

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THE APPLICATION OF)
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS)
AND HORVATH TOWERS VI, LLC FOR ISSUANCE) CASE NO. 2024-00132
OF A CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A WIRELESS)
COMMUNICATIONS FACILITY IN THE)
COMMONWEALTH OF KENTUCKY IN THE COUNTY)
OF FLEMING)

SITE NAME: TILTON

* * * * *

**RESPONSE TO DEFICIENCY OF APPLICATION FOR
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR CONSTRUCTION OF A WIRELESS COMMUNICATIONS FACILITY**

Cellco Partnership, d/b/a Verizon Wireless and Horvath Towers VI, LLC (“Co-Applicants”), by counsel, pursuant to (i) KRS §§278.020, 278.040, 278.650, 278.665, and other statutory authority, and the rules and regulations applicable thereto, and (ii) the Telecommunications Act of 1996, respectfully submit this Application requesting issuance of a Certificate of Public Convenience and Necessity (“CPCN”) from the Kentucky Public Service Commission (“PSC”) to construct, maintain, and operate a Wireless Communications Facility (“WCF”) to serve the customers of the Co-Applicant with wireless communications services.

In response to the notice of Deficiency, Co-Applicants respectfully provide and state the following information:

1. KAR 807 5:063 Section 1(1)(d): A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas.

- a. Co-Applicants recognize the geotechnical report is a requirement, but request consideration of conditional approval until the presence of a federally endangered plant species is determined during the flowering season as described in the original application:
- i. A geotechnical engineering report has not been completed. This is because an area on the site has the potential of being home to Short's Goldenrod, listed as a federally endangered plant species. EBI Consulting has contacted the U.S. Fish and Wildlife Service, Kentucky Field Office. As a result, Seth R. Bishop of the Field Office recommends conducting a survey of the site during the flowering period (mid-August to late October) to determine if the plant species is present; therefore, at this time the site disturbance necessary to conduct the Geotechnical Report has been postponed until after the site survey for the Short's Goldenrod presence. Please see the correspondence with the U.S. Fish and Wildlife Service, Kentucky Field Office attached as **Exhibit 1.** Co-Applicants ask for conditional approval and will submit the Geotechnical Report once completed.
 - ii. As noted on the Survey attached as **Exhibit 2**, the surveyor, registered in Kentucky has determined that the tower site and access easement are not within any flood hazard area per Flood Hazard Boundary Map, Community Panel Number 21069C0225C, Dated May 20, 2010.

2. KAR 807 5:063 Section 1(1)(j): The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and sealed by a professional engineer registered in Kentucky.
 - a. Co-Applicants recognize the tower and foundation design plans are a requirement, but request consideration of conditional approval until the presence of a federally endangered plant species is determined during the flowering season as described in the original application:
 - i. Tower and Foundation designs have not been completed. This is because an area on site has the potential of being home to Short's Goldenrod, listed as a federally endangered plant species. EBI Consulting has contacted the U.S. Fish and Wildlife Service, Kentucky Field Office. As a result, Seth R. Bishop of the Field Office recommends conducting a survey of the site during the flowering period (mid-August to late October) to determine if the plant species is present; therefore, at this time the site disturbance necessary to conduct the Tower and Foundation Design has been postponed until after the site survey for the Short's Goldenrod presence. Please see the correspondence with the U.S. Fish and Wildlife Service, Kentucky Field Office attached as **Exhibit 1.** Co-Applicants ask for conditional approval and will submit the Tower and Foundation Drawings once completed.
3. Attached hereto as **Exhibit S** please find an Affidavit of Certification for all information contained in this application.

4. All Exhibits to this Application are hereby incorporated by reference as if fully set out as part of the Application.

5. All responses and requests associated with this Application may be directed to:

Russell L. Brown
Clark, Quinn, Moses, Scott & Grahn, LLP
320 North Meridian Street, Suite 1100
Indianapolis, IN 46204
Phone: (317) 637-1321
FAX: (317) 687-2344
Email: rbrown@clarkquinnlaw.com

WHEREFORE, Co-Applicants respectfully request that the PSC accept the foregoing Application for filing and, having met the requirements of KRS §§278.020(1), 278.650, and 278.665 and all applicable rules and regulations of the PSC, grant a conditional Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth herein.

