the photos and extensive details from the site visit reflect that a thorough review of natural resources was completed for the correct parcel. To also make this clear, the Petitioner filed an updated document correcting its error in the original report. In addition, the Agency of Natural Resources reviewed the application and submitted public comments requesting the inclusion of certain conditions to ensure there are no undue adverse impacts on natural resources. The Petitioner has no issue with these conditions.

Further, the Project was specifically designed to utilize an existing logging road to minimize forest clearing and fragmentation. The intent of the Petitioner is to clear only what is required to reach the site safely. It is the Petitioner's goal to allow the edges of the access to naturally vegetate in such a way that the tree canopy spreads across the road as it generally exists today. The goal is to limit views of the road and leave the access looking like one of the many logging roads that exist in the area.

Many Commenters raised unfounded concerns about impacts to wetlands. There are no impacts to any jurisdictional wetland. The Agency of Natural Resources determined that any

wetlands on the property are Class III non-jurisdictional wetlands. By following the existing logging road, the project limits impacts overall and restricts the small impacts it does have to these non-jurisdictional wetlands.

### Historic Resources

The State Office of Historic Preservation (“SHPO”) reviewed the project and determined that at 140’ AGL the project would have no adverse impact to historic resources. Further, as articulated in Petitioner’s response to the Town Planning Commission and Selectboard’s Notices of Intervention, the Tower will not unduly impact historic sites in the center of Rochester. The project is approximately 1.5 miles away from the Village Green and the historic properties that surround it. From that location the Tower appears (when visible) as a small backdrop element. It does not overwhelm the view, nor dominate any resource. It matches the general infrastructure in the foreground (electric and telephone cables and wires). To any viewer interested in the historic green and properties around the Green, the Tower is a distant element with little impact on their view and appreciation. For the elimination of doubt with respect to the extent of SHPO’s review, the Petitioner has included as Exhibit 1 to this response the initial report submitted to SHPO for this project prior to the reduction in height, with which SHPO concurred following the reduction in height as shown in Exhibit SA-6.

### Erosion

The Commenters expressed unsupported concerns about erosion and runoff from the project. The proposed access road follows an existing logging road. As shown in Exhibit SA-5, that existing logging road is dirt packed, with leaf litter cover. The access will be improved to increase its stability, protect against erosion, and improve the drainage and permeability of the

road. The access will be improved with large boulders with a permeable dirt/litter cover. This construction method allows water to infiltrate from the road surface into the ground. This construction will reduce any erosion from the constructed condition to that equal to less than what exists today.

The areas outside of the access that will be disturbed during the construction 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. In addition, the Petitioner will obtain and abide by a Vermont Construction Stormwater Permit.

#### Groundwater

The site is not near any drinking water source protection area and thus the statement that “drinking water” or “groundwater” 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. As noted “the project is unmanned and will not require water or wastewater disposal systems, and therefore, will not have an adverse impact on public and private water supplies. See Prefiled Testimony of Scott Adams at Page 12.

#### Property Values

Some of the public comments refer to a concern that the proposed tower will negatively affect property values or other real property disputes. It is well established that real property disputes and impacts on property values are outside the Commission's jurisdiction<sup>1</sup>.

### Health Concerns

A number of commenters raise concerns regarding the health impacts of radio frequency radiation associated with the proposed tower. This Commission is preempted from taking any action to regulate the type of spectrum used in wireless networks. The FCC has exclusive jurisdiction to regulate (among other things) the use of radio spectrum in terms of the nature of service to be offered, spectrum to be used, transmission power, times of operation, location, areas, or zones of operation, and apparatus stations may use. *See* U.S.C. 47 § 332(c)(7)(B)(iv) (state and local authorities preempted from regulating placement of wireless service facilities based on environmental effects of RF emissions if facility will comply with FCC regulations concerning those emissions); Provided the Petitioner's RF emissions are consistent with FCC regulation, this Commission has no jurisdiction. *See Petition of Viridi Wireless, LLC*, Case No. 20-3260-PET, Order of 3/08/21 at 3 (noting that the Commission is "preempted from addressing [RF] emissions in siting proceedings to the extent that the Project complies with the regulations of the [FCC]").

Here, the Petitioner has performed RF emission calculations using the most extreme assumptions possible, which could not be duplicated at the site in real world conditions, and under

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<sup>1</sup> *See generally* *Petition of Bell Atl. Mobile Sys. of Allentown, Inc. Requesting a Cert. of Pub. Good, Pursuant to 30 V.S.A. § 248a, Authorizing the Installation of Wireless Telecomms. Equip. Off Fletcher Rd. in Fairfax, Vt.*, No. 21-4033-PET, 2021 WL 5824623, at \*2 (Vt. P.U.C. Dec. 2, 2021) ("We also agree with the Petitioners that the Project's impact on property values is, as we have concluded in previous cases, outside the Commission's jurisdiction.") (footnote omitted).

those assumptions the RF emission levels for this site will be below the maximum permissible exposure limits established by the FCC. See Prefiled Testimony of Martin Lavin at Page 4.

**Motions to Intervene:**

The Movants have failed to articulate a basis to intervene. None of the Movants have a statutory right to intervene and so their requests are for “permissive” intervention. Commission Rule 2.209 governs permissive intervention. Commission Rule 2.209(B)(2) reserves to the Commission the power to grant intervenor status on a permissive basis:

(2) when an applicant's claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding and the applicant is so situated that the disposition of the proceeding may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In exercising its discretion under Commission Rule 2.209(B)(2), the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public. “A potential party's interests must be sufficiently distinct from the general public's interests to warrant intervention” and the intervenor must have a “particularized interest in a Commission proceeding” separate from that of the general public. *See e.g. Investigation into the City of Burlington Elec. Departments Operations & Mgmt. Pracs.*, No. 25-2607-INV, (Dec. 19, 2025)(Ruling on Motion to Intervene).

