

**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 SUPPLEMENTAL RESPONSE TO PUBLIC COMMENTS 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 supplemental response to the comments filed the Town of Rochester Selectboard (the “Selectboard”) and Town of Rochester Planning Commission (the “Planning Commission”)(together, the “Town”)¹.

As stated in the initial response, the Petitioner believes that the Town’s comments do not raise a significant issue under the applicable criteria set forth in 30 V.S.A. 248(a). To the extent the Town’s comments were not previously addressed in the Application and Prefiled Testimony filed in the present case, the Petitioner filed an initial response to the Town’s comments with respect to Historic Resources, Scenic Byways, Aesthetics, Wetlands, Flood Hazard Risks, Stormwater, Drinking Water, and Quality of Life. That filing demonstrates that the Town’s concerns as to these elements is without substantive merit.

¹ As the Selectboard reiterated the comments of the Planning Commission, references to the “Town Comments” refer to those filed by the Planning Commission.

The Petitioner now supplements the initial response with these comments which reflect the Town's December 30, 2025 filing mostly focusing on conformance with the Town Plan. As the Petitioner detailed how the project met the Telecommunications specific sections of the Town Plan, and other measures of the plan in its filings, the Petitioner directs the Commission and the Town to the Prefiled Testimony of Scott Adams ("Adams Pf.") at Pages 8-15 for a discussion of the project's compliance with the Telecommunications Section of the Town Plan. That testimony is fully incorporated and restated herein.

The Petitioner respectfully requests that the Commission rule on the following: 1. Whether the application raises a substantial issue with respect to the applicable criteria; 2. The Motions to Intervene filed by the Town and members of the Public. The Petitioner maintains its objection to the finding that there is any significant issue and reserves the right to supplement this response, and try any such issue, in the event the Commission makes such a finding.

The Project Complies with the Town Plan

The Town divides its comments into the following sections: 1. Habitat, Rare/Threatened/Endangered Species, Invasive Species; 2. Wetlands; 3. Fluvial Erosion; 4. Visibility, Historic Sites, Scenic Byways, Public Parks and Trails, Private Drinking Water; 5. Coverage; 6. Bond; 7. Health Effects; 8. Other, which the Petitioner addresses below:

(1) Habitat, Rare/Threatened/Endangered Species, Invasive Species

The Town argues that it cannot determine whether there are impacts to natural resources because of an "error" in the natural resource review provided by Petitioner. The Petitioner filed Exhibit SA-5 (revised). All determinations made through GIS were correct. There was only a scrivener's error in Figures 1 and 2. The Agency of Natural Resources ("ANR") reviewed the

project and filed comments on January 12, 2026 requesting conditions with respect to Stormwater Management and Wildlife Habitat, which the Petitioner has consented to. Accordingly, no significant issue has been raised with respect to this criterion.

(2) Wetlands

The Town cites Section 4B.2 of the Town Plan to argue the crossing of a Class III wetland violates the Town plan, the relevant section of the Town Plan is excerpted below:

“Wetlands as indicated on the Vermont State Wetland Inventory maps or *identified through site analysis*” [emphasis added by the Town].

Vermont State Wetland Inventory maps display Class I and Class II wetlands. With this context, it is clear the Town Plan intended to protect Class I and Class II wetlands identified through site analysis, which were not indicated on the inventory maps rather than to add a new layer of protection for non-jurisdictional wetlands. As correctly noted by the Town “the Vermont state District Wetland Biologist classified these wetlands as Class III and therefore they are not regulated under the Vermont Wetlands Rules” Town Comments at Page 4. That this wetland is not environmentally significant is consistent with statute which classifies Class III wetlands as “not significant” meriting protection. 10 V.S.A. §902(10); §913.

Further, the access for the project follows an existing logging road. Deviating from this path to avoid this non-jurisdictional wetland would result in additional clearing and negative impacts on natural resources, including the non-jurisdictional wetland areas in question. Accordingly, to the extent the Town Plan supersedes state wetland regulations, which the Petitioner maintains it does not, there is good cause to overcome the Town’s recommendation with respect to wetlands.

