

**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.: 2023-00074
CONVENIENCE AND NECESSITY TO CONSTRUCT	)
A WIRELESS COMMUNICATIONS FACILITY	)
IN THE COMMONWEALTH OF KENTUCKY	)
IN THE COUNTY OF CARROLL	)

SITE NAME: LOCUST

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**APPLICANTS' RESPONSE TO DEFICIENCY LETTER**

Skyway Towers, LLC, a Delaware limited liability company, and Cellco Partnership, a Delaware General Partnership d/b/a Verizon Wireless (“Applicants”), by counsel, make this Response to the Kentucky Public Service Commission Staff’s (“Commission Staff”) Deficiency Letter dated March 6, 2023 (“Deficiency Letter” or “Letter”). Applicants respectfully state, as follows:

**OBJECTION**

The Commission Staff’s Deficiency Letter states that Applicants’ filing was rejected on the basis of a number of asserted deficiencies in its Application for a Certificate of Public Convenience and Necessity (“CPCN”). As further discussed below, Applicants object to the alleged filing deficiencies Commission Staff has identified via its Deficiency Letter. It should be noted that hundreds of CPCNs have been issued for substantially similar applications that were found to be complete by Commission Staff without amendment or supplement. In fact, Commission Staff issued a No-Deficiency Letter and

approved a CPCN Application for the *exact same proposal* less than three years ago in case number 2020-00139. There has been no change in the applicable regulations that would support Commission Staff's disparate treatment of Applicants here. Applicants urge Commission Staff to avoid similar action in connection with future sites as it will delay the deployment of infrastructure that is critical to daily life and development in Kentucky's communities.

### **RESPONSE TO IDENTIFIED DEFICIENCIES**

With the above objections noted, Applicants provide the following responses to Commission Staff's statements set forth in its Deficiency Letter:

1. In response to Commission Staff's statement at Paragraph 1, to the best of Applicants' knowledge, the CPCN Application filed on March 2, 2023 ("Original Application") was fully search capable. Representatives for Applicants have electronically submitted dozens of similarly prepared CPCN Applications that received No-Deficiency Letters and were subsequently approved. Nevertheless, Applicants have painstakingly reassembled and filed a fully searchable Amended CPCN Application ("Amended Application").

2. In response to Commission Staff's statement at Paragraph 2, Applicants note that nothing in 807 KAR 5:001 Section 14 (3) requires a limited liability company to file either a Certificate of Good Standing or a Certificate of Authorization from Kentucky. Applicants have previously done so as a courtesy. The cited regulation merely requires that applicants "**identify** in the application the state in which it is organized and the date on which it was organized, **attest** that it is in good standing in the state in which it is organized and, if it is not a Kentucky limited liability company, **state** if it is authorized to

transact business in Kentucky” (emphasis added). Applicants fully complied with this requirement with respect to Skyway Towers, LLC in paragraph 4 and 5 of the Original Application, and nothing more is required. Nonetheless to accommodate Commission Staff’s request and avoid further delay, Applicants have filed at **Exhibit A** of the Amended Application current copies of both the Delaware Certificate of Good Standing and the Kentucky Certificate of Authorization for Skyway Towers, LLC.

3. In response to Commission Staff’s statement at Paragraph 3, Applicants note that nothing in 807 KAR 5:001 Section 14 (4) requires general partnerships to file a Certificate of Good Standing or a Certificate of Authorization from Kentucky. As an accommodation, Applicants have filed an Amended Application that includes a copy of the current Delaware Certificate of Good Standing for Verizon Wireless at **Exhibit A** of the Amended Application. KRS 14A.9-010 does not require foreign general partnerships, like Verizon Wireless, to obtain a Certificate of Authorization to transact business in the Commonwealth. Consequently, a Certificate of Authorization for Verizon Wireless is not available.

4. Commission Staff’s statements at Paragraph 4 and Paragraph 5, appear to indicate that Staff has mistakenly concluded that the site is located in adjoining Trimble County. Applicants acknowledge that the site address references the city of Milton, and the corporate limits of Milton lie fully within Trimble County. However, it is not uncommon for rural addresses in the Commonwealth to list the nearest city, even if located in an adjoining county. If any confusion as to the location of the proposed tower exists, the signed and stamped survey attached at **Exhibit B** to the Original Application and Amended Application provides conclusive proof that the proposed WCF site is located

entirely within Carroll County. As an accommodation, Applicants' representative have prepared an affidavit further attesting that the proposed WCF site is located entirely within Carroll County. That affidavit is attached at **Exhibit 1** of this Response.

5. In response to Commission Staff's statement at Paragraph 6, Applicants have filed an Amended Application which includes both the Federal Aviation Administration ("FAA") application and approval for the proposed WCF at **Exhibit E**. However, Applicants question the practicality of requiring Applicants to include the FAA application when the approval is provided. Applicants further state that the application to the Kentucky Airport Zoning Commission ("KAZC") is still under review. Consequently, the KAZC authorization is currently unavailable. 807 KAR 5:0063 (b) only requires that Applicants file "written authorizations from these agencies **as soon as they are available**" (emphasis added). There is no requirement that the authorizations be filed contemporaneously with the CPCN Application. In fact, many CPCN Applications have been approved with subsequent submission of KAZC approval as a condition of approval.<sup>1</sup> Applicants assure Commission Staff that it will file the KAZC authorization into the record once it is received.

