MSK | MURPHY SULLIVAN KRONK

October 26, 2015

Susan Hudson, Clerk
Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: Application for a Certificate of Public Good, pursuant to 30 V.S.A. § 248a
Applicant: Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless ("Verizon Wireless")
Project: Wireless Telecommunications Facility
Location: 2382 Ridge Road, Brookfield, Vermont
Landowners: Douglas and Diane Haggett
Tower Owner: American Tower Corporation ("ATC")

Dear Ms. Hudson:

On behalf of Verizon Wireless, enclosed are an original and two copies of an Application for a Certificate of Public Good, pursuant to 30 V.S.A. § 248a; Prefiled Direct Testimony of AJ Lanpher and Louis Hodgetts, P.E., with supporting exhibits; Notice of Appearance, Certification of Notice, Memorandum of Law Regarding Town Plan, draft of proposed Findings and Certificate of Public Good and a copy of the letter mailed to the abutters notifying them that an Application was filed and of the 21-day deadline for filing comments/requests.

I hereby certify that we have submitted the ANR Certificate of Public Good Application Fee Form with payment. Attached is a copy of the completed ANR Certificate of Public Good Application Fee Form.

If additional information or documentation is required, please contact me.

Very truly yours,

Brian J. Sullivan, Esq.
BSullivan@mskvt.com

Enclosures

c: As set out on attached Certification of Notice

Certificate of Public Good Application Fee Form

Use this form for applications filed **on or after** July 1, 2015

Title 30, Section 248b establishes fees for the purpose of supporting the role of the Agency of Natural Resources (the Agency) in reviewing applications for in-state facilities under Sections 248a and 248 of said title. When applying for Public Service Board (PSB) approval of an in-state facility under Sections 248a and 248, complete this form and provide a copy of the completed form and the fee payment to the Agency and a copy of the form to the PSB as part of the application.

Project Name: Brookfield South
Street Address: 2382 Ridge Road, Brookfield, VT
Description: Wireless telecommunications facility - 10' tower extension & ancillary equipment
Applicant: Verizon Wireless
Date: 09/28/15

Fees shall be calculated as follows:

1. There shall be no fee for an electric generation facility less than or equal to 139kW in plant capacity* or for an application filed under subsection 248(k), (l), or (n) of Title 30.

2. The fee for **electric generation facilities greater than 139kW through five MW in plant capacity*** shall be calculated as follows, except that in no event shall the fee exceed $15,000:

   A. Electric generation facility from 140kW through 450kW: $3.00 per kW
   B. Electric generation facility from 451kW through 2.2MW: $4.00 per kW
   C. Electric Generation Facility from 2.201MW through 5MW: $5.00 per kW

Fee Calculator:

kW plant capacity*	X Rate ($3, $4 or $5)	= Fee (not to exceed $15,000)

3. The fee for a **new electric generation facility greater than 5MW in plant capacity***, and for a **new electric transmission facility** or a **new natural gas facility** not eligible for treatment under subsection 248(j) of Title 30, shall be equal to $2.50 for each $1,000 of construction costs**, but in no event greater than $100,000.

Fee Calculator:

$ construction costs**	/ 1,000	X 2.50	= Fee (not to exceed $100,000)

Upon commissioning of the facility, complete a Certification of Actual Construction Costs form and submit to the Agency, per form instructions.

The fee for an **application under subsection 248(j) of Title 30 for a facility that is *not* electric generation** and for an application or that portion of an application under section 248 of Title 30 that consists of **upgrading an existing facility within its existing development footprint, reconductoring of an electric transmission line on an existing structure**, or **the addition of an electric transmission line to an existing structure**, shall be $2,500.

Fee Calculator:

Type of Project	Rate	= Fee
Non-electric generation project filed under 248(j)	$2,500	
Upgrading an existing facility within its existing development footprint	$2,500	
Reconductoring of an electric transmission line on an existing structure	$2,500	
The addition of an electric transmission line to an existing structure	$2,500	

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4. The fee for an application under section 248a **of Title 30 for telecommunications facilities that includes a new support structure**, shall be equal to $2.50 for each $1,000 of telecommunication facility construction costs***, but in no event greater than $15,000.

