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March 25, 2025

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REPLY TO:

Tarrytown Offices

Julie Hargrave, Policy and Planning Manager  
Central Pine Barrens Commission  
624 Old Riverhead Road  
Westhampton Beach, NY 11978

RE: Public Utility Wireless Telecommunications Facility  
Homeland Towers, LLC and Verizon Wireless  
2055 Flanders Road, Flanders, Town of Southampton

Dear Ms. Hargrave:

As you are aware, we are the attorneys for Homeland Towers, LLC ("Homeland Towers"), and New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") (together "Applicants") in connection with its proposal to place a Public Utility Wireless Telecommunications Facility, consisting of a 150-foot stealth concealment pole and associated equipment ("Facility"), at the above referenced Property. The Facility will support the antennas of Verizon Wireless, while providing collocation space for similar providers or emergency communications equipment, with related equipment installed within a fenced equipment compound at the base thereof. We understand that the above referenced matter is currently scheduled to be heard by the Commission on April 16, 2025.

The Applicants respectfully request an adjournment of the hearing to May 21, 2025 as the Applicants environmental experts are not available to attend the April 16, 2025 hearing. The Applicants acknowledge that the SEQRA Lead Agency coordination process may be affected by the requested postponement and therefore the Applicants consent to an extension of the 30-day coordination period to May 22, 2025. The Applicants further consent to an additional 30 days being added to the Commission's 120-day review period.

Also submitted herewith is an updated Petition for the Application correcting the tax map number and zoning district for the Property.

We thank you for your consideration and look forward to discussing this matter at the May 21, 2025 Central Pine Barrens Commission meeting. If you have any questions or require additional documentation, please do not hesitate to contact me.

Respectfully submitted,



Robert D. Gaudioso

Enclosures

RDG/djk

cc: Homeland Towers, LLC

Town of Southampton Planning Board

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REPLY TO:

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Tarrytown Offices

March 25, 2025

Honorable Chairperson Jacqui Lafaro  
and Members of the Planning Board  
Town of Southampton  
116 Hampton Road  
Southampton, NY 11968

RE: Public Utility Wireless Telecommunications Facility  
Homeland Towers, LLC and Verizon Wireless  
2055 Flanders Road, Flanders, Town of Southampton

Dear Honorable Chairperson Lafaro  
and Members of the Planning Board:

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Pursuant to Section 330-306(B)(1) of the Zoning Code, a pre-submission conference with the Planning Board was previously held. Pursuant to Section 330-306(B)(2) of the Zoning Code, and based on comments at the pre-submission conference the Applicants have proposed two alternative designs for the proposed Facility, including a 150-foot monopole and a 150-foot stealth concealment pole.

Please also note that the Applicants have proposed three informational signs, which will contain information and notices required by FCC, and seek the Planning Board's approval of these signs in accordance with § 330-208(A)(2)(a) and as part of the site plan and special permit approval. The proposed signs are detailed on the Site Plan.

In furtherance of the foregoing, enclosed please find a corrected Petition for the

Application correcting the tax map number and zoning district for the Property.

A copy of the corrected Petition has also been filed with the Central Pine Barrens Commission.

We thank you for your consideration and look forward to discussing this matter at the next available Planning Board meeting. If you have any questions or require additional documentation, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Gaudio", is written over a horizontal line.

Robert D. Gaudio

Enclosures

RDG/djk

cc: Homeland Towers, LLC

Central Pine Barrens Commission

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PLANNING BOARD  
TOWN OF SOUTHAMPTON and  
CENTRAL PINE BARRENS COMMISSION

-----X  
In the matter of the Application of  
HOMELAND TOWERS, LLC and VERIZON WIRELESS  
2055 Flanders Road,  
Flanders, Town of Southampton  
S.C.T.M: 900-170-1-41.1  
-----X

PETITION IN SUPPORT OF APPLICATION  
BY HOMELAND TOWERS AND VERIZON WIRELESS  
TO LOCATE A WIRELESS TELECOMMUNICATIONS FACILITY  
AT THE ABOVE REFERENCED PROPERTY

**I. Introduction**

Pursuant to Section 330-302 of the Southampton Zoning Code (“Zoning Code”), wireless telecommunications facilities are permitted on the Property pursuant to the grant of a special use permit from the Planning Board of the Town of Southampton (“Town”). A Hardship Waiver for a compelling public need is also required from the Central Pine Barrens Commission.

