

**Statement in Support of Application
for a
Development of Regional Impact (“DRI”)
Submitted to the
Martha’s Vineyard Commission**

Applicant: Bell Atlantic Mobile of Massachusetts Corporation Ltd. d/b/a Verizon Wireless ("Verizon Wireless" or "Applicant").

DRI Number: 640

Subject Parcel: A 50’ x 50’ Leasehold Parcel within the interior of 21 New Lane, West Tisbury, MA, Assessor's Map 31, Lot 48 ("Subject Property")

Proposed: Install a new Personal Wireless Service Facility, with associated ground equipment, on a leasehold portion of the Subject Property.

Requested: Approval of DRI Application pursuant to The Martha’s Vineyard Commission Act and the Telecommunications Act of 1996, 47 U.S.C. 332(c)(7)(B).

Date: November 20, 2012

I. Introduction

While many of the DRI’s that come before the Martha’s Vineyard Commission (“Commission”) for review indeed have regional impact, this one does not. Application is being made here because the DRI Checklist mandates the Commission review any tower over 35 feet in height. However, the proposed facility will have no “regional” impact as that term would commonly be applied and, in fact, will have very little impact beyond the bounds of its host Subject Property. Most of the review criteria typical of DRI consideration are entirely non-applicable to this proposed unmanned, unoccupied, remotely-monitored wireless telephone utility structure.

The Applicant is proposing a wireless telephone utility pole. The top of the proposed tower may be visible from certain distant perspectives, but such views will be minimal and mitigated through camouflaging the structure to appear as a tree. The only significant “impact” created by the construction of the proposed facility will be the beneficial impact of providing enhanced wireless communications to an area of West Tisbury that currently suffers from significant gaps in reliable network coverage.

II. Project Summary

Verizon Wireless has acquired a Leasehold interest in a 50' x 50' parcel ("Site") deep within the interior of its host parcel located at 21 New Lane in West Tisbury. Access to the Site will be via a non-exclusive easement that primarily follows existing driveways and paths on the Subject Property until a new portion of access will be created to make its final approach to the actual facility (see enclosed plans). The facility is proposed to be located so deep within the interior of its host Subject Property that the on-grade equipment compound itself will not be visible from off site.

In keeping with the requirements of the West Tisbury Zoning Bylaws, multiple Site locations and different heights and different styles of tower have been offered as alternatives. Pursuant to the ZBA's referral letter to the Commission, the West Tisbury ZBA respectfully wishes to retain the final decision on which site, which height, and which style tower is ultimately chosen as "impact" in that regard is exclusively a West Tisbury issue. From the perspective of the MVC Chapter 831 criteria, the exact Site location and tower height and style are not relevant.

The installation of the facility itself is very simple and its construction will be extremely uncomplicated. A foundation is poured and covered to act as a counter-weight upon which the proposed monopole tower will be bolted. Antennas will be hung from the tower, and radio equipment will be placed at the base of the tower. The entire facility will be surrounded by a buried network of ground rods to protect against lightning strikes. A solid wooden stockade-style fence will surround the entire site compound to provide security as well as shield the view of the equipment inside from viewers outside.

The proposed facility is that of an unmanned, unoccupied, remotely monitored wireless telephone utility pole with associated ground equipment. No water or sewer services are needed. Electric utilities and landline telephone lines existing on New Lane will be adequate to service the proposed installation and shall be brought back to the Site underground. The installation will have no impact on traffic and no impact on affordable housing. No municipal or Island services are required to serve the proposed installation.

III. Development of Regional Impact – Review and Approval Analysis

In order to demonstrate the Applicant's compliance with MVC DRI guidelines, and also to illustrate the de minimis nature of the proposed installation in light of DRI criteria, the review and approval standards of Sections 12, 14 and 15 of Chapter 831 (The Martha's Vineyard Commission Act) are enumerated below (*in italics*) with the Applicant's responses thereto (in plain text) as follows:

A. Chapter 831, Section 12 – Developments of Regional Impact (DRI)

In adopting standards and criteria pursuant to this section, the commission shall consider, but shall not be limited by the following considerations:

(a) the extent to which a type of development would create or alleviate environmental problems, including, but not limited to air, water and noise pollution;

Not Applicable. The proposed unmanned, unoccupied, remotely-monitored wireless telephone utility facility will have no impact whatsoever on the environment and thus this criteria is a complete non-issue. No water or sewer services are required. No air pollution will be created. Noise will be insignificant and well below all Town of West Tisbury guidelines. The development will create no environmental problems whatsoever.

(b) the size of the site to be developed;

The Applicants have leased a 50' x 50' area (2500 square feet) but only a fraction of that will actually consist of impervious development in the form of structural foundations. The remainder of the site compound will be treated with geotechnical fabric and gravel in order to permit proper drainage without any runoff. The area "to be developed" is therefore smaller and less obtrusive than that of a typical modest single family home.

(c) the amount of pedestrian and vehicular traffic likely to be generated;

Insignificant-to-none. The proposed installation will be unmanned and unoccupied. It will host no employees, visitors or customers. Occasionally (perhaps once per month) a service technician may check on the site in a normal passenger vehicle. Operations on-site are remotely monitored 24/7 thereby obviating the need to perform more frequent site visits. The installation will therefore produce less vehicle traffic than a single-family residence and no pedestrian traffic whatsoever.

(d) the number of persons likely to be residents, employees, or otherwise present;

None. Not Applicable. The installation consists of an unmanned, unoccupied, remotely monitored wireless telephone utility.