(3) Fluvial Erosion

As previously noted, the project will use the existing logging access road. The access will be improved to increase its stability, protect against erosion, and improve the drainage and permeability of the road. The Petitioner submits the attached pervious surface calculation (Exhibit 1 to Supplemental Response) demonstrating the improved access meets the definition of “pervious” as set forth in Section 2.0 of the 2017 Vermont Stormwater Management Manual Rule and Design Guidance. Accordingly, the project will not have an undue adverse impact on stormwater as the improvements will allow for better water infiltration compared to the existing conditions. This will reduce flood risk below the present conditions. Nor is the project located near the Fluvial Erosion Hazard Area.

The Town also tries to use fluvial erosion as a basis to challenge the sizing of a culvert. The ANR reviewed the application and its comments did not find that replacement of the culvert was necessary, that the project was in an FEH area, or that the Petitioner be required to submit a plan beyond that required for a general stormwater construction permit. There is no significant issue with erosion.

(4) Visibility, Historic Sites, Scenic Byways, Public Parks and Trails, Private Drinking Water

GENERAL VISIBILITY

The Town objects to the Tower on the basis of a myriad of provisions in its Town Plan which it stretches to suggest the Tower is improperly sited and an affront to aesthetics. The Town Plan does not proclaim as the Town posits and the limited visibility of the Tower was

addressed in Mr. Adam's pre-filed testimony. The Petitioner directs the Commission and the Town to the Adams Pf. Pages 5-6, 8-15 and Exhibit SA-4.

The Site was selected to mitigate the visual impact. It is a lattice tower design and has been sited such that it is not on a ridgeline. Visibility will be mitigated by vegetation and the surrounding topography. As noted in Exhibit SA-1 at Sheet Z-4, the tree canopy surrounding the facility has an average height of 65'. Accordingly, the related infrastructure (i.e. the compound) will not be visible. By utilizing the existing logging road for the access and allowing the areas outside of the access to naturally revegetate the visual impact is further mitigated. Given the existing topography views are limited and when viewed from the center of Town, removed and distant such that tower does not loom over the Town. Furthermore, the Petitioner has consented to an independent aesthetics review by the Department of Public Service. There is no significant issue with aesthetics and if there was, good cause would exist to set-aside the Town's concerns and recommendations.

HISTORIC SITES

The Petitioner directs the Commission and the Town to Exhibit 1 to Initial Response to Town Comments. The State Historic Preservation Office which is charged with the review of the impact on Historic Resources concurred "No Historic Properties in the Area of Potential Effects-Direct Effects" and "No Historic Properties in the Area of Potential Effects-Visual Effects" See Exhibit SA-6. The Tower is not proposed in the Town Green or immediately adjacent to any of the noted resources. With respect to the Ezekiel Emerson Farm, the Town is well aware that Photo Simulation #11 from Exhibit SA-4 is taken from the perspective of the road immediately adjacent this farm and as shown the proposed tower will not be visible as this was specifically

discussed at the Planning Commission Meeting on December 17, 2025. The Town states “At a minimum, many of sites from which the petition indicates that the balloon was visible or partially visible during the test on November 26, 2024 fall within these definitions of historic sites” Town Comment at 12. However, the Town fails to articulate from which sites the tower would be visible and to what extent they would be visible in order to overcome the determination by the State Historic Preservation Office.

SCENIC BYWAYS, PUBLIC PARKS AND TRAILS

As previously noted, the Petitioner consented to an independent aesthetic review by the Department of Public Service. The Town asserts with respect to that the visual impact of the approximately 0.6 miles along Route 100 from the North and 0.8 miles from the south that “the duration of this visual impact is more significant than a single point assessment.” Town comments at Page 12. Presuming a driver is traveling 30 miles an hour, which is the posted speed limit in these area, that means it would be *potentially* visible for 1 minute and 12 seconds (traveling south towards Rochester) and 1 minute and 36 seconds (traveling north towards Rochester) presuming a driver were looking for the tower the entire time and that there was no intervening vegetation, clouds, or topography. Pierce Hall, Rochester Town Park, Lions Park, and the recreation areas noted by the Town are all located over a mile from the proposed Tower site. Any visual impact will be diminished at that distance if the Tower is visible at all.