Respectfully submitted,



Russell L. Brown
Clark, Quinn, Moses, Scott & Grahn, LLP
320 North Meridian Street, Suite 1100
Indianapolis, IN 46204
Phone: (317) 637-1321 / FAX: (317) 687-2344
Email: rbrown@clarkquinnlaw.com
Attorney for Cellco Partnership d/b/a Verizon Wireless

LIST OF EXHIBITS

- 1 U.S. Fish and Wildlife Correspondence
- 2 Flood Plain Certification Survey
- 3 Affidavit of Certification

RE: [EXTERNAL] Natural Resources Review Question



Bishop, Seth R <seth_bishop@fws.gov>
To: Holly Phegley-Ford

Reply Reply All Forward ...
Tue 11/7/2023 4:01 PM

Holly,

Thanks for reaching out to our office regarding your project and its potential to affect Short's goldenrod. If the project site contains suitable habitat for this species, I would recommend conducting a flowering period survey (mid-August to late October) to document presence or probable absence. Without survey data, we may have to assume the species is present and could be adversely affected by the project.

The OKNP is the primary agency in KY that keeps records for state-listed plants and is the best source for this information. The Service only addresses federally listed plant species like Short's goldenrod.

Let me know if you have any additional questions.

Seth

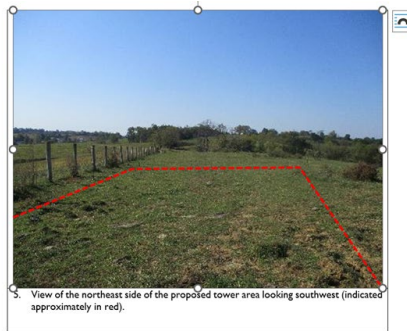
Seth R. Bishop
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Kentucky Field Office
330 West Broadway, Room 265
Frankfort, KY 40601
(502) 545-4532

From: Holly Phegley-Ford <hphegleyford@ebiconsulting.com>
Sent: Monday, November 6, 2023 1:57 PM
To: KentuckyES, FW4 <kentuckyes@fws.gov>
Subject: [EXTERNAL] Natural Resources Review Question

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Hello, we are in the preliminary stages of a Natural Resources Review for a proposed telecommunications site in Flemingsburg, Kentucky. One of the species on the IPaC list is Short's Goldenrod, listed as federally endangered. The site is a previously disturbed pasture and, per our site visit pictures, it does not look like any native species are growing there; however, per the habitat description, it does appear that the site meets the criteria for suitable habitat. I am writing to inquire what your thoughts are on the appropriate finding for this species and whether or not a survey should be conducted. Also, the KY Dept of Fish and Wildlife does not have threatened and endangered plant species listed but I did find threatened and endangered plants on the KY Office of Nature Preserves - is this the official site for state plant listings? Or does the State defer to the USFWS? Thank you so much for your time and help!

Short's goldenrod (<i>Solidago serotina</i>)	FE / SE?	Cedar glades and glade-like habitats (for example, powerline rights-of-way, roadside ledges, and meadows/pastures), where droughty soils prevent the establishment of trees and shrubs. Also found on roadsides and on dry, rocky, overgrazed pastures. Although the plants are most vigorous in full sun, once they are established, they can persist for extended periods of time as succession from pasture to woodland occurs. Seedlings appear to be limited to relatively bare soil in glades, roadsides and wood edges.	Effect? on the northern long-eared bat. Effect?
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Regards,

Holly Phegley-Ford

Scientist II

Mobile: 9708126205

hphegleyford@ebiconsulting.com

www.ebiconsulting.com | Blog



EBI's Notice of Collection and Privacy Policy

GENERAL NOTES:

