PLAPC
PARISI LAW ASSOCIATES, P.C.

**APPLICATION FOR DIMENSIONAL VARIANCE**
**(Zoning Board)**
**FOR WIRELESS COMMINCATIONS FACILTY**

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| **Applicant:** | **Vertex Towers, LLC** |
| **Site Id:** | **VT-MA-3155D** |
| **Property Address:** | **92 Stallion Hill Road, Sturbridge, MA 01566** |
| **Tax Assessor:** | **605-0281-092** |
| **Property Owner:** | **Pamela Soper, Trustee of the Pamela A. Soper 2009 Irrevocable Trust u/d/t dated July 10, 2009** |
| **Date:** | **November 20, 2023** |

## PROJECT NARRATIVE

## INTRODUCTION

The Applicant Vertex Towers, LLC, a Massachusetts limited liability company ("Vertex") is a telecommunications infrastructure developer. Vertex develops, manages and owns telecommunications facilities in strategic locations across the country. The Vertex team has been working in the industry since the industry was founded and has the experience and expertise to navigate the challenges of the most complex markets.

Vertex is sometimes herein referred to as the "Applicant".

The Applicant's proposed Wireless Telecommunications Facility is shown on plans submitted with this Application (the "Plans"). The Applicant proposes to construct a 130' tall monopole-style tower at 92 Stallion Hill Road, Sturbridge, MA 01566, Tax Assessors Parcel 605-0281-092 (the "Property") that will structurally accommodate at least 4 wireless broadband telecommunications carriers and associated antennas, electronic equipment and cabling; and fence in the base of the tower to accommodate ground based telecommunications equipment. As shown on the Plans that accompany this Application, Verizon Wireless will place panel style antennas and required electronic equipment at a height of approximately 125' on the tower, it is anticipated that various telecommunications companies, including AT&T Wireless, T-Mobile / SprintPCS, Dish Networks and other wireless communications companies will place panel style antennas and required electronic equipment at heights of approximately 115', 105' and 95' (centerline) on the tower, and each will place telecommunications equipment and backup batteries inside equipment shelter(s) and/or weatherproof cabinets to be located immediately adjacent to the base of the tower. Power/telephone cabinets will be installed just outside the fenced in compound. Applicant's Wireless Communications Facility is similar to the other telecommunication facilities already located in the Town and the surrounding area and has been designed in accordance with the Town's Zoning Bylaw in all respects.

The Property is a large, approximately 22 acre substantially undeveloped parcel in the Rural Residential Zoning District. Section 300-14.2 Table of Standards requires 150' of frontage on a street. Although the Property has an existing driveway providing access from Stallion Hill Road to the bulk of the Property, the Property has only approximately 90' of frontage on Stallion Hill Road (which frontage was previously approved by the Planning Board). Note that, in 2021, the Property Owner received a determination from the Zoning Board, in connection with an application for an expansion of the existing structure on the property, that the application did not intensify the existing or create additional non-conformities. However, because the Applicant desires to expand the use of the Property, the Applicant respectfully requests that the ZONING BOARD grant a VARIANCE from Section 300-14.2 Table of Standards permit use of the Property as proposed.

Note that § 300-9.3.H(2) of the Town's Zoning Bylaw provides that

> (2) A new wireless communication facility, which may extend up to 15 feet in height above the average tree canopy elevation, may be located in a Residential District pursuant to a special permit and site plan approval issued by the Planning Board in accordance with these bylaws, provided the Planning Board finds that the applicant has exhausted all reasonable alternatives for placing the facility in a nonresidential district and provided that any wireless communication facility placed in a residential district shall not present a dominant visual feature to residential users within the district, and may utilize significant wooded isolation, topographical isolation and/or or camouflage consistent with its surroundings, as determined acceptable by the Planning Board, to achieve this result.

In addition, § 300-9.3(H) of the Town's Zoning Bylaw provides that the

> H. Average tree canopy elevation waiver. In the event that the Planning Board finds that application of the average tree canopy elevation requirement is impracticable because there exists no alternative site at which a wireless communication facility can be located to provide service in compliance with such requirement, the Planning Board may, at its discretion, grant a waiver to such requirement. The waiver may allow a wireless communication facility to extend up to 130 feet in height from grade, subject to all other applicable site plan approval and special permit criteria in these bylaws. To grant an average tree canopy elevation waiver, the Planning Board must also find that there are no alternative locations, including other parcels, where the grant of an average tree canopy elevation waiver would result in an outcome substantially more in keeping with the intent and purpose of the bylaw than at the proposed location.