PRIVATE DRINKING WATER SUPPLIES

The Project will have no adverse impact on private drinking water supplies. The Project is not located in a mapped source protection area. The Project will not require a water supply, will have no draw on the groundwater aquifer, nor will the Project have an in-ground waste

treatment system that could potentially contaminate the groundwater. The Town has not articulated how an unmanned telecommunication facility, which will not require a water supply system, could have any adverse impact on private drinking water supplies.

(5) Coverage – site selection and propagation

The Petitioner respectfully notes that there is nothing in the Town Plan or the Zoning Ordinance that provides the Town the authority to weigh the information it now requests with respect to evidence of alternative sites and the definition of what constitutes adequate coverage. The only time the word “coverage” is used in the entirety of the Town Plan is the sentence “When surveyed in 2012, residents were very supporting of increasing cell coverage throughout the community depending on the location of the proposed communications towers” Town Plan at Page 16, see also Town comment at Page 14. Increasing cell coverage throughout the community is exactly what the Petitioner seeks to do with this project.

The Town asserts without this information “the PC cannot determine if the project complies with the Town Plan under Section 4B.3 and 3B.7” Town Comments at Page 16.

Section 4B.3 provides as follows:

3. Significant Areas: All new telecommunications facilities shall be sited and designed to avoid or, if no other reasonable alternative exists, to otherwise minimize or mitigate adverse impacts to the following:

- Historic districts, landmarks, sites and structures listed, or eligible for listing, on state or national registers.
- Public parks and recreation areas, including state and municipal parks, forests and trail networks.
- State or federally designated scenic byways, and municipally designated scenic roads and viewsheds.

- Special flood hazard areas identified by National Flood Insurance Program maps (except as required for hydro facilities)
- Public and private drinking water supplies, including mapped source protection areas.

Section 4B.7 provides as follows:

Site Selection: Site review should not be limited to the telecommunications facilities; other elements required of the facility need to be considered as well. These include access roads, site clearing, onsite power lines, substations, lighting, and off-site power lines. Development of these elements shall be done in such a way as to minimize any negative impacts. Unnecessary site clearing, and highly visible roadways can have greater visual impacts than the telecommunication facility itself. In planning for facilities, designers should take steps to mitigate their impact on natural, scenic and historic resources and improve the harmony with their surroundings.

Neither section in the Plan speaks to a requirement with respect to defining “alternative locations and technologies considered” nor does it speak to a definition of “adequate coverage” as the Town indicates it has authority to consider in their comments at Page 16. Nor does the Town have such authority to require a Petitioner detail every other technology considered or every other site considered.

Notwithstanding the foregoing, the Petitioner states that adequate coverage is the minimal coverage necessary to provide reliable service that is acceptable to Verizon’s customers. This coverage level, -95 dBm, is also referred to as “in-vehicle coverage”. Coverage below this level is not considered reliable and therefore would be inadequate.

With respect to alternative technologies, the Town appears to be suggest “small cell” antennas would be a viable alternative to the proposed facility. First and foremost, the goal of this site is to provide macro level coverage, which is not possible from small cell technology. Furthermore, it is not practical, nor economically feasible, and is not consistent with good RF Engineering practice to try to cover a heavily traveled, miles long stretch of road and Town with “small-cells.” Typically, small cell facilities involve the installation of a single cannister antenna,

an individual radio head, and related electrical and fiber optic connections. Small cells would utilize existing infrastructure (i.e., electric distribution poles) along public rights of way in areas where coverage and/or capacity problems exist. These existing utility poles are often encumbered by other electric or communications equipment (i.e., transformers, streetlights, CATV boxes, risers, primary power lines). Pole attachment rules, established by the pole owners (e.g., electric and wireline phones utilities) limit or restrict the Petitioner's use of these encumbered poles. Structural limitations of the existing poles could also limit the Petitioner's ability to deploy all the equipment needed to provide service in all of its operating frequencies. Providing some form of back-up power to small cells is also very difficult and, in many cases, impossible, making the service even more vulnerable to power outages caused by storms or traffic accident

In areas where existing utility poles are not available, for example, along private roads, in State Parks, on private and municipal properties, or in public and private nature preserves, property rights would need to be acquired, and new utility poles would need to be installed. The actual number of small cell facilities that would be needed to provide service comparable to that from the Proposed tower site is not known, but would be significant given the overall size of the area that Petitioner is attempting to serve with the proposed Facility. Individual small cells would be capable of providing service in some, but not all of Petitioner's operating frequencies, further limiting network capacity in the area around the Proposed Facility.

