COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF	)	
SKYWAY TOWERS LLC AND	)	
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS	)	
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC	)	CASE NO.: 2020-00139
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	
A WIRELESS COMMUNICATIONS FACILITY	)	
IN THE COMMONWEALTH OF KENTUCKY	)	
IN THE COUNTY OF CARROLL	)	

SITE NAME: LOCUST

* * * * * * *

APPLICANTS RESPONSE TO PUBLIC COMMENT FROM ALEXANDER S. JOHNSON AND RACHEL B. GRIMES

Skyway Towers, LLC and Cellco Partnership d/b/a Verizon Wireless ("Applicants"), by counsel, make this Response to the comments submitted by Alexander S. Johnson and Rachel B. Grimes in the within proceeding. Applicant respectfully states, as follows:

1. Alexander S. Johnson and Rachel B. Grimes have voiced generalized concerns to the Kentucky Public Service Commission regarding aesthetics for the facility proposed in the within Application. However, as presented in the subject Application and as discussed herein below, there is no ground for denial of the subject application, and substantial evidence supports approval of the requested Certificate of Public Convenience and Necessity ("CPCN"). The proposed facility has been designed, configured, and located in such a manner that it will prevent or limit potential adverse

effects on surrounding properties. Furthermore, the tower will be galvanized steel to minimize its visibility. The general area where the proposed facility is to be located is a heavily wooded rural area with ample setbacks from surrounding land uses. The nearest adjoining residential structure is approximately 920' to the northwest across Fairview Ridge Road/Hwy 1492. Tower placement at this location is the most suitable and least intrusive method of resolving the existing coverage and/or capacity gap in this area.

2. In response to generalized concerns regarding the tower lighting, the FAA conducted an aeronautical study and determined that the tower must be lit with a med-dual system to ensure air safety. The dual system is designed with an alternating white light in the daytime and a red light at night-time to minimize visibility to area residents. See attached **EXHIBIT A**.

3. In response to generalized concerns regarding the height of the proposed structure, the tower must be located at the proposed location and proposed height to provide necessary service to residents in the subject area because the nature of the technology requires a facility to be located within the area to serve the area. The necessary height was determined by a radio frequency engineer through in-depth terrain modeling as well as signal propagation modeling. Due to the rising and falling terrain combine with the dense wooded area, it was determined that a centerline height of 240-feet was necessary to provide adequate coverage in the area. A lower height would greatly reduce coverage and result in the inability of the facility to operate properly in the Verizon Wireless network. See attached **EXHIBIT B**.

4. Verizon Wireless radio frequency engineers conducted studies and tests in order to develop a highly efficient network that is designed to handle voice and data traffic

in the service area. The engineers determined an optimum area for the placement of the proposed facility in terms of elevation and location to provide the best quality service to customers in the service area. A radio frequency design search area prepared in reference to these radio frequency studies was considered by the Applicant when searching for sites for its antennas that would provide the coverage deemed necessary by the Applicant. A map of the area in which the tower is proposed to be located which is drawn to scale and clearly depicts the necessary search area within which the site should be located pursuant to radio frequency requirements was submitted with the application. Verizon Wireless is a provider of essential wireless voice and data services to residential and commercial customers. Verizon Wireless delivers these services over a network of sites (i.e., antennas mounted on a support structure, with associated radio transmitting equipment) which are linked to one another and which transmit and receive signals to and from mobile phones and other wireless communication devices. The proposed facility is necessary to achieve coverage and capacity needs that cannot be established in any other manner in the Locust area along Locust Road, Fairview Ridge Road and to the surrounding areas. It will provide needed capacity to offload the surrounding sites which are currently operating at or near maximum capacity in this area limiting the ability of user access to the network. This new tower is required as there is no other means of providing this service in this area. See attached **EXHIBIT B**.