The Applicant has respectfully requested from the PLANNING BOARD a SPECIAL PERMIT, an AVERAGE TREE CANOPY ELEVATION WAIVER and SITE PLAN APPROVAL, and said Application is pending.

**THE PROJECT**

Wireless telecommunications carriers are in the process of independently designing, constructing and upgrading wireless telecommunications networks to serve areas in and around the Town of Sturbridge. Such a network requires a grid of radio transmitting and receiving cell sites located at varying distances depending on the location of existing and proposed installations in relation to the surrounding topography. The radio transmitting and receiving facilities require a path from the facility to the user on the ground. This requires the antennas to be located in a location above the tree line where the signal is not obstructed or degraded by buildings or topographical features.

Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The only utilities required to operate the facility are electrical power as well as telephone service which are currently available at the property. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character. The Applicant's maintenance personnel will make use of the existing access driveway off Stallion Hill Road which will be extended to the base of the proposed Facility roads and parking to be constructed at the Property. The proposed Facility will not obstruct existing rights-of-way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion hazard, or character of the neighborhood. The installation will not require the addition of any new parking or loading spaces.

The construction of the Applicant's Facility will enhance service coverage in the Town of Sturbridge and surrounding communities. The enhancement of service coverage in the Town of Sturbridge is desirable to the public convenience for personal use of wireless services and for community safety in times of public crisis and natural disaster. Wireless communications service also provides a convenience to residents and is an attractive feature and service to businesses. In addition, the requested use at this location will not result in a change in the appearance of the surrounding neighborhoods. The use is passive in nature and will not generate any traffic, smoke, dust, heat, glare, discharge of noxious substances, nor will it pollute waterways or groundwater. Once constructed, the facility will comply with all applicable local, state and federal safety regulations.

Moreover and most importantly:

1. The proposed Facility will promote and conserve the convenience and general welfare of the inhabitants of Sturbridge by enhancing telecommunications services within the Town.

2. The proposed Facility will lessen the danger from fire and natural disasters by providing emergency communications in the event of such fires and natural disasters.

3. The proposed Facility will preserve and increase the amenities of the Town by enhancing telecommunications services.

4. The proposed Facility will facilitate the adequate provision of transportation by improving mobile telecommunications for business, personal and emergency uses.

Wireless service is important to public safety and convenience. As of the end of 2021 there were an estimated 457 million mobile wireless subscribers in the United States. See FCC's *2022 Communications Marketplace Report*, p. 56 (December 31, 2022). There are now more wireless subscriptions than landline telephone subscriptions in the United States, and the number of landline telephone subscribers across the nation is declining each year while the number of wireless users increases. Moreover, it is forecasted that wireless connections will become more significant as network service providers facilitate increase connectivity directly between devices, sensors, monitors, etc., and their networks. *Id. at 56-57.*

For many Americans, wireless devices have become an indispensable replacement for traditional landline telephones. Even when Americans maintain both types of telephone service, Americans are opting increasingly to use wireless devices over their landline telephones. For Americans living in "wireless-only" homes and for those others while away from their homes, cell phones are often their only lifeline in emergencies. Over 97% of Americans now own a cellphone of some kind and more than 85% own smartphones; more importantly, more than 50 percent of American households are now wireless only for voice connectivity, and 15% of adults are "smartphone-only" internet users – meaning they own a smartphone, but do not have traditional home broadband service. *http://www.pewinternet.org/fact-sheet/mobile/* Approximately 80% of the millions of 911 calls made daily are placed from cell phones, and that percentage is growing. *https://www.ctia.org/the-wireless-industry/infographics-library*. The FCC's Phase II E911 rules require wireless service providers to transmit the location of a wireless 911 call, within certain parameters for accuracy. Under the FCC's rules, wireless providers are subject to increasingly stringent 911 location accuracy requirements almost every year through 2024. See *http://www.fcc.gov/guides/wireless-911-services*

## COMPLIANCE WITH CRITERIA FOR VARIANCE

Section 300-18.2 provides that

**B(3) The Board of Appeals shall have the power, after a public hearing for which notice has been given by publication and posting as provided in MGL c. 40A and by mailing to all parties in interest, to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning bylaw where the Board of Appeals specifically finds that owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw.**

Given technical limitations with respect to:

- the location of the Facility relative to the surrounding neighborhoods and other existing telecommunication sites in and around the Town;
- the topography of the surrounding area;
- the lack of viable alternatives in the area;
- the height restrictions of the Facility imposed by the Bylaw;
- the Town's requirement to accommodate multiple wireless communications companies;
- the demand for robust and reliable telecommunications coverage; and
- the requirement to accommodate rapidly evolving technologies;

the Applicant requires the requested Variance to permit construction of the Facility as proposed.