Fee Calculator:

$ construction costs***	/ 1,000	X 2.50	= Fee (not to exceed $15,000)
$ 75,000.00	$ 75.00	$ 187.50	$ 187.50

Upon commissioning of the facility, complete a Certification of Actual Construction Costs form and submit to the Agency, per form instructions.

TOTAL FEE	$ 187.50

I attest by my signature under 13 V.S.A Sec. 3016 (False Claim) that the above is true to the best of my knowledge:

SIGNATURE OF APPLICANT	CLEARLY PRINT NAME	DATE
	Brian J. Sullivan, Esq.	10/05/15

Payment Information – For payment by check or money order, make payable to:

Vermont Agency of Natural Resources
Office of Planning and Legal Affairs
One National Life Drive, Davis 2
Montpelier, VT 05620-3905

For Electronic Payment:

TD Bank, 90 Main Street, Montpelier, VT 05602
ABA#: 011600033
Account #: 5240113051

^ For wire transfers, include a reference number and receipt of the transaction with this form.

For questions related to fee calculations or payment, or for additional information please contact:
ANR Office of Planning and Legal Affairs
ANR-OPLA@state.vt.us
802-828-1295
http://www.anr.state.vt.us/site/html/OPLA.htm

DEFINITIONS:

*** Plant Capacity.** The rated electrical nameplate for a plant, except that, in the case of a solar energy plant, the term shall mean the aggregate AC nameplate capacity of all inverters used to convert the plant's output to AC power.

**** Construction Costs.** Estimated dollar value of project improvements including site preparation, buildings, roads, parking, facility components, equipment and installation, fencing, screening, stormwater infrastructure, etc.

***** Telecommunication Facility Construction Costs** calculated under 5 above do not include the antennae, related appurtenances, equipment for transmission and receipt of signals and materials design to conceal the antennas from view. They do include all construction costs associated with the installation of any new support structure and any ancillary buildings/structures, including related earthwork.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. _____

Application of Vermont RSA Limited Partnership and Cellco	)
Partnership, each d/b/a Verizon Wireless, for a Certificate of	)
Public Good, pursuant to 30 V.S.A. § 248a, authorizing the	)
modification of an existing wireless telecommunications facility	)
located at 2382 Ridge Road in Brookfield, Vermont	)

NOTICE OF APPEARANCE

Please enter the appearance of the law firm of Murphy Sullivan Kronk on behalf of Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless, in the above referenced matter.

Dated at Burlington, Vermont, this 26th day of October, 2015.

Vermont RSA Limited Partnership and
Cellco Partnership, each d/b/a Verizon Wireless

By: _____

Brian J. Sullivan, Esq.
Murphy Sullivan Kronk
275 College Street
Burlington, VT 05401
(802) 861-7000
BSullivan@mskvt.com

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APPLICATION OF VERMONT RSA LIMITED PARTNERSHIP AND CELLCO PARTNERSHIP, EACH D/B/A VERIZON WIRELESS, FOR A CERTIFICATE OF PUBLIC GOOD PURSUANT TO 30 V.S.A. SECTION 248a

By this Application, Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless ("Verizon Wireless" or "Applicant"), represent:

1. The Applicant is a "company" as defined by 30 V.S.A. § 201 and, as such, is subject to the jurisdiction of the Vermont Public Service Board (the "Board") pursuant to 30 V.S.A. § 203.

2. The proposed project will be a "telecommunication facility" as defined by 30 V.S.A. § 248a(b)(1).

3. As a part of improving its commitment to providing quality service to its wireless telecommunication subscribers in the State of Vermont, Verizon Wireless intends to co-locate a wireless telecommunication facility on an existing monopole tower ("Monopole") located on approximately 71 acres of property owned by Douglas and Diane Haggett. American Tower Corp. ("ATC") owns the monopole and has given Verizon permission to file this Application. The tower currently has twelve (12) AT&T panel antennas mounted at 81'AGL and twelve (12) T-Mobile panel antennas mounted at 72' AGL. The site is accessed from the eastern side of

Ridge Road and follows an approximately 1,000' gravel driveway. The coordinates of the Compound are latitude 44°-00'-38.69" North and longitude 72°-36'-58.37" West. *See* Prefiled Testimony of Louis Hodgetts, P.E. and Exhibit LH-1, Permit Plans.