**II. Statement of Facts**

The Property is identified by SCTM No. 900-170-1-41.1 on the Town Tax Map and is located in the CR-60 Zoning District.

The proposed Facility will be used to provide federally licensed wireless communication services to the Town. The Facility will include a 150-foot stealth concealment pole to support the antennas of Verizon Wireless, while providing collocation space for similar providers or emergency communications equipment, with related equipment installed within a fenced equipment compound at the base thereof. The Applicants have also proposed a stealth design for the Facility, a concealment pole designed to resemble a flagpole. A detailed site plan (“Site Plan”) prepared by WFC Architects is submitted herewith.

**III. Public Utility Status**

Under the laws of the State of New York, Verizon Wireless is qualified as a public utility. *See Cellular One v. Rosenberg*, 82 N.Y.2d 364 (1993), *Cellular One v. Meyer*, 607 N.Y.S. 2d 81 (2d Dep’t 1994) and *Sprint Spectrum, L.P. v. Town of West Seneca*, (Index No. 1996/9106 Feb. 25, 1997, Sup. Ct. Erie County). In *Rosenberg, supra*, the Court of Appeals, New York’s highest court, held that federally licensed wireless carriers (such as Verizon Wireless) provide an essential public service and is a public utility in the State of New York. Public utilities should be accorded favored treatment in zoning matters.

Verizon Wireless's status as a public utility is underscored by the fact that its services are an important part of the national telecommunications infrastructure and will be offered to all persons that require advanced digital wireless communications services, including local businesses, public safety entities, and the general public.

In addition to its status as a public utility, Verizon Wireless is licensed by the Federal Communications Commission ("FCC").

There is also a public need for Verizon Wireless's service, as evidenced by the granting of a license to Verizon Wireless by the FCC. This grant constitutes a finding that the public interest will be served by Verizon Wireless's service and is consistent with the public policy of the United States "to make available so far as possible, to all people of the United States a rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication . . . [.]” 47 U.S.C. § 151.

The instant application is filed in furtherance of the goals and objectives established by Congress under the federal Telecommunications Act of 1996 ("TCA"). The TCA is "an unusually important legislative enactment," establishing national public policy in favor of encouraging "rapid deployment of new telecommunications technologies (emphasis supplied)." *Reno v. ACLU*, 521 U.S. 844, 857 (1997).

In fact, in 1999, Congress expanded further upon this policy by enacting the Wireless Communications and Public Safety Act of 1999, Pub.L. 106-81, 113 Stat. 1286 (the "911 Act"). The "911 Act" empowered the FCC to develop regulations to make wireless 911 services available to all Americans. The express purpose of the Act, as articulated by Congress, was "to encourage and facilitate the prompt deployment throughout the United States of seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs[.]”

A State or local government's authority to regulate "the placement, construction, and modification of personal wireless service facilities," is limited by the federal requirements set forth in Section 332(c)(7)(B) of the TCA. 47 U.S.C. § 332(c)(7)(a). The Facility is a "personal wireless service facility" as defined by the TCA. 47 U.S.C. § 332(c)(7)(c). Pursuant to Section 332(c)(7)(B), the zoning authority of a State or local government, or instrumentality thereof, including the Planning Board and Central Pine Barrens Commission, with regards to personal wireless service facilities is limited as follows:

No decision or action shall "unreasonably discriminate among providers of functionally equivalent services," or "prohibit or have the effect of prohibiting the provision of personal wireless services." 47 USCA § 332(c)(7)(B)(i);

Decisions and actions on zoning and construction applications must be made "within a reasonable period of time." 47 USCA § 332(c)(7)(B)(ii);

Any "decision shall be in writing and supported by substantial evidence

contained in a written record.” 47 USCA § 332(c)(7)(B)(iii); and

No action or decision shall be made “on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” 47 USCA § 332(c)(7)(B)(iv).