As the Plans indicate, the proposed Facility has been designed to accommodate the antennas at least 4 wireless broadband co-locators, including Verizon Wireless. There

are no existing or previously approved telecommunications facilities in the area of the proposed Facility, nor are there existing structures of sufficient height in the area of the proposed Facility, that will achieve the coverage objective of the proposed Facility. The Facility has been situated on the Property in such a way to achieve the objectives of the Town's Bylaw regulating Wireless Communications Facilities in all respects.

As has been shown throughout this Project Narrative, the granting of the Variance(s) will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest. The Variance will substantially secure the objectives, standards and requirements of these regulations, and a particular hardship exists and special circumstances warrant the granting of the Variance. Specifically with respect to frontage, the Applicant notes that there is already an existing driveway off Stallion Hill Road that the Applicant will utilize and extend to the base of the Facility. Accordingly, there will be no driveway changes along Stallion Hill Road that will have any effect on the public, and the use of the existing driveway by the Applicant will have no effect on vehicular traffic patterns. Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character.

In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No.104-104, § 704; 110 Stat. 56 (1996) (the "TCA"). The intent of the TCA enacted by the U.S.Congress was to institute a framework to promote competition and innovation within this telecommunications industry. Under their respective licenses from the FCC, wireless telecommunications providers are obligated to provide a reliable "product" [i.e. wireless communications service] to the population in the region, which includes the Town. Likewise, consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure. A carrier's failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. The proposed Facility and corresponding relief requested are necessary to remedy a gap in reliable service coverage within the various wireless carriers' existing network infrastructure.

The Applicant has investigated alternative sites in and around the defined geographic area within which engineers determined that a facility must be located to fill the gap in service coverage and to function effectively within the network of existing and planned facilities. No existing structure or property in or near the vicinity of the proposed Facility is feasible to accommodate the coverage network requirement.

Most importantly, given the Town's very stringent requirements for Wireless Communications Facilities, including substantial setbacks, vegetative buffers, minimization of impact on abutting properties as well has height and other limitations, the Property represents the only feasible alternative to alleviate this gap in coverage.

Accordingly, a literal enforcement of the provisions of the Bylaw would prevent the Applicant from eliminating an existing gap in reliable service coverage, resulting in a potential loss of subscribers and the inability to effectively compete for subscribers with FCC licensed competitors in the market, contrary to the intent of the Bylaw and the U.S. Congress in enactingthe TCA.

Moreover, this hardship is owing to the circumstances relating to topography of the surrounding area. The property is a large, substantially undeveloped lot. The surrounding area provides no other feasible location in which to install and operate a wireless telecommunications facility. Existing structures and buildings in the area are insufficient in height to allow wireless carriers to operatethereon and provide adequate coverage to this significant gap in its network. The Property provides a unique opportunity, given the location and area topography surrounding the Facility, to minimize any adverse visual impacts to the surrounding area. The proposed design conforms to the existing characteristics of the Property, and utilizes the existing vegetative buffer on the Property to screen the proposed Facility, thereby minimizing potential impacts.

The wireless communications systems being developed by the various telecommunications carriers operating in the area have been designed employing themost sophisticated radio frequency engineering methods available. Radio frequency engineers determine the placement of network points-of-presence using computer engineering models that simultaneously evaluate are topography and population patterns to identify specific geographic areas to be serviced by each antenna facility in the network. As a result of this modeling, combined with actual coverage data provided by existing "on air" facilities, the carriers' radio frequency engineers have identified a limited geographic area as a necessary location for a communications facility to remedy an existing gap in reliable service coverage in the general vicinity of the Property. Without the requested relief, there would remain a substantial "gap" in reliable service coverage in the carriers' respective networks. Radio frequency coverage maps confirm that a telecommunications facility located at the Property is required to remedy the existing gap in the wireless network coverage in the area. The requested height has been determined by engineers to be the minimum height necessary to connect coverage from the proposed Facility with coverage from adjacent cell sites in the carriers' respective networks (i.e. to remedy the existing "gap" in service and to effect reliable handoffs between adjacent cell sitesas a subscriber travels through the area).