4. Verizon proposes to add a second 10' extension to the existing Monopole, raising the height of the tower to 95' AGL. Verizon proposes to locate twelve (12) antennas and six Remote Radio Heads ("RRH") at the top of the tower extension. A structural analysis completed by ATC on June 3, 2015, confirmed that the tower meets the requirements of the Vermont State Building Code and TIA-222 with the proposed extension and addition of antennas and equipment. (Exhibit LH-2).

5. Verizon proposes to mount twelve (12) panel antennas and six (6) Remote Radio Heads ("RRH"), on a triangular mounting frame, centered at a height of approximately 95' on the Monopole, with four (4) antennas and two (2) RRH per side or "sector". Each sector will consist of two (2) 1900-2100 MHz AWS/PCS antennas measuring approximately 54.7" long and 12.7" wide, two (2) 700-850 MHz XLTE antennas measuring approximately 76.1" long and 11.9" wide.[1] Each sector will have two (2) RRH measuring approximately 24.4" long and 10.63" wide installed directly behind the antennas. The topmost point of the tallest antenna will extend approximately 38" (3'2") above the top of the extended Monopole.

6. Verizon Wireless proposes to expand the existing Compound by approximately 1000 square feet, from the existing 28' x 50' to 50' x 50', in order to accommodate its 12'x30' two-room equipment shelter within the Compound. (Exhibit LH-3). One room will contain the electronic equipment and the other will hold a diesel-fueled emergency generator that will

[1] From time to time, equipment manufacturers may slightly alter their products or Verizon may purchase from different suppliers. Therefore, there is a possibility that the actual antennas may be a different model than what is described in this document.

provide back-up power if needed. (Exhibit LH-4). Co-axial and fiber optic cables from the mounted antennas will descend inside the hollow Monopole. The cables will exit near the base of the Monopole and will connect with the equipment shelter via a cable bridge.

8. The equipment shelter will feature a single, down-shielded, 75W light at the entrance door (Exhibit LH-5). The light will be equipped with a motion detector and will provide light to technicians when ambient light is insufficient.

9. There will be no changes to the existing access drive or the underground utilities, and no new clearing is required. There will be approximately 891 square feet of new earth disturbance. Access to the site will continue to be restricted through the use of a locked gate.

10. The Project will promote the general good of the State by expanding wireless telecommunication infrastructure to support modern mobile services along highways and in communities; providing high quality services for businesses and residents; providing competitive choices for consumers; and providing the opportunity to improve public safety and economic development within the State, all in conformance with the substantive criteria under Section 248a.

11. Construction of the Project will allow Verizon Wireless to provide improvements in service and coverage in the Town of Brookfield and along portions of Interstate 89 and Vermont Routes 12 and 14 located near the Project.

12. The proposed Project will not exceed 140 feet in height and there is no additional clearing required for this project. There will be an increase of approximately 891 square feet in the area of permanent disturbance. Therefore, under the provisions of 30 V.S.A. §§ 248a(b)(3)(A) and (c)(1), the proposed Project qualifies as one of "limited size and scope."

13. On July 21, 2015, Verizon Wireless provided the 45-day written notice, as

required under 30 V.S.A. § 248a(e), to the following: Town of Brookfield Selectboard and Planning Commission, Two Rivers-Ottauquechee Planning Commission, Secretary of the Agency of Natural Resources, Division of Historic Preservation, Commissioner of the Department of Public Service and its Director for Public Advocacy, Agency of Transportation, Public Service Board and to the landowners of record of properties adjoining the Project site.

14. Concurrently with the filing of this Application, Verizon Wireless has provided copies of this Application, and accompanying exhibits and prefiled testimony, to the following: Town of Brookfield Selectboard and Planning Commission, Two Rivers-Ottauquechee Planning Commission, Secretary of the Agency of Natural Resources, Division of Historic Preservation, the Commissioner of the Department of Public Service and its Director for Public Advocacy, and the Agency of Transportation. A notice of the filing of this Application has also been provided to the landowners of record of properties adjoining the Project site.

