

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7695

Petition of Cellco Partnership, d/b/a Verizon)
Wireless, for a certificate of public good, pursuant)
to 30 V.S.A. § 248a, for the installation of antennas)
and equipment at existing telecommunications)
sites located in the Towns of Brandon, Colchester,)
Moretown, New Haven, Norwich, and Sharon)

Order entered: 3/17/2011

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves, in part, the application filed on December 6, 2010, by Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Procedures Order ("Procedures Order")¹, and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of communications facilities located in the Towns of Brandon, Colchester, Moretown, New Haven and Norwich, Vermont (the "Project").² The Board denies the Petitioner's request for a CPG for the portion of the Project proposed for Sharon, Vermont, pending further notice and opportunity for hearing, for the reasons discussed below in the Discussion and Conclusion section of this Order.

II. BACKGROUND

This case involves a petition and prefiled testimony filed by the Petitioner on December 6, 2010, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a,

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order issued August 14, 2009.

2. The petition originally sought approval for an additional site located in Bolton, Vermont. However, on February 4, 2011, the Petitioner filed a letter with the Board stating that it was no longer seeking approval of that site as part of the petition.

authorizing the construction of the Project. Additionally, due to the limited nature of the Project, Petitioner sought waivers of the following: (1) 45-day prefiling notice requirement;³ (2) requirement to notify adjoining landowners that the application has been filed;⁴ (3) requirement to file detailed site plans;⁵ and, (4) requirement to file testimony addressing all substantive criteria applicable to projects reviewed under 30 V.S.A. § 248a.⁶ We explain our rulings on these waiver requests below in the Discussion and Conclusion section of this Order.

Copies of the petition and prefiled testimony were concurrently filed with Department of Public Service ("Department"), the Agency of Natural Resources, the Addison Regional Planning Commission, the Central Vermont Regional Planning Commission, the Chittenden County Regional Planning Commission, the Rutland Regional Planning Commission, the Two Rivers/Ottauquechee Regional Planning Commission, and to each of the legislative bodies and municipal planning commissions for the Towns of Bolton, Brandon, Colchester, Moretown, New Haven, and Sharon.

On December 16, 2010, the Board issued a memorandum to the Petitioner requesting additional information regarding the request for waiver of notice to adjoining landowners.

On December 27, 2010, the Department filed comments on the petition with the Board. The Department states that it "generally supports the petition but wishes to note some concerns about the requests for waivers of notice."⁷ The Department argues that "the complete elimination of notice to adjoining landowners is inconsistent with both the letter and the spirit of 30 V.S.A. § 248a." However, the Department recommends that "subject to the concerns above" the Board issue a CPG for the Project without further evidence or hearings.⁸

3. See 30 V.S.A. § 248a(e); Procedures Order at 5 (Notice Requirements).

4. See 30 V.S.A. § 248a(j)(2)(A); Procedures Order at 6 (Filing Requirements).

5. See Procedures Order at 6-8 (Filing Requirements, E.).

6. See 30 V.S.A. § 248a(c)(1); Procedures Order at 8 (Environmental Criteria, G.).

7. Department comments at 1.

8. Department comments at 2.

On January 11, 2011, the Petitioner filed a letter with the Board stating that providing notice to the adjoining landowners "would not be a significant burden" and therefore it was withdrawing its request for a waiver of the notice to adjoining landowners.

On January 18 and 19, 2011, respectively, the Petitioner filed copies of the notice sent to all adjoining landowners, and certification that the notice had been mailed to all adjoining landowners. The notice provides a description of the proposed project and instructs recipients that they may file comments with the Board regarding the project within 21 days.

On February 3, 2011, the Town of Sharon Selectboard filed comments opposing the waivers requested by the Petitioner with respect to that portion of the Project to be located in Sharon. The Town of Sharon contends that granting the waiver of advance notice to the Town would not allow sufficient time for it to review the Project and submit comments.

On February 11, 2011, the Petitioner filed a response to the Town of Sharon's comments.

No other comments or requests for hearing regarding the Project have been filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the issues raised with respect to the applicable substantive criteria of 30 V.S.A. § 248a, with the exception of the portion of the Project to be located in the Town of Sharon. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The Project involves modification of Verizon Wireless facilities at five sites through the installation of Long Term Evolution ("LTE") antennas on existing antenna support structures and the installation of operating equipment in existing equipment shelters. The Project also involves the addition and/or replacement of other types of antennas at the sites. The modifications will improve capacity and frequency spectrum within the existing coverage footprints. Lanpher pf. at 3-4.

2. The Project facilities are proposed to be located at the following sites: (1) Brandon, located on a water tank off Arnold District Road; (2) Colchester, located within a non-working

silo at 4151 Roosevelt Highway; (3) Moretown, on an existing artificial-pine-tree tower located off U.S. Route 2; (4) New Haven, located within a working silo at 273 Lime Kiln Road; and (5) Norwich, on an existing artificial-pine-tree tower at 201 Upper Loveland Road. Lanpher pf. at 2-3.