In the context of a utility service where the critical criteria in the development of each facility is its ability to integrate with a network of surrounding sites and subsequently, for each cluster of sites to function within a regional/national network,

there is an underlying premise that each site chosen by the Applicant for a facility possesses a unique location and topographical characteristics.

Finally, as noted in Nextel Communications of the Mid-Atlantic, Inc. v. Town of Wayland, 231 F.Supp. 2d 396, 406-407 [D. Mass. 2002], the "need for closing a significant gap in coverage, in order to avoid an effective prohibition of wireless services, constitutes another unique circumstance when a zoning variance is required." No existing structure or property in an allowed zoning district is technically suitable to resolve the existing gap in the wireless service coverage in the area. In addition, the existing structures located near the Property are not at a height sufficient to provide adequate coverage to this significant gap in its network. The Facility will be the minimum height necessary to provide coverage for multiple wireless carriers. Given the location and size of the Property, as well as the proposed design of the Facility, the proposed installation will have a minimal visual impact to the surrounding neighborhood while achieving the carriers' requisite coverage.

- The proposed Facility will reduce the number of new structures ultimately needed to provide wireless communication services in the surrounding area by providing co-location potential;

- The proposed Facility is designed to be at the minimum height necessary to provide adequate coverage to the area and keep potential visual impacts to a minimum;

- The proposed Facility will comply in all respects with radio frequency emission standards established by the FCC;

- The proposed Facility will not have any adverse effect on the value of land and buildings in the neighborhood or on the amenities thereof. The proposed use is passive, requires no employees on the premises, and has no characteristics that are incompatible with the underlying zoning. Specifically, it will generate only about two vehicle trips per month by a service technician for routine maintenance, will be served by standard electrical and telephone service, and requires no water, septic or other town services;

- The proposed Facility will promote and conserve the convenience and general welfare of the inhabitants of the Town by enhancing telecommunications services within the town;

- The proposed Facility will lessen the danger from fire and natural disasters by providing emergency communications in the event of such fires and natural disasters;

- The proposed Facility will involve no overcrowding of land or undue

concentration of population because it is an unmanned Facility;

- The proposed Facility will preserve and increase the amenities of the Town by enhancing the telecommunications services and will facilitate the adequate provisions of transportation by improving mobile telecommunications for business, personal and emergency uses;

- The proposed Facility will involve no adverse effects on public and private water supplies and indeed will utilize no water at all;

- The proposed Facility will involve no adverse effects on drainage, schools, parks, openspace, or other public requirements, and will involve no excessive noise or pollution to the environment;

- The proposed Facility will have no adverse effect on historic sites; and
- The proposed Facility will be an appropriate use of land within the Town.

Due to the unique size, shape, location and elevation of the subject Property and the topographyof the surrounding area as well as the existing zoning of the property and surrounding area, unique circumstances exist to justify the granting of the requested Variance(s). Moreover, Applicant's proposed Facility will have no impact on adjoining properties and the surrounding neighborhood in that the proposed Facility will produce no objectionable noise, glare, dust, smoke, fumes, odors, of effluent, and will not have any impact of traffic or circulation.

Accordingly, the Applicant requests findings that

1. a literal enforcement of the provisions of this chapter would involve a substantial hardship to the Applicant.

2. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but notaffecting generally the zoning district in which it is located.

3. Desirable relief may be granted without nullifying or substantially derogating from theintent or purpose of the zoning bylaw.

In addition (or in the alternative), the Applicant requests a finding that strict compliance would cause a conflict with the TCA.

## THE TELECOMMUNICATIONS ACT OF 1996

In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, § 704; 110 Stat. 56 (1996) (the "TCA" or the "Telecommunications Act'). The intent of the TCA as enacted by Congress was to institute a framework to promote competition and innovation within the telecommunications industry. Although this law specifically preserves local zoning authority with respect to the siting of wireless service facilities, it clarifies when the exercise of local zoning authority may be preempted by federal law. Section 704 of the TCA provides, in pertinent part, that

**(7) PRESERVATION OF LOCAL ZONING AUTHORITY-**

**(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.**

**(B) LIMITATIONS-**

**(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--**

> **(I) shall not unreasonably discriminate among providers of functionally equivalent services; and**
>
> **(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.**

The intent of the TCA enacted by the U.S. Congress was to institute a framework to promote competition and innovation within this telecommunications industry. Under its respective licenses from the FCC, wireless telecommunications carriers are obligated to provide a reliable "product" [i.e. telecommunications service] to the population in western Massachusetts, which includes the Town of Sturbridge. Likewise, consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure. A carrier's failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. As demonstrated in the Application and supplemental materials provided by the Applicant, the proposed Facility and corresponding relief requested are necessary to remedy a gap in reliable service coverage within the existing network infrastructure.