15. In support of this Application, Verizon Wireless submits the Prefiled Testimony and exhibits sponsored by the following witnesses:

Witness	Subject
AJ Lanpher, RF Engineer	Describes the installation, coverage and the Project's purpose and impact on the existing Verizon Wireless network.
Louis Hodgetts, Project Manager	Describes the design of the proposed Project, as well as the Project's impact on the applicable Criteria of 10 V.S.A. § 6086(a) and 10 V.S.A. § 1424a(d) that are not otherwise addressed in this Application, and addresses conformance with the conservation measures in the applicable local and regional plans.

16. In further support of this Application, Verizon Wireless submits the accompanying *Memorandum of Law Regarding Application of Town Plan.*

WHEREFORE, Petitioner respectfully requests that the Board:

1. Find that the Application complies with all applicable filing requirements pursuant to 30 V.S.A. § 248a criteria and does not raise a substantial issue under said Section;
2. Find that the Project will promote the general good of the State of Vermont and authorize the Applicant to undertake the actions as described herein and in its exhibits;
3. Issue an Order and Certificate of Public Good; and
4. Take such other measures as may be required for the expeditious review and approval of this Application.

Dated in Burlington, Vermont this 26TH day of October, 2015

Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless

By: _____

Brian J. Sullivan, Esq.
Murphy Sullivan Kronk
275 College Street
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installation of a wireless telecommunications facility located at	)
2382 Ridge Road in Brookfield, Vermont	)

MEMORANDUM OF LAW REGARDING APPLICATION OF TOWN PLAN

Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless ("Verizon Wireless" or "Applicant"), through its attorneys, Murphy Sullivan Kronk, submits the following Memorandum of Law to discuss the legal issues presented by the Town of Brookfield, Vermont Town Plan, adopted January 24, 2011 ("Plan"), and Verizon Wireless' application to extend an existing telecommunications tower by ten feet and to add antennas, mounting hardware and ground equipment (the "Project").

Preliminary Statement

The anticipated dispute regarding the validity and enforceability of the Brookfield Development Bylaw's height limit provisions ("Height Limit") need not be resolved for the Board to enter positive findings as to the requirements of Section IV. I. of the *Third Amended Order implementing standards and procedures for issuance of a certificate of public good for communications facilities*, entered on August 19, 2015 ("Procedures Order"). Instead, the Board need only refer to the approval it granted for the same height extension on the same tower ("Existing Tower") in *Petition of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, for a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of telecommunications equipment in Brookfield, Vermont*, Docket No. 8126, Final Order entered on

October 18, 2013 ("Final Order"). The Final Order, which approved an extension above the Height Limit, is consistent with the earlier decision of the Brookfield Zoning Board of Adjustment ("ZBA") to require co-location on the Existing Tower.

Further, in this instance, federal law restricts the use of the Height Limit provisions, even if they were found to be applicable. Moreover, federal law would also mandate approval of the present application to prevent unreasonable discrimination among functionally equivalent telecommunications service providers.

POINT I

THIS BOARD HAS RECENTLY HELD THAT A NEARLY IDENTICAL EXTENSION OF THE SAME TOWER BY A COMPETITOR OF VERIZON WIRELESS SATISFIES THE REQUIREMENTS OF SECTION 248A

In PSB Docket No. 8126, the Brookfield Planning Commission ("PC") contended that the modifications proposed by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T") to the Existing Tower would conflict with the section of the Plan that purports to limit the height of all communications towers to no more than ten feet above the surrounding tree line. *See* PC Memorandum of July 12, 2013 ("PC Memo," attached), citing, Plan at 11. At a public meeting on September 3, 2015, certain members of the PC made the same contentions concerning the changes proposed in the instant application[1].

However, in that same Docket, the PC asserted that, despite the apparent conflict, the proposed changes would be in the general good of the State. PC Memo at 2-3. The PC began by observing that:

[1] As with AT&T, Verizon Wireless proposes to add ten feet to the existing monopole tower, to mount an array of antennas on the tower and to place support equipment in a shelter on the ground. Application at 2. AT&T's antennas, although longer than those of Verizon Wireless, extended to the top of the tower – 85 feet above ground level ("AGL") and AT&T's equipment shelter fit within the existing fenced compound. Verizon Wireless' antennas will extend three feet and two inches above the top of the proposed tower extension. Because its equipment shelter will not fit within the current fenced area, Verizon Wireless will extend the compound by approximately 1,000 square feet. *Id.* Neither of these differences is material to this analysis.

