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 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 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**.

3. In response to the question of service need, the proposed tower is necessary to resolve the coverage and/or capacity gap in this part of Carroll County. 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**.

4. 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,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of April 2023, 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

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David A. Pike
Attorney for Applicant

LIST OF EXHIBITS

A	Radio Frequency Report

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