The TCA "is an exercise in cooperative federalism" that "attempts, subject to five limitations, to preserve state and local authority over the placement and construction of facilities." Nat'l Tower, LLC v. Plainville Zoning Bd. of Appeals, 297 F.3d 14, 19 (1st Cir. 2002) (citing 47

U.S.C. § 332(c)). "Under the TCA, state and local governments and instrumentalities may regulate the placement of wireless service facilities, provided they (1) act on requests to authorize the placement, construction, or modification of such facilities within a reasonable time, (2) do not give consideration to any environmental effects of radio frequency emissions that comply with FCC regulations, (3) do not unreasonably discriminate among providers of functionally equivalent services, (4) make all decisions in writing and support those decisions with substantial evidence contained in a written record, and (5) do not make decisions that prohibit or have the effect of prohibiting the provision of personal wireless services." Cellco P'ship v. Town of Leicester, No. 16-cv-10693-MGM, 2017 WL 4381673, *2 (D. Mass. September 29, 2017) (citing 47 U.S.C. § 332(c)(7)(B)) (internal quotation marks omitted). The provisions of the TCA preempt state and local laws to the extent that they conflict. Eco-Site, Inc. v. Town of Wilmington, No. 17-cv-10304-MBB, 2019 WL 1332621, at *9 (D. Mass. Mar. 25, 2019).

In a growing number of cases, federal courts have found that permit denials violate the TCA, even if such denials would be valid under state law. For example, in Omnipoint Communications v. Town of Lincoln, 107 F. Supp. 2d 108 (D. Mass. 2000), the court found that denial of a variance for a location outside of the town's wireless overlay district violated the TCA and ordered the variance to issue despite an Ordinance provision prohibiting use variances. The court in Nextel Communications v. Town of Wayland, 231 F. Supp. 2d 396 (D. Mass 2002) reached the same result. In that case, the court stated: "Although the Board's statement [regarding its lack of authority to issue a use variance] may be correct statement in Massachusetts regarding variances, it is not controlling in the special case of Telecommunications facilities…Under the Telecommunications Act, the Board cannot deny the variance if in so doing it would have the effect of prohibiting wireless services." Wayland at 406-407. Most notably, in Omnipoint Holdings. Inc. v. Town of Cranston, No. 08-2491 (1st Cir. Nov. 3, 2009), the United States Court of Appeals for the First Circuit affirmed a judgment of the United States District Court for the District of Rhode Island, which found that the Cranston Zoning Board of Review violated the TCA by effectively prohibiting the provision of wireless services in Cranston when it denied an application for a special use permit and variance to construct a wireless facility in a residential area. The Court noted that "[t]he effective prohibition clause does not stand alone; it is also part of the TCA's larger goal of encouraging competition to provide consumers with cheaper, higher-quality wireless technology…. As cell phone use increases, carriers need to build more facilities, especially in populated areas, to continue providing reliable coverage, and local regulations can present serious obstacles." *Cranston*, p. 25. In New Cingular Wireless, LLC v. Town of Manchester, Case No. 11-cv-334-SM (USDC D. NH Feb. 28, 2014), the United States District Court for the District of New Hampshire indicated that the Town of Manchester impermissibly denied a variance to construct a telecommunications tower in a (non-permitted) residential zone, in that the tower addressed significant coverage gaps and provided competitive and reliable wireless services and there was no feasible alternative. The Court noted that the Town must consider the public benefits of wireless services in determining whether to grant a zoning variance for a tower. Id.

The Applicant has investigated alternative sites in and around the defined geographic area within which its engineers determined that a facility must be located to fill the gap in service coverage and to function effectively within the wireless network of existing and planned facilities.

No existing structure or property in or near the vicinity of the proposed Facility is feasible to accommodate the wireless network requirements. The proposed Facility is on large substantially undeveloped parcel and provides a substantial vegetative buffer. The wireless communications systems being developed by the various telecommunications carriers operating in the Sturbridge area have has been designed employing the most sophisticated radio frequency engineering methods available. Radio frequency engineers determine the placement of network points-of-presence using computer engineering models that simultaneously evaluate are topography and population patterns to identify specific geographic areas to be serviced by each antenna facility in the network. As a result of this modeling, combined with actual coverage data provided by existing "on air" facilities, the carriers' radio frequency engineers have identified a limited geographic area as a necessary location for a communications facility to remedy an existing gap in reliable service coverage in the general vicinity of the Property. Without the requested relief, there would remain a substantial "gap" in reliable service coverage in the carriers' respective networks. Radio frequency coverage maps confirm that a telecommunications facility located at the Property is required to remedy the existing gap in the wireless network coverage in the area. The requested height has been determined by engineers to be the minimum height necessary to connect coverage from the proposed Facility with coverage from adjacent cell sites in the carriers' respective networks (i.e. to remedy the existing "gap" in service and to effect reliable handoffs between adjacent cell sites as a subscriber travels through the area).

