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 RESPONSE TO PROCEDURAL ORDER AND REQUEST FOR STATUS CONFERENCE

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, hereby submits this response to the Procedural Order of the Public Utility Commission dated February 17, 2026. The Procedural Order appeared to Petitioner to be a grant of its January 20, 2026 request that the Hearing Officer set a deadline of not less than 21 days from January 20, 2026 for the Petitioner to further respond to the December 30th Comments filed by the Town of Rochester. *See* Initial Responsive Comments of Petitioner filed on January 20, 2026 at p. 2, 11-12.

However, because the Petitioner had not heard from the Hearing Officer by February 17, 2026, the Petitioner filed its supplemental and additional responses to the Town's comments at 7:45am. In it, the Petitioner addressed the claims by the Town of Rochester and provided supplemental information as requested. At the same time, almost literally, the Clerk of the PUC issued the Procedural Order at 9:07am which appeared to grant the aforementioned request of Petitioner and stated that Petitioner had two weeks to file what it just filed 80 minutes prior. Given the timing of the filing (7:45am) and the short window (80 minutes) it seems impossible

that the Procedural Order reflected the twelve pages of supplemental comments filed moments before. Accordingly, the Petitioner understood that it had already met the request of the Procedural Order. However, as the Town has now filed three additional filing with the Commission on March 2 and March 3, the Petitioner supplements the responses below.

To the extent required, this filing made within the 14-day period provided, incorporates and re-states everything previously asserted in the application, initial responsive comments, and supplemental responsive comments as if fully stated herein. There are no facts to support the Town's position, no sworn evidence to support the Town's claims, and the Town's recommendation is not prima facie evidence of anything. By statute, it creates a rebuttable presumption and as this a contested case, a rebuttal presumption is to be addressed a hearing once there is a determination of whether there is a significant issue.

Notably, the Petitioner highlights to the Commission and Hearing Officer that the Town of Rochester *has never recommended the denial of this CPG.* It asked for more information, asked for a hearing, and asked to intervene. It did not recommend the denial of the petition. Thus, to convert comments asking for information, asserting concerns with the Town Plan into a denial recommendation, as was done with the Towns March 3rd filing, strains logical reality.

There are clearly disputed material facts as demonstrated by the filings of the parties and a hearing is required once the Commission or Hearing Officer determines what are the significant issues. The Town is clearly trying to create some sort of summary decision process out of the comment period when no such rule or law provides for that. Rather, as a contested case, the applicant is entitled to a hearing (a) and (b) the comment period is merely designed to

identify significant issues. To convert this wild-west interregnum into dispositive motion practice is improper.

To the extent that the Town states that the Petitioner has not addressed 30 V.S.A. §248a(C)(2), or 248a(n), those arguments are misplaced. First, §248a(n) sets a standard for this Commission to meet with its eventual decision. It is not directed at the Petitioner. To the extent that the Petitioner is required to provide evidence addressing the Town's comments the Petitioner has done that with its response and requests a full and complete hearing, to which it is entitled, to present evidence.

Second, to the extent that §248a(c)(2) is at issue, §248a(c)(2) tests *facts.* Under §248a(c)(2), this Commission must find that unless good cause exists, substantial deference has been given "to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan." For the purposes of this provision, "good cause" means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or the State's interests …." 30 V.S.A. §248a(b)(3). Those State interests are broadly summarized as ensuring that all Vermonters have access to a robust, modern telecommunications network which includes the provision of universal high-speed data and voice services, modern mobile wireless services along travel corridors and in communities, competitive choice, and improved telecommunications technology serving public services, public safety and the economic development of the State. See 30 V.S.A. §202c.

Substantial deference means "this commission assumes that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable." See 30 V.S.A §248a(c)(5). To effectuate the deference, "a rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan …." *Id*. at (c)(2)

A rebuttable presumption places the burden of going forward with the evidence on the party against whom it operates. *Rocque v. Co-operative Fire Ins. Ass'n of Vt.*, 140 Vt. 321, 325–26, 438 A.2d 383, 386 (1981). A rebuttable presumption is not evidence nor probative. *State v. Giard*, 2005 VT 43, ¶ 9. It is locative and merely shifts the burden to another party at trial. *Tyrrell v. Prudential Ins. Co. of Am*., 109 Vt. 6, 23, 192 A. 184, 192 (1937)); see also *Application of Seneca Mountain Wind, LLC, for Auth., Pursuant to 30 V.S.A. Ss 246 & 248, to Install Four Temp. Meteorological Stations, Two in the Town of Brighton, Vermont & One Each in the Towns of Ferdinand & Newark, Vermont*., No. 7867 (July 30, 2012)("In Section 246 cases, the rebuttable presumption is an evidentiary burden-shifting device that does not apply to the Board's initial determination whether a significant issue with regard to aesthetics has been raised in an application or by the comments filed in response to an application.") That a municipal recommendation is "presumed" valid under the substantial deference standard also merely creates a rebuttal presumption, which logically means that if an applicant can demonstrate that the municipal recommendation is not factually or legally accurate at a hearing, the presumption is "burst" and of no further force and effect.

Here the Applicant has done that. There are no controlling provisions in the Town Plan which have the force of law. As the Petitioner demonstrated in its filings the Town Plan's language is broadly worded and non-specific. For example, the Town objects to the Tower's visibility based on the following clause in the Town Plan:

> 7. 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. (Town Plan, 16)

As the Petitioner explained extensively, it meets the single "shall" sentence. All negative impacts are "minimized." The Tower height is lowered to the lowest possible level to meet the coverage objectives, the site is screened to limit the views of the compound, and the surrounding topography greatly limits the scope of the Tower's overall views. In addition, the pre-existing logging road is used which prevents the creation of a highly visible roadway of the type objected to in the Town Plan.