5. The U.S. Court of Appeals for the Sixth Circuit has upheld that lay opinion or generalized concerns are not substantial evidence justifying a rejection of this application. Any decision rendered by state or local authorities must be in writing and supported by substantial evidence in a written record. Federal Courts in the 6th Circuit have defined

"substantial evidence" in previous cases. For example, the locality's own zoning requirements are an example of substantial evidence. Cellco Partnership v. Franklin Co., KY, 553 F. Supp. 2d 838, 845-846 (E.D. Ky. 2008). Of course, in this instance Carroll County has not adopted zoning requirements. Courts in the 6th Circuit have found that lay opinion is not substantial evidence. Cellco Partnership at 852 and T-Mobile Central, LLC v. Charter Township of West Bloomfield, 691 F.3d 794, 804 (6th Cir. 2012). They have also found that unsupported opinion is not substantial evidence. Cellco Partnership at 849. Generalized expressions of concerns with "aesthetics" are not substantial evidence. Cellco Partnership at 851. Claims the tower is unsightly are generalized expressions of aesthetical concerns and the same objection could be made by any resident in any area in which a tower is placed. Cellco Partnership at 852. General concerns that the tower is ugly or unwanted near an individual's residence are not sufficient to meet the 6th Circuit substantial evidence test. T-Mobile Central at 800. Finally, anyone who opposes a tower in their backyard can claim it would be bad for the community, not aesthetically pleasing, or is otherwise objectionable, but such claims would not constitute substantial evidence. T-Mobile Central at 801.

WHEREFORE, there being no ground for denial of the subject application and substantial evidence in support of the requested CPCN, Applicants respectfully request the Kentucky Public Service Commission:

(a) Accept this Response for filing;

(b) Issue a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth herein without further delay; and

(c) Grant Applicant any other relief to which it is entitled.

Respectfully submitted,

David A. Pike
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26 day of May 2020, a true and accurate copy of the foregoing was electronically filed with the PSC and sent by U.S. Postal Service first class mail, postage prepaid, to Alexander S. Johnson and Rachel B. Grimes. 1312 W. Prong Locust Rd, Milton, KY 4005 and Timothy W. Dermon, 1048 Fairview Ridge Road, Milton, KY 40045.

David A. Pike
Attorney for Applicant

LIST OF EXHIBITS

A	FAA Determination
B	Radio Frequency Report

EXHIBIT A
FAA DETERMINATION

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Aeronautical Study No.
2019-ASO-15052-OE

Issued Date: 07/26/2019

Operations
Skyway Towers, LLC
3637 Madaca Lane
Tampa, FL 33618

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Antenna Tower KY-03072 Locust
Location:	Milton, KY
Latitude:	38-42-20.66N NAD 83
Longitude:	85-16-51.00W
Heights:	835 feet site elevation (SE)
	255 feet above ground level (AGL)
	1090 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

_____ At least 10 days prior to start of construction (7460-2, Part 1)
__X__ Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

This determination expires on 01/26/2021 unless:

(a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
(b) extended, revised, or terminated by the issuing office.

(c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (718) 553-2611, or angelique.eersteling@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2019-ASO-15052-OE.