Accordingly, denial of a Variance to construct the Facility would prevent the Applicant from eliminating an existing gap in reliable service coverage, resulting in a potential loss of subscribers for the carriers and the inability to effectively compete for subscribers with other FCC licensed competitors in the market, contrary to the intent of the Ordinance and the U.S. Congress in enacting the TCA.

## SUMMARY

Because the proposed facility meets all of the requirements for a VARIANCE under the Sturbridge Zoning Bylaw and Massachusetts law, and pursuant to §704(a) of the Federal Telecommunications Act of 1996 which provides, among other things, that wireless facilities may not be prohibited in any particular area and that any denial of zoning relief must be based upon substantial evidence, the Applicant respectfully requests that the ZONING GRANT a VARIANCE as proposed, and the Town grant such other permits, relief or waivers deemed necessary by the Town under the current Bylaw and pending Bylaws amendments, if any, so that the Applicant may construct and operate the Facility as proposed.

Respectfully submitted,

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**STATEMENT OF BRENDAN M. GILL**
**Vertex Towers, LLC**

I, Brendan M. Gill, hereby state the following in support of the application submitted by Vertex Towers, LLC for a multi-user Personal Wireless Service Facility ("PWSF") to be located at 92 Stallion Hill Road, Sturbridge, MA (the "Property"), consisting of a 150' Monopole and related ground equipment contained within a fenced compound (the "Site")

1. My name is Brendan M. Gill and I am the Director of Site Acquisition and Leasing for Vertex Towers, LLC.

2. I have worked in the telecommunications industry for 10 years overseeing and assisting in the leasing, zoning, permitting and construction of wireless communications facilities and specifically in the investigation of all feasible alternatives and options locating a wireless communications facility within a search ring which would fill a significant gap in wireless coverage.

3. I have participated directly through my present and past employment in the development and analysis of hundreds of such facilities, including wireless communication facilities similar to the proposed Site.

4. I have personally visited the Property, and the areas surrounding the Property, on numerous occasions. I submit this affidavit based on my personal knowledge of the Property and the surrounding areas, while also working together with the experience and documentation provided by civil and radio frequency engineers, environmental consultants and based on my professional experience in the development of wireless communication facilities.

5. Part of my site acquisition and development duties include identifying potential candidates within an area identified as having a significant gap in coverage. The candidate identification process includes reviewing the applicable zoning ordinance with legal counsel, engineers, wetland scientists, and other professionals to identify areas where the proposed Site is allowed and feasible. First, I explore the area to determine whether there are any existing structures of sufficient height and structural capacity from which an antenna installation on such a structure would provide sufficient coverage. If there are no such existing structures, I identify properties, located within the narrowly defined search area, that appear to be suitable for the installation of a communications facility, while also eliminating certain properties that would not be suitable due various limitations or concerns related but not limited to, parcel size, access issues, landlocked parcels, conservation restrictions, wetlands, visibility, elevation, terrain and constructability. In order to be viable, a candidate must (i) provide adequate coverage to the identified significant gap in coverage and (ii) have a willing landowner with whom commercially reasonable lease terms may be negotiated. Preference is given to locations that closely comply with local zoning ordinances, or in the event no viable candidates are found within the search area, I attempt to identify other potentially suitable properties, with preference always given to existing structures.

6. In connection with this site, I have provided site acquisition services, including researching the area, and identifying potential alternative candidates to the leased ground space on the Property.

7. Based on my personal knowledge of the proposed Site and the and the surrounding area, there are no potential alternative candidates located within this geographically driven search ring that would be considered superior to the proposed Site. All possible locations along Rt 20 fail to provide the coverage needed due topographical limitation. In addition, based on my experience, in my professional opinion, the proposed PWSF to be located at 92 Stallion Hill Road is the least intrusive and only available and viable alternative to adequate meet the coverage objective to fill this significant gap in coverage.

Executed this 30th day of August 2023.

Brendan M. Gill
Vertex Towers, LLC