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 Intervenor's Motion to Alter or Amend the Procedural Order

NOW COMES Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless ("Verizon") and Vertex Towers, LLC ("Vertex") (together, "Petitioner"), by and through its counsel and hereby files this response to the Intervenor's Motion to Alter or Amend the Procedural Order. Petitioner asks that the motion be denied. In filing this response, Petitioner also incorporates its objections to the Intervenors' Party Status previously filed as if stated herein.

Intervenors' request to alter or amend is governed by Rule 2.221(a) of this Commissions Rules of Procedure. Motions under Rule 2.221 are "appropriate only to avoid an unjust result due to "mistake or inadvertence of the [Commission], and not the fault or neglect of a party." "A….motion must clearly establish either a manifest error of law or fact or must present newly discovered evidence" to be valid. *Petition of Indus. Tower & Wireless, LLC Requesting A Certificate of Pub. Good, Pursuant to 30 V.S.A. S 248a, Authorizing the Installation of Wireless Telecommunications Equip. at 160 Frog Hollow Lane in Westmore, Vermont*, No. 24-1755-PET, 2025 WL 3192140, at *1 (Nov. 7, 2025). "Granting reconsideration is an extraordinary remedy to be used with great caution. Rule 2.221 does not permit parties to relitigate issues or correct previous tactical decisions It is not a vehicle to introduce new evidence or advance arguments that could have been made previously." *Id. citations omitted.*

Rule 2.221 is analogous to Rule 59 of the Vermont Rules of Civil Procedure. Under Rule 59 there are four reasons for granting a Rule 59(e) motion: "(1) to correct manifest errors of law or fact upon which the judgment is based; (2) to allow a moving party to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; and (4) to respond to an intervening change in the controlling law." *Old Lantern Non-Conforming Use*, No. 154-12-15 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Sep. 13, 2017) (Durkin, J.) (quotations omitted).

On the motion, the moving party is obligated to put forward specific facts or legal analysis of "a strongly convincing nature." 11 C. WRIGHT & A.MILLER, FED. PRAC. & PROCED. CIVIL, at § 2817, n.1. A motion to alter under Rule 59(e) does not provide an avenue through which to raise arguments that have already been rejected and addressed by the Court. *In re. Capitol Plaza Act 250*, No. 59-5-19 VTEC, 2020 WL 5105784, at *3 (Vt.Super. June 17, 2020)" Rule 59 does not entitle a party to raise arguments it could have raised before the court entered judgment against it" either. *In re SP Land Co., LLC*, 2011 VT 104, ¶ 19, 190 Vt. 418. A Rule 59 Motion "should not be granted where the moving party seeks solely to relitigate an issue already decided."' *Latouche v. N. Country Union High Sch*. Dist., 131 F. Supp. 2d 568, 569 (D. Vt. 2001)

For these reasons, the standard for granting a Rule 59 motion is very high. "The grant of a motion to reconsider, alter, or amend a judgment after its entry is an extraordinary remedy which should be used sparingly." *Snyder Group, Inc. Act 250 Appeal*, No. 107-10-18 VTEC, 2019 WL 7900451, at *2 (Vt.Super. Dec. 24, 2019) *citing In re Zaremba Grp. Act 250 Permit*,

No. 36-3-13 Vtec, slip op. at 2 (Vt. Super. Ct. Envtl. Div. Apr. 10, 2014) (Walsh, J) (quotation omitted); see also State v. Tongue, 170 Vt. 409, 414 (2000)

Under this standard there is no basis to grant Intervenors' the relief they seek. First, Intervenors duly filed motions to intervene on January 12, 2026. This was the last day that "interested parties" had to file comments on the petition. On January 23, 2026, the Petitioner filed a consolidated response to the Intervenor's motions opposing their intervention as stated therein. On February 9, 2026 the Intervenors filed supplemental responses (replies) in support of their motions to intervene. The filing of the replies completed all briefing contemplated under the Commission's Rule 2.206 (setting forth standard Motion – Opposition – Reply format) and analogous rules 7(b) and (b)(4) of the Vermont Rules Civil Procedure (also setting out standard Motion-Opposition- Reply format). Accordingly, upon the filing of the Intervenor's February 9th filings, the Intervenors had been fully heard on their motions to intervene and the motions were ripe for review. The Procedural Order was issued on February 17, 2026 – a week after the motion was fully briefed.

It is no error of law or manifest injustice to decide a motion after a party has been fully heard. Nor is what whatever correspondence occurred between an intervenor and the Clerk material. No decision was signed before Intervenors filed their replies on the 9th and the Hearing Officer and Commission had access to their supplemental filings before issuing its decision on February 17th. Reaching a decision after the conclusion of briefing is not manifest injustice. Nor is making a decision after briefing is complete a mistake or inadvertence of the Hearing Officer and Commission. Certainly it is not an error or law to reach a decision on intervention after all

possible intervening parties have had the chance to file a motion and reply as that is exactly what Rule 2.206 sets forth as the proper procedure.

