

**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

\* \* \* \* \*

**MOTION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS  
AND HORVATH TOWERS VI, LLC  
FOR LEAVE TO DEVIATE FROM FILING REQUIREMENTS**

Cellco Partnership, d/b/a Verizon Wireless and Horvath Towers VI, LLC (“Co-Applicants”), by counsel, moves the Commission pursuant to 807 KAR 5:001, for leave to deviate from the filing requirements 807 KAR 5:063 Section 1(1)(d) and 807 KAR 5:063 Section 1(1)(j) as described below.

Co-Applicants have been notified by the Commission of a deficiency in filing the above matter, specifically related to 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 (the “Geo-Tech Report”), and b) 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 (the “TFD Drawings”). Co-Applicants respectfully request that they be excused from filing such required documents for a temporary period of time, and instead that the Commission consider the balance of the filing made in this matter for a conditional approval of a certificate of

public convenience and necessity, pending the receipt and review of the Geo-Tech Report and the TFD Drawings.

The site chosen by the Co-Applicants has been listed as the potential home to Short's Goldenrod, listed as a federally endangered plant species. To determine if the site is home to Short's Goldenrod, the recommendation from the U.S. Fish and Wildlife Service, Kentucky Field Office is to conduct a survey of the site during the flowering period (mid-August to late October) to determine if the plant species is present. Correspondence with the U.S. Fish and Wildlife Service, Kentucky Field Office reflecting this recommendation was provided to the Commission as part of the original application and the initial response to a Notice of Deficiency, but is also reattached hereto as **Exhibit 1**.

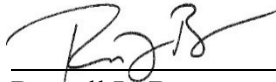
To conduct any activity which requires disturbance of the site, which would be required for the investigation necessary to generate a Geo-Tech Report, prior to this determination would be against the guidance of U.S. Fish and Wildlife and potentially harmful to an endangered plant species. Without the issuance of a Geo-Tech Report, no accurate TFD Drawings can be generated for submission to the Commission. The Co-Applicants desire to have a preliminary determination of the suitability of the proposed Site on all other aspects of the 807 KAR 5:063 Section 1 documents which have been submitted, to allow for a timelier issuance of a certificate of public convenience and necessity upon a determination that the Site is not home to the endangered plant species. This will also allow for faster deployment of the new telecommunications antenna tower after the TFD Drawings and Geo-Tech are completed in the fall of 2024 and submitted to the Commission's files.

In further support of the requested Deviation, the Co-Applicants would note that all other application requirements, including public notice are in process or have been completed. Further,

the survey provided with the application completed by a surveyor registered in the Commonwealth of Kentucky, reattached hereto for convenience as **Exhibit 2**, 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. This information provides partial compliance with the requirements of 807 KAR 5:063 Section 1(1)(d).

For all of these reasons, the Co-Applicants believe a temporary deviation from the complete filing requirements by the Commission is justified. This deviation will allow Co-Applicants to be confident that the chosen site would be conditionally eligible for a certificate of public convenience, if and when, a determination is made that there are no federally endangered plant species on or near the site. Co-Applicant therefore respectfully requests to be temporarily excused from complying with the filing requirements related to the TFD Drawings and Geo-Tech Report and a conditional review and approval of the otherwise complete application be considered by the Commission.

Respectfully submitted,



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Russell L. Brown

Clark, Quinn, Moses, Scott & Grahn, LLP

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Indianapolis, IN 46204

Phone: (317) 637-1321 / FAX: (317) 687-2344


Email: [rbrown@clarkquinnlaw.com](mailto: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

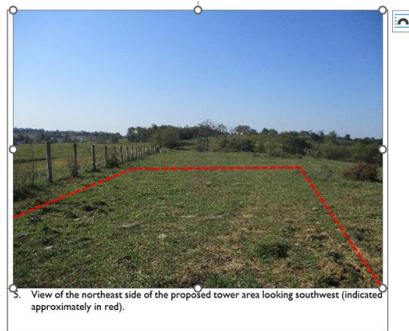
Seth R. Bishop  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
Kentucky Field Office  
330 West Broadway, Room 265  
Frankfort, KY 40601  
(502) 545-4532

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](mailto:hphegleyford@ebiconsulting.com)

[www.ebiconsulting.com](http://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**

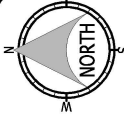
FEMA FLOOD MAP PANEL: 21069C0225C, Effective Date: 05-20-2010  
 Surveyed Area appears to lie within: ZONE X (Areas of Minimal Flood Hazard)

**TITLE EXAMINATION:**

See Sheet #7

**LOCATION MAP**

NOT TO SCALE



**LEGEND**

	CONCRETE MONUMENT FOUND		WATER VALVE		R/W		GRAVEL EDGE		OVERHEAD UTILITY LINES
	UTILITY POLE		GUY ANCHOR		C/L		OHU		GUY WIRE
	PROPOSED TOWER CENTER		ACCESS & UTILITY		AU		GUY		DITCH
	SITE BENCHMARK		POINT OF COMMENCEMENT		ESMT		STORMWATER PIPE		FENCE
			POINT OF BEGINNING		P.O.C.		PUBLIC R/W		TAX PARCEL LINE
			SQUARE FEET		P.O.B.		TIE LINE		LESSEE'S PREMISES
					Sq Ft		LESSEE'S EASEMENTS		

**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**

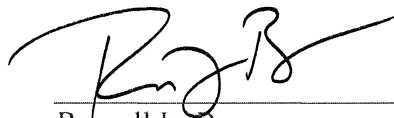
DWG#: 23229  
 ISSUE #: 2  
 ISSUE DATE: 02-14-2024  
 SEE SHEET #1

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 18<sup>th</sup> day of June, 2024.



\_\_\_\_\_  
Notary Public  
Printed Name of Notary: Megan N. Webb  
My commission expires: May 24, 2028  
Commission #: NP0634690

