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MEMORANDUM BY KEVIN R. JONES, ESQUIRE IN SUPPORT OF CONDITIONAL USE VARIANCE/MAJOR SITE PLAN APPLICATION FOR CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS PROPOSED COMMUNICATIONS FACILITY

The Applicant Cellco Partnership d/b/a Verizon Wireless (hereinafter, "VZW" or "Verizon") is requesting conditional use variance together with major site plan approval from the Ewing Township Zoning Board of Adjustment in order to erect a communications facility ("tower") at the Revere Restaurant property along River Road in Ewing Township. The proposed tower and compound will also be designed to accommodate the antennas and ancillary equipment of future carriers. This communication facility is designed to provide VZW and other future users an antenna support structure for their Personal Communications Services ("PCS") This proposed site will address a large area of weak signal strength or a "gap" in Verizon's network coverage. This facility will provide an antenna platform for additional PCS providers and would potentially eliminate the need for other carriers to construct their own antenna towers in this area.

In addition to traditional wireless telephone services, other services will include wireless internet connections and wireless data transmission. The VZW facility will also provide support for emergency services by providing wireless communications to paramedics, firefighters and law enforcement agencies. These first responder services have become established and accepted as an integral part of the nation's communications infrastructure as these services promote public health, safety, comfort and general welfare.

Verizon determined the location for this specific site based on thorough computerized studies. Like traditional cellular phone systems, PCS operates on a "grid" system, whereby overlapping "cells" mesh to form a seamless wireless network. The technical criteria for establishing cell sites are very exacting as to both the height and location of the communication facility. Based on a computerized engineering study which considers, among other things, local population density, traffic patterns and topography, VZW's RF (radio frequency) engineers have identified the necessary location for this additional PCS site to serve the residents of Ewing Township. Verizon Wireless coverage objective is to improve coverage in the area of approximately two to four miles in radius.

Verizon Wireless representatives first sought out collocation opportunities on existing towers. There were no towers within our search area. Verizon Wireless representatives then looked outside the search area to see if any towers were in the area available for collocation that would meet VZW RF Coverage needs. No towers or structures were available for collocation that would meet VZW's coverage objective.

The proposed communications facility will consist of a new 120' monopole with a 5' lightning rod together with a proposed 1,600 sf fenced elevated equipment compound located at the Revere Restaurant property along River Road in Ewing Township. The proposed tower and compound is located within the BN Neighborhood Business Zone and will be designed to accommodate the antennas and ancillary equipment of future carriers. Verizon's panel antennas will be installed at a centerline height of 115'. Verizon's ancillary equipment cabinets together with its proposed diesel generator will be placed on a proposed 355.5 sf elevated

equipment platform within the proposed fenced compound area. Verizon will utilize the existing gravel access drive for ingress, egress and parking during construction and maintenance.

As set forth in *Article IV, Chapter 215-35* of the Land Development Ordinance of the Township of Ewing ("Ordinance"), the proposed use in the BN Neighborhood Business Zone is conditionally permitted. However, due to the unique shape and size of the subject parcel, some of the conditions set forth in the Ordinance cannot be met, therefore requiring D-3 conditional use variance approval. Since the relief sought by VZW is a conditional use variance, the burden of proof is lessened since cellular telecommunications transmission or receiving towers are permitted as conditional uses by Ewing Township and have long been recognized to promote the general welfare of the public thereby meeting the positive criteria set forth in the state statute. Due to the location of the site together with the existing natural buffering, the height of the proposed tower will not have a detrimental impact upon the public. As stated above, the need for reliable wireless coverage in this area of Ewing Township is significant and there will be the added benefit to the community since this tower will provide coverage not only to the residents of Ewing Township, but also to the traveling public and first responders who provide critical services to the community. Accordingly, these factors far outweigh any detriment that may exist.