- This Survey is prepared exclusively to show site conditions and/or for use in support of instruments related to Leases and Easements as may be shown hereon. Any property boundary information shown hereon is a composite of information gathered from current or previous Surveys, Plat & Deed Description and/or Assessor's Tax Maps as may be referenced hereon. This Survey is not a Boundary Survey of any Tax Parcels or Deed Tracts, and does not create, combine, or divide any existing properties.
- Survey shown hereon was performed under the supervision of a state-registered Land Surveyor and conforms to all applicable State Board Requirements.
- Instruments Used: One or more of: Topcon Total Station, Topcon Hiperlite Plus GPS, Carlson Surveyor Data Collector, DJI UAV.
- Where shown, improvements (utilities, buildings, trees, fences, etc.) are based on field Survey and/or aerial mapping.
- Any Underground Utilities shown according to surface markings made by others, found at time of survey. Additional marked utilities outside the area covered by this survey map may be shown in provided CAD Files. Utility Markings may not be comprehensive: this survey does not relieve design and construction personnel of the responsibility to determine the locations of underground utilities prior to land disturbance activities.
- This Survey is presented in the format required by Clients. Clients are advised that Official Jurisdictions may require the Survey to be presented in another format with additional notes and certifications. In the event other formats, notes or certifications are requested by applicable jurisdictions, it is the responsibility of the Client to request same be prepared by Surveyor. Survey as published is not intended to be suitable for recording as a Subdivision Plat.
- This survey may have been reduced or enlarged in size due to subsequent reproduction. This should be taken into consideration when obtaining scaled data.
- Geographic Coordinates, if published, meet FAA Accuracy Code 1A, and are accurate to within ± 20 feet horizontally and to within ± 3 feet vertically.
- Any Flood Zone information presented hereon is according to current FEMA Flood Map information as may be referenced hereon. No Flood Elevation Survey of Certification performed.
- This survey is not valid without the original signature seal of a State-Licensed Land Surveyor, and is not complete without the total of sheets as specified in Survey Title Blocks.
- Unless indicated otherwise by reference to Record Instruments, any Lessee's Leases, Premises or Easements shown hereon are NOT YET OF RECORD and may be subject to change pending review and approval by Carrier, applicable jurisdictions and/or other involved parties.
- Any Survey Markers placed as required by Standards of Practice and/or Client request represent the Leases and/or Easements as requested or designed by Clients at the time of this survey issue and may not reflect changes to site design which have not been communicated to Surveyor in the form of a Survey revision request. Surveyor shall not be liable for any circumstance arising as a result of revisions to Site Design (which may invalidate existing survey markers) occurring after the date of this Survey issue.

SURVEYOR'S CERTIFICATION

To: Horvath Towers VI:
I hereby certify (or state) that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Kentucky to the best of my knowledge, information, and belief.



Travis L. Shields
Kentucky PLS
License No. 4246

PROPOSED TOWER LOCATION DATA

Latitude: NORTH: 38.342557° 38° 20' 33.20"
Longitude: WEST: 83.769573° 83° 46' 10.46"
Ground Elev: 934.2 FEET AMSL (NAVD88)
Benchmark: DK3328 KYTI

PARENT TAX PARCEL

JAMES MATTHEW WATSON
TAX PARCEL: 033-00-00-022.01

NORTH ORIENTATION

KENTUCKY NORTH STATE PLANE COORDINATE SYSTEM
Based on GPS Survey relative to NGS CORS Network, NAD83 (2011)
ELEVATION DATUM: NAVD88, GEOID 12B
DATE OF SURVEY: 08-10-23
Method: RTK (CORS); Confidence Level: 95%
Positional Accuracy: HZ ± 0.10'
EPOCH 2010.0000