Please note that the FCC and federal courts have concluded that the correct test for determining an effective prohibition is the “materially inhibits standard.” The FCC in its 2018 Third Report and Order clarified that the significant gap plus least intrusive means standard (a/k/a the *Willoth* standard) is no longer applicable and that a carrier needs only to demonstrate that a municipality is materially inhibiting the provision of wireless services. *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv., Declaratory Ruling and Third Report and Order*, 33 FCC Rcd 9088 (2018), (hereinafter referred to as the “*Third Report and Order*”); *See also, City of Portland v. United States*, 969 F.3d 1020, (9th Cir. 2020), *cert denied sub nom. City of Portland, Oregon v. Fed. Communications Commn.*, 141 S. Ct. 2855 (2021) (upholding the Third Report and Order’s “materially inhibit” standard.) The FCC clarified that “an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.” *Third Report and Order*, at 9104-9105. Furthermore, “a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.” *Third Report and Order*, at 9105; *See also, New Cingular Wireless PCS, LLC v. Town of Colonie*, 20-CV-1388 (NAM/ATB), 2022 WL 1009436, (N.D.N.Y. Mar. 31, 2022) (“[t]he FCC has stated that the ‘materially inhibit’ standard is the appropriate standard for determining whether a State or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.”); *See also, Cellco P’ship v. White Deer Twp. Zoning Hearing Bd.*, 74 F.4th 96, 106 (3<sup>rd</sup> Cir. 2023) (“[i]n light of our decision to adopt the ‘materially inhibit’ standard, not only does ‘insufficiency in coverage’ ordinarily entitle a provider to a variance but so does insufficiency in network capacity, 5G services, or new technology. In the TCA, Congress recognized that ‘[t]he telecommunications interests of constitutions are . . . statewide, national and international.’ 33 FCC Rcd. at 9110. Local zoning boards, like White Deer Zoning Board, are prohibited from preventing providers from meeting those broader interests.”)

Please further note that on November 18, 2009, the FCC issued a Declaratory Ruling regarding timely review of applications for siting of wireless facilities, WT Docket NO. 08-165 (the “Shot Clock Order”). The Shot Clock Order finds that a “reasonable period of time” for a local government to act on this type of application, an application for a new tower, is presumptively 150 days. The FCC again clarified the 150-day “Shot Clock” (2018 Third Report and Order) and in the implementing regulations contained in 47 C.F.R. § 1.6003. According to the Shot Clock Order and 47 C.F.R. § 1.6003(c)(1)(iv), if the Town or Central Pine Barrens Commission fails to

act within 150 days of filing a complete application, the applicant may commence an action in federal court for "failure to act" under Section 332(c)(7)(B)(v) of the Federal Communications Act.

#### **IV. The Proposed Facility Meets the Applicable Legal Standards**

The instant application is for a special use permit pursuant to Article XXVII of the Zoning Code. A special use permit is permitted as of right when the applicant has demonstrated compliance with the applicable standards. *See Matter of North Shore Steak House v. Board of Appeals of Inc. Vil. of Thomaston*, 30 N.Y.2d 238 (1972).

Please see the Planning Report with Appendices and Environmental Assessment Form and Site Plan for a full and complete description of the Facility's compliance with the Town Code and the New York State Environmental Conservation Law.

#### **Conclusion**

By granting the special use permit and the hardship waiver, the Planning Board and Central Pine Barrens Commission, respectively, will permit Verizon Wireless to improve its network and provide local businesses, residents and public service entities with a safe and reliable wireless communications alternative. There will be no significant adverse effects from the project.

WHEREFORE, for all of the foregoing reasons, the Applicants respectfully pray that the Planning Board issue a Negative Declaration and that the Central Pine Barrens Commission grant the Hardship Waiver declare the grant the requested special use permit, including all waivers requested herein, and site plan approval.

Dated: March 25, 2025

Tarrytown, New York

Respectfully submitted,



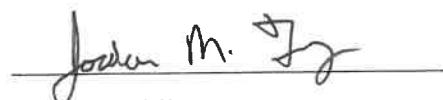
David J. Kenny, Esq.

SNYDER & SNYDER, LLP

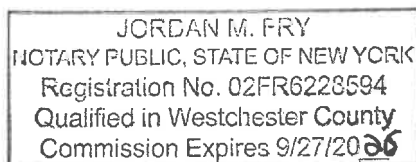
94 White Plains Road

Tarrytown, NY 10591

Sworn to before me this 25<sup>th</sup>  
day of March, 2025



Notary Public





PLANNING BOARD  
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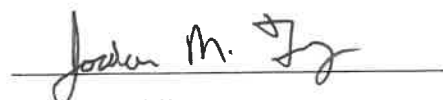
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Sworn to before me this 25<sup>th</sup>  
day of March, 2025



Notary Public