None of the Movants have met this standard. First, as *both* the Selectboard and Planning Commission have intervened and raised *all* the same points as the Movants, the Selectboard and Planning Commission adequately represent the Movant’s interests. Given that, the Movants are not so situated that case may be disposed of in a manner that does not consider their “interests.”

Rather the Town is protecting them. Thus, the Movants fail the test set out in 2.209(B)(2) and intervention should be denied.

Further, because the Selectboard and Planning Commission are raising all the same points and taking all the same positions, the inclusion of several additional pro-se Movants, repeating the same points and arguments unduly delays the matter and prejudices the parties. That duplication and repetition will extend all filings, hearings, discovery, and make reaching consensus on schedules and other procedural matters challenging.

In addition, the Movants have failed to identify particularized interests that stake in this proceeding. The Movants by and large have not demonstrated a personal, particularized interest with respect to any of their issues, or explained why other parties in the case will not adequately protect these interests. They all raise generalized arguments on the purported issues but none articulate a potential harm to *their particular interest*. Rather they mostly voice generalized grievances which do not reflect a particularized interest conferring standing. *See Brod v. Agency of Nat. Res.*, 2007 VT 87, ¶ 9, 182 Vt. 234, 239, 936 A.2d 1286, 1289 (2007) (“For standing, plaintiffs must present a real—not merely theoretical—controversy involving “ ‘the threat of actual injury to a protected legal interest’ rather than merely speculating about the impact of some generalized grievance.”)(citations omitted) For these reasons, intervention should be denied.

Of the parties who have moved to intervene, only three are landowners near the project site. They are Wildwood/Atwood, Murray, and Risinger-Harvey. The Wildwood/Atwoods live at 645 VT Route 100S. The Wildwood/Atwoods do not articulate a particularized interest in their Motion to Intervene. Their Motion to Intervene raises a concern that runoff could harm *their neighbors in the future*. This is a statement as to third-party harm and not related to *their* interests.

It does not support intervention. Secondly, they argue that the Tower could affect their business interests. Economic interests, and property values, are not protected by this Commission and thus cannot confer standing and right to intervene. *Petition of VTel Wireless, Inc.*, Dkt. No. 8355, 2015 WL 273061, at \*4 (Vt. P.S.B. Jan. 7, 2015) (declining to find a substantial interest and rejecting neighbors' intervention request where neighbors alleged they had a "financial interest in preserving the development" of their land and that construction of the Project near property they planned to develop would mean "that no one will be interested in buying lots" on that property), *aff'd*, 2015 VT 135, 201 Vt. 1, 134 A.3d 1227.

Tara Murray and Thomas Jaquith live at 64 State Garage Road. The concerns they raise mirror those raised by the Town. As to their protected interests, they do not articulate that they will be able to *see* the Tower from 64 State Garage Road and that such views if they did exist would negatively impact their aesthetic interests. In fact, when the Petitioner performed a balloon float and photo simulations, the balloon could not be seen from the general area of 46 State Garage Road. They do claim that they can see the Tower from an investment property located at 237 South Main Street in Rochester. That location is close to the center of Rochester and perhaps a mile or more away from the Tower location. At that distance the Tower's views are minimal and distant. Their standing from that location is no different than that of the general public. That they could see the Tower from this investment property does not confer standing and a right to intervene. *See Petition of GMR Holdings of NH, LLC*, Dkt. No. 8689, 2016 WL 2621978, at \*4 (Vt. P.S.B. Apr. 26, 2016) (declining to find a substantial interest and rejecting neighbors' intervention request where neighbors alleged that the "value of our property would be damaged because the proposed

tower would be situated virtually in our front yard, approximately one quarter mile from our front deck").

Ms. Risinger-Harvey is an abutter and the access to the site does cross her property. She likely can maintain a particularized interest. However, her objections still mirror those of the Town and therefore there is no basis to grant her intervention when the Town is already advocating for her positions. As to Ms. Risinger-Harvey's stated ROW concerns, they are outside the jurisdiction of this Commission. Those are civil claims to be determined in civil court if need be. They cannot confer standing and a right to intervene here.

Movant Deborah Scherrer resides at 176 South Main Street. She claims she can see the Tower from her property. This may be possible, but her property is located approximately one mile away from the Tower site. From her property, the Tower will likely look very distant with only the upper most portions sticking above the treeline. On the majority of days, when clouds and weather will impede the views, the Tower will not be visible at all. Ms. Scheerrer's concerns are therefore akin to those of the general public and not particularized enough to confer a basis for intervention. *See Petition of GMR Holdings of NH, LLC, supra.*

Movant Bruce Jones speaks at length about the potential for negative visual impacts on this property, but by his own admission his property is located 2.65 miles away, with intervening topography between. This is a much greater distance than the Commission has previously found does not amount to a substantial interest. *Id.* Richard and Debbie Mathiesen's motion fails for the same reason. They live at 6 South Main Street, which is more than a mile from the Tower.

For these reasons, the Movants' Motions to Intervene should be denied. They are duplicative of the arguments and concerns raised by the Town Selectboard and Planning Commission.

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Burlington, Vermont

Respectfully submitted,

By:



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

*Attorneys for Petitioner*