> [I]n deciding whether to approve the proposed changes under 30 V.S.A. § 248a, the PSB will consider the general good of the state, balancing the impacts and costs of the changes with their benefits, including whether the changes support universal availability of infrastructure for transmitting voice and high-speed data, availability of wireless telecommunications services along the state's travel corridors and in its communities, and competitive choice for consumers among telecommunications providers. 30 V.S.A. §§ 202c(b), 248a(a).

Id. at 2.

Verizon Wireless' proposed modifications at this existing site will support universal availability of voice and high-speed data, both within travel corridors and in the community, and will enhance the competitive choices for consumers among telecommunications providers. As with AT&T's modifications, Verizon Wireless will co-locate its antennas on an existing communications tower with a ten-foot extension.

After stating the general standard, the PC continued to apply the components of this analysis to the AT&T application. The results of that application resemble closely the results proposed by Verizon Wireless. For example, the PC found that:

- The changes will allow AT&T to increase its ability to provide 4G LTE coverage for the I-89 corridor through Brookfield and in areas of Brookfield.

PC Memo at 3.

The changes proposed by Verizon Wireless will increase its ability to provide 4G LTE coverage for the I-89 corridor through Brookfield and in areas of Brookfield. Prefiled Testimony of AJ Lanpher ("Lanpher Pf.") at 3.

- These changes will not only improve wireless services to some Brookfield residents, but also increase choice for those residents among providers of those services.

PC Memo at 3.

Verizon Wireless seeks to provide service to its subscribers from the same location used by its competitors, AT&T and T-Mobile Northeast, LLC ("T-Mobile"). Lanpher Pf. at 3. That

service will, by definition, increase choice for Brookfield residents and those of nearby towns. *Id.*

- AT&T has made significant efforts to reduce the visual intrusion of the tower extension and proposed additional antennae while still achieving these benefits. Those efforts include an extension of the tower height by 10 feet only and using mounting arrays for the proposed antennae and tower that are smaller than the typically used mounting arrays and which AT&T represents are the smallest mounting array that are commercially available.

PC Memo at 3.

Verizon Wireless is also using a less intrusive mounting system than it has used at other sites. Rather than a triangular platform, Verizon Wireless, proposes three "T-arms" spaced at 90 degree intervals from one another. Hodgetts Pf. at 2.

- AT&T represents that it will comply with all conditions in the existing conditional use and site plan approvals for the tower and its site, except for the height limit.

PC Memo at 3.

Verizon Wireless will also comply with the applicable "Permit Conditions" that the ZBA imposed when approving the Existing Tower and its related equipment, with the exception of the Height Limit and the size of the compound. In both cases, Verizon Wireless is seeking the minimum increase necessary to accommodate its antennas and ground equipment.

After considering the PC's statements, declining to adopt the Stipulation entered between the PC and AT&T and denying the PC's request for a hearing, this Board issued the Certificate of Public Good in Docket No. 8126. As the Board held:

> The Town of Brookfield has adopted a zoning bylaw that has been incorporated by reference into Brookfield's town plan, and that restricts the maximum height of telecommunications facilities to approximately 75' in this area. Construction of the Project will cause the existing facility to exceed this height restriction by 10'. However, notwithstanding these circumstances, the Planning Commission nonetheless recommends that the Board approve the Project because of its societal benefits, including the increased coverage, improved safety and expanded capacity

> that the Project will bring to the area. Accordingly, in substantial deference to the Planning Commission's ultimate approval recommendation, we find that it is appropriate to approve the Project, notwithstanding that the Project will exceed the height restrictions reflected in the Town of Brookfield's town plan and its zoning bylaw.

Final Order at 5-6.

The Town of Brookfield ("Town") has not stated its position regarding approval of the present application. However, as shown above, all of the considerations required by Section 248a that led to the approval of AT&T's application compel the same result for the present Project.