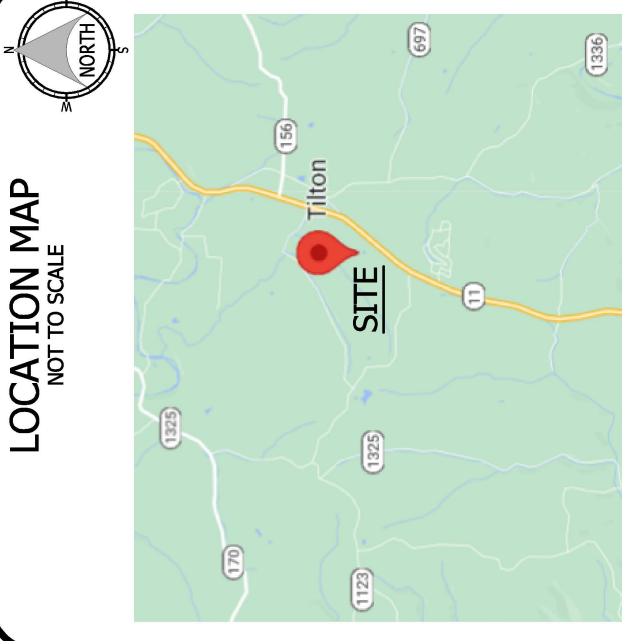
FLOOD DATA

FEMA FLOOD MAP PANEL: 21069C0225C, Effective Date: 05-20-2010
Surveyed Area appears to lie within: ZONE X (Areas of Minimal Flood Hazard)

TITLE EXAMINATION:

See Sheet #7

LOCATION MAP
NOT TO SCALE



LEGEND

	CONCRETE MONUMENT FOUND		WATER VALVE		UTILITY POLE		GUY ANCHOR		PROPOSED TOWER CENTER		SITE BENCHMARK
	R/W		RIGHT-OF-WAY		C/L		ACCESS & UTILITY		ESMT		P.O.C.
	Sq Ft		P.O.B.		PAVEMENT EDGE		POINT OF BEGINNING		GRAVEL EDGE		OVERHEAD UTILITY LINES
	PUBLIC R/W		STORMWATER PIPE		TIE LINE		LESSEE'S PREMISES		LESSEE'S EASEMENTS		TAX PARCEL LINE

SURVEY ISSUE DATA

#	DETAILS	DATE	DRAWN	APP
0	Original Survey Issue	08-27-2023	NB	TLS
1	Title Examination	08-29-2023	NB	TLS
2	Update Notes	02-14-2024	NB	TLS

THE LAND CONSULTANTS
5449 HIGHWAY 41 LLC
JASPER, TN 37347
423-304-6722

PREPARED FOR
HORVATH
TOWERS VI
312 West Colfax Avenue,
South Bend, IN 46601

(Not a Boundary Survey of Parent Lands. Not intended for fee simple Land Transfer)
SITE SURVEY
LV TILTON
Site Number: HV1611
Mount Sterling Road, Flemingsburg, KY 41041
Fleming County, Kentucky

COVER SHEET

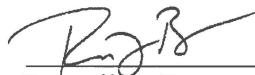
DWG#: 23229
ISSUE #: 2
ISSUE DATE: 02-14-2024
SEE SHEET #1

SHEET 1 OF 7

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

**AFFIDAVIT OF CERTIFICATION
COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

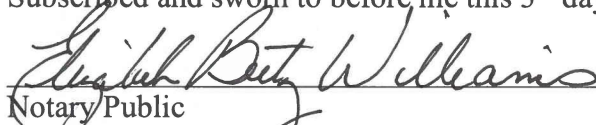
I Russell L. Brown, attorney for Cellco Partnership, d/b/a Verizon Wireless do hereby certify that as the person supervising the preparation of this application and all statements and information contained herein are true and accurate to the best of that person’s knowledge, information, and belief formed after a reasonable inquiry for all information within this application.



Russell L. Brown
Attorney, for Cellco Partnership, d/b/a Verizon Wireless

STATE OF INDIANA,
COUNTY OF MARION, SS:

Subscribed and sworn to before me this 3rd day of June, 2024.



Notary Public

Printed Name of Notary: Elizabeth Bentz Williams

My commission expires: November 18, 2028

My County of Residence: Marion

Commission #: 0639620