6. In response to Commission Staff's statement at Paragraph 7, Applicants provided all applicable Federal Communication Commission ("FCC") licenses as part of **Exhibit A** of the Original Application. With respect to the Commission's request for the FCC applications, Applicants note that this requirement has never been imposed on any of the hundreds of prior CPCN Applications approved by Commission Staff. Furthermore, it makes little sense to require said applications when the agency with appropriate

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<sup>1</sup> See, among others, PSC Case #'s: 2021-00045, 2020-00120, 2019-00037, 2019-00244, and 2018-00340.

jurisdiction has already reviewed and approved them. It merely serves further to swell an already voluminous record. Nevertheless, as a voluntary accommodation, Applicants have filed copies of the applicable FCC *applications* and licenses as part of **Exhibit A** of the Amended Application.

7. In response to Commission Staff's statement at Paragraph 8, Applicants again believe that Commission staff is operating under the mistaken belief that the proposed tower site is located in adjoining Trimble County. The proposed tower site is located in Carroll County and Carrollton is the County seat. Clear directions to the proposed WCF site from Carrollton are attached to the Original Application and Amended Application at **Exhibit H**, which fully complies with all requirements under 807 KAR 5:063 Section 1 (1) (e).

8. In response to Commission Staff's statement at Paragraph 9, **Exhibit C** of Applicants' Amended Application includes the identification and credentials of all individuals responsible for the design and construction of the proposed WCF.

9. In response to Commission Staff's statement at Paragraph 10, Applicants reaffirm their belief that Commission staff is operating under the mistaken belief that the proposed tower site is located in Trimble County. The proposed tower site is located entirely within Carroll County. Furthermore, all parcels located within 500' of the proposed tower site or adjoining the site parcel are located entirely within Carroll County. Attached as **Exhibit 1** is an affidavit from Applicants' representative attesting to the above. Accordingly, Applicants' exclusive references to the Carroll County PVA records are appropriate and fully comply with the requirements under 807 KAR 5:0063 Section 1 (1)(k).

10. In response to Commission Staff's statement at Paragraph 11, Applicants again reaffirm their belief that Commission staff is operating under the mistaken belief that the proposed tower site is located in Trimble County. As discussed above, the proposed WCF site is located entirely within Carroll County. Carroll County is consistently referenced throughout the Application. Applicants do not dispute that one of its Radio Station Authorizations reference adjoining Trimble County as the *Market Name*. RF signals do not stop at county lines, so it stands to reason that a Market located in an adjoining county could also serve Carroll County. It is illustrative of this point that that other FCC Licenses for this site reference the following Markets: Lexington, KY, Louisville, KY, Decatur, IN, and the Mississippi Valley. Applicants are unclear why Commission staff concluded this constituted a discrepancy. Nevertheless, Applicants have included an affidavit at **Exhibit 1** of this Response that attest the proposed WCF is located entirely within Carroll County. This should resolve any perceived deficiency.

11. The U.S. Congress in adopting the Telecommunications Act of 1996 in the Act's preamble recognized the importance of the "rapid deployment of new telecommunications technologies."<sup>2</sup> (Emphasis added). The FCC has further established a 150-Day Shot Clock for permitting decisions on new towers.<sup>3</sup> Moreover, it is agency regulations, not ad hoc requirements, which establish substantial evidence in support of a wireless permitting decision. *Cellco Partnership v. Franklin County, et al*, 553 F. Supp. 2d 838, 845-846 (E.D. Ky. 2008). Establishing filing and/or review criteria beyond adopted regulations which serve to delay filing and processing of wireless facility applications is

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<sup>2</sup> See 1996 federal Telecommunications Act preamble, 110 Stat. 56.

<sup>3</sup> *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, 24 FCC Rcd. 13994, 14005, ¶ 32 (Nov. 18, 2009).

inconsistent with the longstanding practice of the Commission and federal telecommunications law, precedent, and policy.

**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 No Deficiency Letter;
- (c) Issue a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth herein without further delay; and
- (d) Grant Applicants any other relief to which they are entitled.

Respectfully submitted,



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David A. Pike  
and

*F. Keith Brown*

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F. Keith Brown  
Pike Legal Group, PLLC  
1578 Highway 44 East, Suite 6  
P. O. Box 369  
Shepherdsville, KY 40165-0369  
Telephone: (502) 955-4400  
Telefax: (502) 543-4410  
Email: dpike@pikelegal.com  
Attorneys for Applicants

## **LIST OF EXHIBITS**

- 1 - Affidavit from Applicants' Representative



**EXHIBIT 1**  
**AFFIDAVIT FROM APPLICANTS' REPRESENTATIVE**

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\* \* \* \* \*

**AFFIDAVIT OF F. KEITH BROWN, ATTORNEY FOR APPLICANTS**

Comes now the affiant, F. Keith Brown, attorney for Skyway Towers, LLC, a Delaware limited liability company, and Cellco Partnership, a Delaware General Partnership d/b/a Verizon Wireless (“Applicants”), and after having been duly sworn on oath states the following facts are true and correct.

1. In response to the Kentucky Public Service Commission’s March 6, 2023 Deficiency Letter, the affiant states that the proposed WCF site referenced in the above captioned case, having an address of 1002 Fairview Ridge, Milton, KY 40045 (Parcel ID #: 06-03) is located entirely within Carroll County. Furthermore, affiant states that all parcels located within 500’ of the proposed WCF location or adjoining the site parcel are located entirely within Carroll County.

Further the affiant sayeth naught.

Affiant:

J. Keith Brown

Date: 3/15/2023

State of Kentucky )

County of Bullitt )

**AFFIANT ACKNOWLEDGEMENT**

On this, the 15 day of March 2023 before me, the subscriber, a Notary Public in and for the above state, personally appeared to me F. Keith Brown and in due form of law, acknowledged, subscribed, and swore that he executed this instrument as his voluntary act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal in said County and State on the day and year last above written.

My commission expires on: December 4, 2024



[Signature] KYNP 19462  
Notary Public, State at Large