POINT II

THE ORIGINAL DECISION AUTHORIZING THE EXISTING TOWER REQUIRES THAT COMPETITORS BE ALLOWED TO CO-LOCATE ON IT

The decision by the ZBA to grant conditional use approval to T-Mobile's original construction of the Existing Tower is particularly instructive. The ZBA began its decision with a background section that stated, among other things, that: "[T]he facility will allow co-location by other service providers." *Id.* at 1. In this vein, the ZBA continued:

> As there are no existing sites or telecommunications facilities within Brookfield, there is no potential for co-location in the town. The Board of Adjustment finds that T-Mobile has shown it has and will diligently pursue additional locations outside of Brookfield to fulfill its goal of providing coverage along the I89 corridor.
>
> **T-Mobile has provided for additional co-location on its tower and antennas once the proposed facility is completed. Should the opportunity arise for another service provider to co-locate on the tower, T-Mobile will apply to the Board of Adjustment for review and approval of the proposed additional antennas or services[2].**

Id. at 3 (emphasis added). To make the point even more clear, the ZBA included the following "Permit Condition":

T-Mobile **shall** allow co-location on its tower and antennas once the proposed

[2] Under 30 V.S.A. § 248a(h), the current application preempts review by the ZBA.

> facility is completed, if such co-location is technically feasible on reasonable terms and conditions. Should the opportunity arise for another service provider to co-locate on the tower, T-Mobile **will** apply to the Board of Adjustment for review and approval of the proposed additional antennas or services.

Id. at 4, Condition 8 (emphasis added).

In the wireless communications industry, carriers cannot typically share the same "centerline" on a tower. Lanpher pf. at 5. In fact, the industry standard is to have approximately ten feet of vertical separation between antennas on the same tower. *Id.* In 2009, the ZBA found that the nearby trees were 65 feet in height. ZBA Decision at 2. Even without the growth that is likely to have occurred in the past six years, applying the ten-foot Height Limit would place additional wireless communications antennas in the treeline. Wireless antennas, especially at the higher frequencies, do not function well when blocked by foliage. Lanpher Pf. at 5. That fact is commonly known and was undoubtedly the reason that T-Mobile sought to construct its tower ten feet above that nearby treeline. *Id.*

Therefore, when it approved T-Mobile's construction of the Existing Tower, the Town specifically mandated co-location with knowledge that doing so would require that tower to be extended to more than ten feet above the surrounding tree line. That is undoubtedly the reason AT&T sought a ten-foot height extension and precisely the reason Verizon Wireless seeks the same. The Town required this co-location and was aware of the consequences of it. Therefore, there is no credible basis upon which the Town may argue against the very co-location it mandated.

POINT III

FEDERAL LAW SHAPES THE BOARD'S DECISION MAKING AND RESTRICTS THE APPLICATION OF THE HEIGHT LIMIT AT ISSUE

Section 704 of the Federal Telecommunications Act of 1996, codified at 47 U.S.C. §

332(c)(7)(B) ("TCA"), guides the Board in its application of 30 V.S.A. § 248a to petitions for "Telecommunications Facilities." Section 704 has both substantive and procedural requirements. This section focuses on the substantive requirement that a State or municipal government entity may not "unreasonably discriminate" among providers of "functionally equivalent" services. 47 U.S.C. § 332(c)(7)(B)(i)(I)[3].

There should be no dispute that AT&T and Verizon Wireless provide functionally equivalent services. *See Independent Wireless One Corporation v. Town of Charlotte*, 242 F.Supp.2d 409 (D. Vt. 2003)(finding Sprint, AT&T's predecessor and Verizon Wireless to be functionally equivalent providers). Therefore, the inquiry turns to whether the potential discrimination (*if* the Town were to persuade the Board to disallow the same ten-foot height increase and antenna placement that AT&T was granted) is "unreasonable."