3. The Brandon site modifications involve the replacement of six existing four-foot panel antennas with three antennas measuring approximately 71-inches by 11-inches, and three antennas measuring approximately 54 inches by 6 inches. Lanpher pf. at 4.

4. The Colchester site modifications involve the replacement of twelve existing four-foot panel antennas with six antennas measuring approximately 72 inches by 10 inches, six antennas measuring approximately 71 inches by 10 inches, and three antennas measuring 71 inches by 11 inches. Lanpher pf. at 5.

5. The Moretown site modifications involve the replacement of twelve existing four-foot panel antennas by six antennas measuring approximately 71 inches by 15 inches, six antennas measuring approximately 71 inches by 4 inches, and three antennas measuring approximately 71 inches by 11 inches. Lanpher pf. at 5.

6. The New Haven site modifications involve the replacement of six four-foot panel antennas with three antennas measuring approximately 54 inches by 6 inches, and three antennas measuring approximately 71 inches by 11 inches. Lanpher pf. at 5.

7. The Norwich site modifications involve the addition of three antennas measuring approximately 71 inches by 11 inches. Lanpher pf. at 5.

8. The modifications will not alter the overall appearance of the existing facilities, nor will there be any earth disturbance associated with the modifications. Finding Nos. 3-7, above; Dreher pf. at 3-4.

9. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 10 and 11, below.

10. The proposed installation of the facilities will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing telecommunications towers and equipment located at each site. Dreher pf. at 3-4.

11. The proposed installation of the facilities will not have undue adverse impacts to rare or irreplaceable natural areas or historic sites within the vicinity of the existing sites where the Project will be located, because there will be no ground disturbance and because the new facilities will be barely discernable. Dreher pf. at 3-4.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Pursuant to § 248a(j)(1), the Procedures Order defines a project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope:"

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing

The proposed Project will consist of attachments to existing structures that will not increase the height or width of those structures, nor will there be any earth disturbance associated

with Project installation at the existing sites.⁹ Therefore, all of the facilities qualify as facilities of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

Additionally, we partially grant the request of Verizon Wireless and waive the 45-day prefiling notice requirement, to the required parties with the exception of the Town of Sharon, and the requirement to file detailed site plans. Pursuant to 30 V.S.A. § 248a, the Board may waive by order the requirements of that section that it deems inapplicable to telecommunications facilities of limited size and scope.¹⁰ In its Procedures Order the Board waived some, but not all of the substantive criteria of section 248a. At the same time, we declined to generally waive any of the notice requirements of that section, instead establishing a case-by-case waiver process.¹¹ We are only granting these waivers to Verizon Wireless due to the extremely limited nature of the facilities that are included in the Project. They are small in size, are being installed on existing towers and in existing equipment sheds.

With respect to the request for waiver of advance notice to the Town of Sharon, ("the Town") we conclude that the Petitioner has not shown that the provision of notice would be overly burdensome or provided other sufficient basis on which to grant the waiver, especially in light of the Town's request for additional time to review. The advance notice requirement is specifically intended to allow towns, and other recipients, an opportunity to review a project's

9. Dreher pf. at 4-5.

10. 30 V.S.A. § 248a(k).

11. Procedures Order at 5 (Purpose and Applicability) and 5-6 (Notice Requirements).

potential impacts and to contact the applicant with questions regarding the project, prior to submitting comments to the Board. Verizon Wireless has not shown why the Town should be denied this opportunity in this case. Therefore, the request for waiver of the 45-day advance notice requirement to the Town of Sharon is denied. However, because the Petitioner filed a copy of the prefiled testimony and petition with the Town over 60 days ago, we conclude that the Town has had sufficient time to review the Project and we will require only that the Petitioner file notice with the Town, with copies to the Board and the Department, that it will have 21 days from receipt of the notice to file any comments regarding the Project with the Board. The Petitioner will then have two weeks from the date comments are filed with the Board to file any response with the Board. The Board will then make a determination regarding the portion of the Project proposed to be located in Sharon.

It should be noted that the waivers of the 45-day advance notice requirement and the notice to landowners that an application has been filed are of special concern to us, because granting these waivers means that adjoining landowners will not receive any advance notice of the Project. Were it not for the extremely limited nature of the Project, we would not be granting these waivers. Applicants should keep in mind that the Board considers these notice requirements a fundamental part of this process, and will only grant waivers in the most compelling circumstances.

As to Petitioner's request that we waive all substantive criteria not otherwise waived in our Procedures Order, we find the request to be moot because Petitioner submitted testimony addressing potential Project impacts on aesthetics, historic sites and rare and irreplaceable natural areas. Accordingly, we decline to rule on the request.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the five locations specified in the above findings, by Cellco Partnership, d/b/a Verizon Wireless, in accordance with the evidence and plans submitted in this proceeding, will promote the general

good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 17th day March, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: March 17, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.