Signature Control No: 403889316-412639915 (DNE)
Angelique Eersteling
Technician

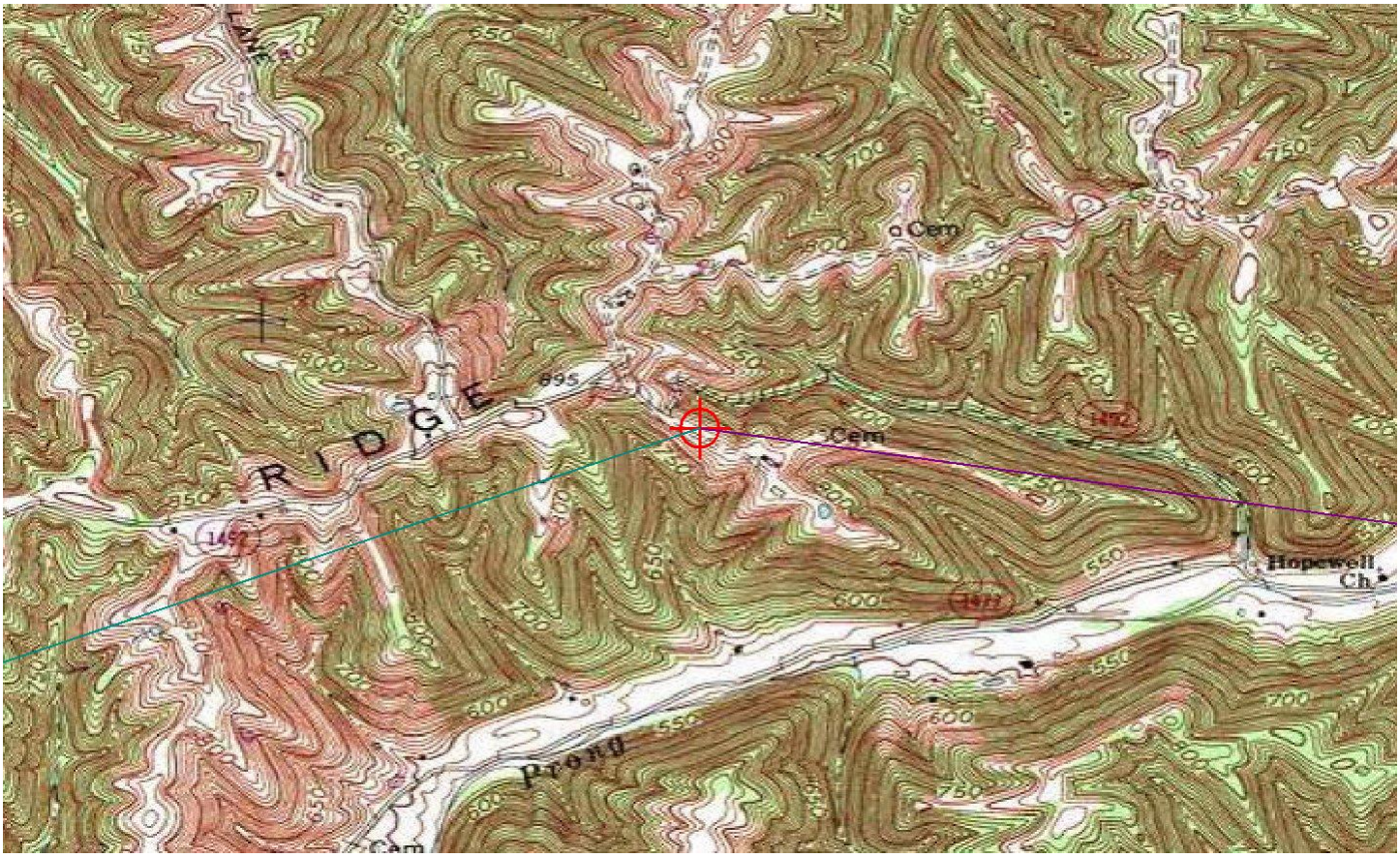
Attachment(s)
Frequency Data
Map(s)

cc: FCC

Frequency Data for ASN 2019-ASO-15052-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
6	7	GHz	42	dBW
10	11.7	GHz	55	dBW
10	11.7	GHz	42	dBW
17.7	19.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
21.2	23.6	GHz	55	dBW
21.2	23.6	GHz	42	dBW
614	698	MHz	1000	W
614	698	MHz	2000	W
698	806	MHz	1000	W
806	901	MHz	500	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
929	932	MHz	3500	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2360	MHz	2000	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W