A wireless service provider meets the unreasonable discrimination test, by demonstrating that the "[existing] provider is similarly situated, i.e., that the 'structure, placement or cumulative impact' of the existing facilities makes them as or more intrusive than the proposed facility." *See, e.g., T-Mobile Northeast, LLC v. Borough of Leonia Zoning Board of Adjustment*, 942 F.Supp.2d 474, 480-81 (D. N.J. 2013)(quoting *APT Pittsburgh Ltd. V. Penn Twp.,* 196 Fed. 3d 469, 480 (3rd Cir. 1998)); *see also American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1055 (9th Cir. 2014). Examples of this type of discrimination include denial of an application to "co-locate an antenna array on an existing tower that already supports two antenna arrays belonging to other carriers." *Nextel West Corp. v. Town of Edgewood*, 479 F.Supp.2d 1219, 1232 (D. N.M. 2006), citing *Nextel Partners v. Town of Amherst,* 251 F.Supp.2d 1187, 1194-94

[3] Verizon Wireless reserves its right to assert other provisions of the TCA and all other applicable statutes, including the so-called "shot clock" should motion practice by the Town make it necessary to do so. *See Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, 24 F.C.C.R. 13994 (2009)(90-day time limit for State and local regulatory authorities to rule on applications for co-locations).

(W.D.N.Y. 2003). This is precisely what Verizon Wireless proposes in the present application.

As the Federal Court for the District of Vermont observed, effectively favoring incumbent wireless carriers over a competitor that seeks to expand its service in that area shelters them "from the very competition Congress sought to create when it enacted the TCA." *Independent Wireless One*, 242 F.Supp.2d at 422 (citation omitted). Our District Court further held that:

> As the goal of the TCA is to promote competition, the mere fact that wireless service exists in an area without a finding of actual cumulative impact or other shortcoming, cannot be a reasonable basis upon which to discriminate.

Id. at 422.

For these reasons, a denial of Verizon Wireless' application to locate its antenna array on a tower that: 1) was already extended to allow one of its competitors to offer service, and 2) was mandated for co-location of other carriers, would constitute unreasonable discrimination among functionally equivalent providers as proscribed by Section 704 of the TCA.

CONCLUSION

For all of the reasons stated above, this Board should find that the Height Limit Provisions of the Plan form no barrier to the approval of the modest changes sought by Verizon Wireless through the present application.

Dated in Burlington, Vermont this 23rd day of October, 2015

Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless

By: _____

Brian J. Sullivan, Esq.
Murphy Sullivan Kronk
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Burlington, VT 05401
(802) 861-7000
BSullivan@mskvt.com

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located at 2382 Ridge Road in Brookfield, Vermont	)

CERTIFICATION OF NOTICE

I, Brian J. Sullivan, attorney for Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless, do hereby certify that on October 26, 2015, I served a complete copy of the Application for a Certificate of Public Good, as filed, by U.S. mail, on the following parties:

Statutory Parties

Susan Hudson, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

John Benson, Chair
Town of Brookfield Selectboard
PO Box 463
Brookfield, VT 05036

Aaron Adler, Chair
Town of Brookfield Planning Commission
PO Box 463
Brookfield, VT 05036

Peter Gregory, Executive Director
Two Rivers-Ottauquechee Planning Comm.
128 King Farm Road
Woodstock, VT 05091

Karin McNeill
ANR Office of Planning and Legal Affairs
1 National Life Drive, Davis 2
Montpelier, VT 05402-3901

Jamie Duggan
Vermont Division for Historic Preservation
National Life Building, 6th Floor
Montpelier, VT 05620-1201

Chris Recchia, Commissioner
Vermont Department of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601

Geoff Commons, Dir. for Public Advocacy
c/o Dan Burke, Esq.
Vermont Department of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601

Douglas & Diane Haggett
7523 Vermont Route 14
Brookfield, VT 05036

American Towers LLC
10 Presidential Way
Woburn, MA 01801
Attention: Contract Management

Adjoining Landowners

Secretary
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001

Bruce & Leslie Bowman
2060 Ridge Road
Brookfield, VT 05036

Mark & Elizabeth Parker
2043 Ridge Road
Brookfield, VT 05036

Pastor Stephen Barry
The Ridge, Inc.
2252 Ridge Road
Brookfield, VT 05036

Robert & Hope Krenick
2401 Ridge Road
Brookfield, VT 05036

Marjorie & Kevin Haupt
7 Fales Street
Randolph, VT 05060

Douglas & Suzanne Sprague
2544 Ridge Road
Brookfield, VT 05036

Corey Haggett
2902 Ridge Road
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