What is clear is that Intervenors are seeking to re-argue their request to intervene and re-raise legal arguments and issues already addressed. This is not appropriate. The intervenors had a full and fair opportunity to raise any and every basis and argument supporting their intervention. They were given the statutory opportunity to request intervention and then the Commission set timelines to brief that request. They availed themselves of those rights and were fully heard on the question. Their request to reconsider nevertheless reargues their prior motions. This is not a valid basis to alter or amend. *Veljovic v. TD Bank*, N.A., 2025 VT 38, ¶ 16, 342 A.3d 941, 947 (Vt. 2025)("Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment."); *In re SP Land Co., LLC*, 2011 VT 104, ¶ 19, 190 Vt. 418; Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d § 2810.1) (internal footnotes omitted) (stating that motions to reconsider should not be used to "relitigate old matters"). That the Intervenors are unhappy their efforts were not as successful as they desired does not merit altering the Procedural Order. *Snyder Group, Inc. Act 250 Appeal*, No. 107-10-18 VTEC, 2019 WL 7900451, at *2 (Vt.Super. Dec. 24, 2019)("Rule 59(e) motions are "not intended as a means to reargue or express dissatisfaction with the Court's findings of fact and conclusions of law….").

To the extent the substance of the motion to alter or amend must be addressed, it can be done so summarily with respect to each criterion the Intervenors assert they should be entitled standing:

(A): Town Plan: The mere mention of the Town Plan in a comment does not create a personal particularized interest. Nor did the Intervenors in their January 12, 2026, February 9, 2026, or the present filing provide any explanation for how they are better situated to address this compliance with this criterion than the Town of Rochester Planning Commission or Selectboard which have both intervened in the proceeding.

(B): Public Health and Safety: Wildwood has failed to demonstrate how there isa *personal* particularized interest in *potential* damage to a *neighboring* property. Murray seeks standing on a topic which has continuously been held to be outside of the jurisdiction of this Commission. Risinger-Harvey makes speculative and unproven assertions with respect to the existing road and the potential for blasting without providing any evidence for how these impacts could impact her particularized interests.

(C): Co-location: Nothing asserted in the Motion to Alter or Amend under this section speaks to co-location. The coverage provided by AT&T is wholly irrelevant to this proceeding. Nor has Wildwood demonstrated any expertise to render an opinion on the viability of alternative "small cell" units, which even then would not amount to a personal particularized interest.

(D): Wetlands: It is unclear how a concern related to a provision in the Town Plan imparts any level of personal particularized interest with respect to this criterion. The Agency of Natural Resources, which is participating in this proceeding, is best situated to address this criterion.

(E): Natural Environment: The Intervenors have failed to provide any basis for a finding they have a personal particularized interest in wildlife and endangered species, or "forest block continuum". Harvey-Risinger states that "multiple forms of recreators use the area" however, she makes no claim that she is one of these recreators and that the project would impact her *personal* particularized interests. In the totality, the concerns raised are in fact nothing more than general interests that are not different from any other member of the public and the Intervenors have repeatedly failed to present evidence to the contrary.

The Intervenors motion also argues that there is "newly discovered" evidence. They appear to allege that this evidence is the Town of Rochester concedes (their words, not the Town's) that some of the Town's concerns are not meritorious. Whether this is true or not, is not newly discovered evidence. It's merely a narrowing of the Town's position. It does not mean the Town is still not properly situated to litigate compliance with the Town Plan as the hearing officer held. The Town still remains best suited to, and is actively, objecting to the project based on the Town Plan. Essentially the Intervenors argue that because they believe the Town dropped unsupported or dubious claims, they should be granted intervention to pursue those unsupported or dubious claims. That logic has no merit.

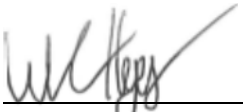
As to the Intervenors objections to the coordination of their participation, Rule 2.209(C) states that intervenors may be granted intervention upon the coordination of their efforts as the economy of adjudication may require. Thus, their coordination as directed by the Procedural Order is consistent with this Commission's rules. To the extent that the Intervenors allege this

obligation to coordinate infringes on their constitutional rights to be heard, their argument fails. The Intervenors are not being restricted from speaking on the topics for which they have standing. Rather they are being asked to coordinate their efforts and participate through one spokesperson so as to reduce the burden on the Hearing Officer, Commission and parties. That is well within the confines of the Constitution and well within the Commission's rules.

WHEREFORE, the Petitioner respectfully requests the Hearing Officer deny the Intervenor's Motion to Alter or Amend the Procedural Order.

Dated: March 27, 2026
Burlington, Vermont

Respectfully submitted,

By: 

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