Verified Map for ASN 2019-ASO-15052-OE



TOPO Map for ASN 2019-ASO-15052-OE

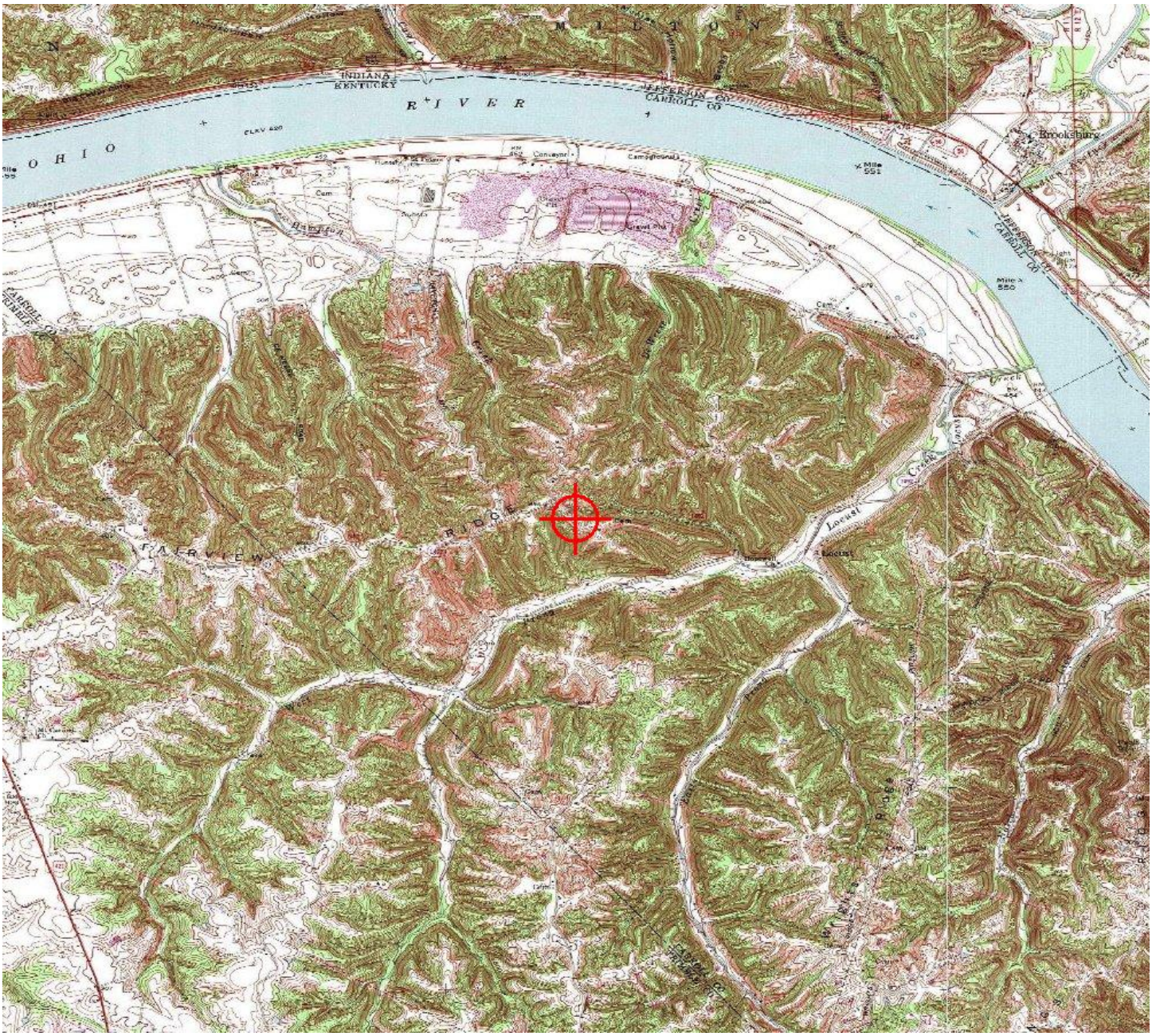


EXHIBIT B
RADIO FREQUENCY NEED REPORT

May 22, 2020

RE: Proposed Verizon Wireless Communications Facility
Site Name: LV Locust

To Whom It May Concern:

As a radio frequency engineer for Verizon Wireless, I am providing this letter to state the need for the Verizon Wireless site called Locust and its compliance to RF emission standards as set by FCC. The Locust cell site is necessary to achieve coverage and capacity needs in the Locust area along Locust Rd, Fairview Ridge Rd and to the surrounding residential areas. This site is necessary to provide this coverage and capacity that cannot be established in any other manner. Locust will provide needed capacity to offload the Carrollton and Milton sites. The sites are currently operating at or near maximum capacity in this area of the Verizon Wireless Network, limiting the ability of customer access to the network. This new tower is required as there is no other means of providing this service in this area.

Whenever possible, Verizon Wireless seeks out colocation opportunities. Colocation allows Verizon Wireless to increase capacity, coverage and services in a targeted area in a more timely manner and at less cost than building a new raw land site.

The height for the Locust site was determined through in-depth terrain modeling as well as signal propagation modeling. Due to the rising and falling terrain combine with the dense wooded area, it was determined that a centerline height of 240 feet was necessary to provide adequate coverage in the area. A lower height would greatly reduce coverage and result in the inability of the Locust site to operate properly in the Verizon Network.

The site will provide the quality coverage our customers expect and rely on; Customers will experience access to mobile voice and wireless data services previously unavailable, and support Homeland Security through enhanced 911 services.

This cell site has been designed, and will be constructed and operated in a manner that satisfies regulations and requirements of all applicable governmental agencies that have been charged with regulating tower specifications, operation, construction, and placement, including the FAA and FCC.

RF emission readings at this site in the accessible areas would be well below the applicable limits for FCC Uncontrolled/General Population and FCC Controlled/Occupational environments as outlined in 47 CFR 1.1301 through 1.1319. The site would carry appropriate RF emission signage to the public entering the site area.

This site would transit frequencies within the licensed frequency bands and the power limitations set by FCC regulatory authority. The site would go through the complete rigorous regulatory process before it comes on-air to provide service to our customers.

Sincerely,

Gordon Snyder
RF Engineer, Verizon Wireless