Moreover, this standard, like most of those quoted by the Town, is not a legally controlling standard. It provides no tangible metrics and does not provide any clear guidance to "a person of ordinary intelligence a reasonable opportunity to know what is proscribed." *Brody v. Barasch*, 155 Vt. 103, 110, 582 A.2d 132, 137 (1990). It is a "[b]road policy statements phrased as nonregulatory abstractions" which are "are not equivalent to enforceable restrictions." *In re B & M Realty, LLC*, 2016 VT 114, ¶¶ 33-36, *citing Chaves*, 2014 VT 5, ¶ 38 (quotation omitted). When a plan uses non-specific, broad policy language that does not place a party on clear notice

of the relevant standards, the Vermont Supreme Court will not enforce the plan. See e.g. Chaves at ¶¶ 40–41 (concluding that plan provision stating that mineral extraction "should minimize adverse effects on aesthetics and special community resources (such as historic sites) and should not interfere with or have negative impacts on historic sites" was "broad and nonregulatory, espousing general policies" without any "specific requirements that are legally enforceable"); *see also In re John A. Russell Corp*., 2003 VT 93, ¶ 19 (mem.) (concluding that plan that "discouraged" certain uses in particular area did not evince sufficiently "specific policy" against particular kind of development to support finding of nonconformity with town plan); *In re MBL Assocs*., 166 Vt. 606, 607–08, 693 A.2d 698, 700–01 (1997) (mem.) (concluding that use of word "should" in regional plan did not create mandatory enforceable requirement). The Rochester Plan is exactly this type of abstract document.

Thus, based on the facts no known, and to be proven after the taking of discovery, the Petitioner believes that there is good cause to not follow the Town's "recommendations" in this regard. Following that "recommendation" does harm to State policy and can be proven as such.

Similarly, the Town objected on the basis of Scenic Impacts. It cited another amorphous and non-controlling provision of the Town Plan:

> 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: […]
> - 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. […] (Town Plan, 16)

Again, this provision has no legal meaning. It provides no basis to determine what "reasonable alternative" "minimize" or "mitigate" means. It leaves open those key terms and as such cannot be afforded and force and effect. Even then, the Petitioner detailed with *evidence* that the Tower meets this standard. As the Petitioner explained the Tower is minimally visible to one traveling on Route 100 (which is to be expected) and while potentially, at times, visible from the noted locations, those locations are over a mile away. At that distance, the Tower appears as a spec on the horizon. The visual simulations provided with the application make this clear. Thus, any visual impact is "minimized" and "mitigated" as recommended by the Town Plan. For the Town to say that simply because it disagrees and wants a zero-visibility standard to exist, is not a viable legal position. It converts these proceedings into one where the singular deciding factor is "does the Town approve." While the Town may wish that to be the law; it is not. Thus, based on the facts no known, and to be proven after the taking of discovery, the Petitioner believes that there is good cause to not follow the Town's "recommendations" in this regard. Following that "recommendation" does harm to State policy and can be proven as such.

The Town's arguments re. wetlands also have little merit. As explained in the Petitioner's initial filings, the Town Plan states that towers may not be located on wetlands located on the Vermont Significant Wetland Map or by site analysis. The Tower and compound and all the *new* telecommunication tower development is *outside* of any wetland, regardless of whether it is Class I, II or III. At a technical level, the project meets the objectives of the Town Plan explicitly.

There are also no new impacts to any regulated "wetland." The sole impacts are 210 square feet of minor impacts to a Class III "wetland" which result from using the *existing* access road. Class III "wetlands" by State law, are not wetlands meriting any protection. 10 V.S.A. §902(10); §913. To the extent the Town argues the Town Plan protects *any* work associated with *any* telecommunication development from impacting *any* amount of wetland regardless of the class of wetland or size of impact that is a standard that cannot be upheld. It is likely preempted by State wetland laws and unreasonable and unworkable. The Town's assertion that Petitioner should relocate the road as "the small wetland is a unique habitat whereas the adjacent hardwood forest that would be disturbed is extremely common" directly contradicts the following section which raises concerns regarding erosion and stormwater management. *See* Town response dated February 24, 2026 filed March 2, 2026 at Page 6. The Petitioner relays on the expertise of the Agency of Natural Resources to determine the value of habitat and the impact of erosion. If the Agency shared the concerns of the Town, it would require the road be rerouted as a condition.

The Town has indicated it continues to require additional information to assess the compliance of the proposal. The Petitioner has already consented to the Dept. of Public Service hiring an independent consultant which will address one of the Town's alleged deficiencies. To the extent it was unclear, the cost of this consultant will be borne by the Petitioner, not the Town or State, pursuant to the Commission rules.

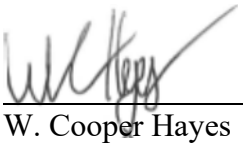
The Petitioner maintains that adopting the Town's March 3rd filing as determinative, despite its inconsistencies with the Town's previous filings, would cause significant harm to the

State's policy and desire to provide universal telecommunication coverage, would result in the adoption of legally unsupported positions, and is without merit.

WHEREFORE the Petitioner asks that the Hearing Officer determine what if any significant issues have been raised by the Town's Comments and Recommendations, convene a Status Conference so that the parties may set a schedule including deadlines for the submission of pre-filed testimony, the taking of discovery, conducting a site visit, dispositive motion practice, and an evidentiary hearing.

Dated: March 3, 2026
Burlington, Vermont

Respectfully submitted,

By: 

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