Verizon's Radio Frequency engineering experts will testify that they have identified a significant gap in Verizon's wireless coverage and capacity in the Township of Ewing that will adversely affect Verizon Wireless' customers in the area. After initially considering several possible solutions on existing towers or other existing infrastructure, poles in the rights-of-way, water tanks or rooftops (including municipally-owned properties) throughout the Township, Verizon's experts determined that none of these sites was technically feasible and that the best option would be to construct a new tower facility at the subject property along River Road. This proposed facility will fill a need for Verizon's customers and the proposed tower height of 120' is the minimum height necessary and the least intrusive means for doing so. Verizon's professional planning expert will testify that the subject site location is particularly suited for this proposed facility which will benefit the community by providing an enhanced ability to utilize Verizon's state of the art Fourth and Fifth Generation wireless services. Additionally, as set forth above, local, county and state police, fire and EMS first responders (most of whom utilize the Verizon Wireless network) will have improved real time communications during emergencies.

Verizon's experts will testify that the proposed facility will not be a detriment to the public good and is not inconsistent with the intent and purpose of the municipal master plan and zoning ordinances. Verizon's experts will also testify that locating the proposed facility on the subject property will have no detrimental effect upon surrounding properties, or substantially impair the intent and purpose of the Ewing Township Land Development Ordinance and Master Plan since the proposed unmanned facility will not generate any noise, glare, dust, odor or traffic. Moreover, Verizon's experts will testify that the visual impact of the proposed facility will be minimal. Accordingly, the proposed site promotes the general welfare (as stated above) and is particularly suited for the proposed use and the proposed relief of a conditional use variance can be granted without any detriment to the public welfare and will not impair the intent and purpose of the Township of Ewing Zoning Ordinances and Master Plan. Here, the enhanced 5G, data and wireless services are clearly a benefit to the community and further the goals of the Telecommunications Act as well recent FCC Orders with the intent to accelerate the rapid deployment of wireless broadband and 5G technologies across the nation. These benefits clearly outweigh any negative impacts and there will be no significant visual impact.

Radio Frequency Emissions and FCC Compliance

Section 332(c)(7)(B)(iv) of the TCA provides: "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effect of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." This categorical restriction

precludes local governments from regulating the placement of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations. As written, the purpose of Section 332(c)(7)(B)(iv) is to prevent state or local governmental instrumentalities from issuing telecommunications siting decisions that are based upon unscientific or irrational fears that emissions from telecommunications sites may cause undesirable health effects. Congress intended that Section 332(c)(7)(B)(iv) would eliminate this issue and provided uniform standards and guidelines to measure radio frequency emissions. Accordingly, Verizon's radio frequency engineering expert will provide a study and testify that the proposed facility will comply with all applicable FCC regulations with respect to MPE (Maximum Permissible Exposure) limits.

FCC Shot Clock Order

On November 18, 2009, the FCC issued a Declaratory Ruling (Order), also known as the "Shot Clock" Ruling, which in part clarifies what constitutes "a reasonable period of time" to act on telecommunications applications pursuant to Section 322(c)(7)(B) of the Telecommunications Act. In order to speed the deployment of next generation wireless networks (such as the proposed) while respecting legitimate authority concerns of local jurisdictions, the FCC sought to clarify the meaning of "*within a reasonable period of time*" pursuant to Section 332(c)(7) of the Telecommunications Act.

The Ruling establishes time frames of 90 days from the date of application for jurisdictions to act on collocations and 150 days from the date of application to act on all other telecommunications applications, such as the proposed wireless facility here. If a jurisdiction fails to act within the above time frames, this will constitute a presumptive failure to act. The applicant may file for relief from the court within 30 days of the jurisdiction's failure to act. The parties may, of course, consent to an extension of time, but this must happen before expiration of the applicable time frame.

The Shot Clock commences upon the filing of an application, not the date it is deemed complete by the local jurisdiction, and continues to run until and unless the jurisdiction correctly notifies the applicant within 30 days of filing that the application submitted is incomplete. The Shot Clock will then toll until the applicant provides the missing documentation to the jurisdiction. Should the jurisdiction notify the applicant that the application is incomplete after the initial 30 days from receipt of the application, the Shot Clock will continue to run regardless of any incompleteness issues. Additionally, mutual consent may be granted to extend the decision period.

Moreover, under the Shot Clock Ruling a jurisdiction may not deny a telecommunications application on the basis that a different carrier already provides service to that area. A denial on the aforementioned basis is in violation of Section 332(c)(7)(B)(i)(II) of the Telecommunications Act.

Accordingly, based on the foregoing reasons, The Ewing Township Zoning Board of adjustment should grant the Applicant's requested relief for its proposed wireless communications facility as described herein.