The Town seeks to far exceed the confines of the Town Plan and Zoning Regulations. The Petitioner has presented extensive evidence that there are no facilities available for co-location within a 10-mile radius of the proposed site.

While the Town argues that the Petitioner should have considered Deer Mountain, Alexander Hill, and Mount Reeder, as those were identified over 10 years ago as “most acceptable” by residents of the Town, there is no evidence to suggest the Town accounted for the physical constraints and natural resource impacts associated with these locations, or that the ability to provide coverage from these locations informed determination. Nor has the Town established that properties in these locations would even be available to the Petitioner. The Petitioner was under no obligation to consider these sites, the Petitioner considered and demonstrated that there is no existing facility or structure upon which it could co-locate to meet its coverage objectives.

(6) Bond for removal

Despite the lack of basis for the request in the Town Plan, or Zoning Bylaw, the Petitioner will agree to post a tower, structure, and removal bond.

(7) Health Impacts

As the Town is aware, health concerns are outside of the jurisdiction of this Commission. 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). See also *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]”). As stated in the Prefiled Testimony of Martin Lavin, “calculations using the most extreme assumptions, which could not possible be duplicated at the site, demonstrate that RF emission levels for this site will still be well below the Maximum Permissible Exposure limits established by the FCC.” Lavin Prefiled at Page 4.

However, the Petitioner highlights that the proposed facility is located a much greater distance from residences than the telecommunications facility currently located in Church Steeple in the heart of the Village.

(8) Other

The Petitioner does not understand the first comment. The facility at 1610 Town Line Road was not constructed and this is noted in the pre-filed testimony of Martin Lavin. It is therefore irrelevant to any discussions with respect to the present project.

The applicant chose to lower the proposed tower height following the public information session. At that session, concerns were raised about the potential visual impact, so the Petitioner took one of the available mitigation measures by reducing the Tower height. It is unclear why the Town is taking issue with this mitigation measure while simultaneously raising concerns about the potential visual impact.

The Town comments then proceed to request the applicant be required to do the following:

1. Resubmit a Natural Resources Report that correctly locates the project and revises any determinations made through GIS.

The Applicant has done so. See Exhibit SA-5 (revised).

2. Conduct a full and accurate assessment of the potential impact of the proposed tower on historic sites. Without this information, the PC cannot determine if the project complies with the Town Plan under Sections 4B.3 (16) and 7F (29).

The Applicant directs the Town to Exhibit 1 to Initial Response to Town Comments and Motions to Intervene.

3. Provide evidence of alternative locations and technologies considered and explanations for their rejection, especially sites indicated as preferred in the Town Plan. Without this information, the petition as submitted violates the Town Plan under Section 4B.3 and fails to sufficiently address Section 4B.7 (16).

*There is no basis in the Town Plan or Zoning regulations for this request.
Notwithstanding the foregoing, the Petitioner directs the Town to the response above.*

4. Provide a clear definition of what constitutes “adequate coverage” for this project, the metrics for judging coverage, and explanations for both. Without this information, the PC cannot determine if the project complies with the Town Plan under Sections 4B.3 and 4B.7 (16).

*There is no basis in the Town Plan or Zoning regulations for this request.
Notwithstanding the foregoing, the Petitioner directs the Town to the response above.*

5. To post a tower, structure, and removal bond, separate from any similar agreement that may exist between Vertex and the property owner.

The Petitioner has agreed to do so.

WHEREFORE Petitioner maintains that the Town comments do not raise a significant issue with respect to the applicable criteria. The Petitioner requests that the Hearing Officer rule on the pending motions to intervene and to set a date for a status conference to move this proceeding forward.

Dated: February 17, 2026
Burlington, Vermont

Respectfully submitted,

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