(e) the extent to which a type of development is intended to serve a regional market;

The proposed installation is intended to close significant gaps in the Applicant's wireless network in the vicinity of the subject site, specifically between its other locations at the Airport and the West Tisbury DEM Fire Tower. Although the proposed site, once on air, will indeed become part of a nationwide (hence "regional") wireless network, the extent that this particular site itself can be considered "regional" is minimal. The wireless transmissions utilized by the Applicant, which are highly regulated by the FCC, are generally speaking considered weak and quite "local" in nature, rather than "regional." For that reason, multiple sites are needed throughout a region to be able to cover broad areas. So although the Applicant's wireless

network itself could be considered regional, the specific site that is the subject of this Application is not.

(f) the location of a type of development near a waterway, publicly-owned land, or a municipal boundary; and

Not Applicable. The proposed site is located deep within the interior woods of private property. No public lands or municipal boundaries are close enough to be impacted. The greater subject [host] property enjoys riparian boundaries along Town Cove, but the Applicant's specific site is located several hundred feet upland where it will have no impact whatsoever on this body of water.

(g) the extent to which the development would require the provision of the following municipal or regional services: solid waste disposal, public water supplies, sewage treatment facilities, parking facilities and tourist services and public education facilities.

None of the above. The proposed unmanned, unoccupied, remotely monitored wireless telephone utility installation requires no water or sewer services; no waste will be generated on site; no nitrogen loading will occur because of the proposed installation; no parking is needed; no tourism will take place on site; and no public education facilities will be impacted in any manner.

The standards and criteria shall be reviewed at least every two years.

In light of the very "non-regional" impact installations such as this create, perhaps the Commission might consider amending the DRI Checklist to remove wireless facilities from future consideration.

B. Chapter 831, Section 14 – DRI Review

The commission shall permit the referring agency to grant a development permit for such development only if it finds after such public hearing that:

(a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section fifteen;

The Section 15 analysis follows, however, as can be seen here, there are no quantifiable detriments associated with the installation of this proposed unmanned, unoccupied, remotely monitored wireless telephone utility pole whereas there will be great benefits resulting from the provision of enhanced wireless connectivity to the subject area of West Tisbury currently suffering from inadequate coverage.

(b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of the county of Dukes County;

As enumerated in Section IV (infra) of this Statement, the Applicant's proposal will actually benefit and support many of the goals and objectives of the Island Plan as well as the Town of West Tisbury's Master Plan.

(c) the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation; and

The Applicant's proposal is entirely consistent with the Town of West Tisbury's Zoning Bylaws pertaining to wireless installations and will require no variances as proposed.

(d) if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the commission pursuant to section ten; and

Not Applicable. The subject site is not located within any district of critical planning concern.

(e) a proposed development which does not qualify as a development of regional impact under the standards and criteria approved pursuant to section seven may nevertheless be referred to the commission as a development of regional impact by a municipal agency in the town where the development is located, by the board of selectmen in any other municipality in the county of Dukes county or by the county commissioners.

Not Applicable.

C. Chapter 831, Section 15 – DRI Benefits vs. Detriments

In making a finding of the probable benefits and detriments of a proposed development, the commission shall not restrict its consideration to benefits and detriments within the municipality of the referring agency, but shall consider also the impact of the proposed development on the areas within other municipalities. Such probable benefits and detriments shall be considered even if they are indirect, intangible or not readily quantifiable. In evaluating the probable benefits and detriments of a proposed development of regional impact the commission shall consider, together with other relevant factors, whether:

(a) development at the proposed location is or is not essential or especially appropriate in view of the available alternatives on the island of Martha's Vineyard;

The proposed installation is absolutely essential to close the significant gaps in coverage that currently exist in the Applicant's FCC Licensed network in that area of West Tisbury. There are no available alternatives (in the area targeted for improved wireless services). There are no towers or other tall structures of sufficient height to accommodate the Applicant's antennas anywhere in that subject neighborhood. Because the purpose of the proposed installation is to close specific network gaps, only that section of West Tisbury can be considered, not the entire "island of Martha's Vineyard."

(b) development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development;

The Applicant is proposing the most favorable manner to provide its wireless services with the least amount of impact on the environment in that it is proposing a single, low pole structure located in a wooded area where minimal clearing will be needed to access and develop the site. The amount of environmental disturbance necessary to effectuate the proposed installation is insignificant to none.

*(c) the proposed development will favorably or adversely affect other persons and property, and if so, whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development **of the types proposed; (emphasis added)***

The "development" proposed is that of a single, unmanned, unoccupied, remotely monitored wireless telephone utility pole. Other "types" of such structures include guy-wired lattice towers such as those off North Road and Pennywise Path in Edgartown and well as the 120' conventional, non-camouflaged monopole tower that the Commission just recently approved in Oak Bluffs. Compared to those other *types* of towers, the Applicant's proposed 80' disguised and camouflaged monopine tower will have significantly less impact and hence is definitely more favorable.

(d) the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for island residents;

Not Applicable.

(e) the proposed development will favorably or adversely affect the provision of municipal services and the burden on taxpayers in making provision there for;

Not Applicable. No municipal services whatsoever are required to service the proposed unmanned, unoccupied, remotely monitored wireless telephone utility pole.

(f) the proposed development will use efficiently or burden unduly existing public facilities or those which are to be developed within the succeeding five years;

Not Applicable. The proposed unmanned, unoccupied, remotely monitored wireless telephone utility pole will have absolutely no impact, burden or affect on existing or future public facilities.

(g) the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan; and

As enumerated in Section IV of this Statement (infra) the proposed installation, which will improve wireless connectivity in certain areas of West Tisbury, will serve to benefit and further the goals and objectives of the Island Plan as well as the Master Plan of West Tisbury.

(h) the proposed development will further contravene land development objectives and policies developed by regional or state agencies.

Not Applicable. The proposed installation, that of an unmanned, unoccupied, remotely monitored wireless telephone utility pole located deep in the woods of its host parcel, will have no impact whatsoever on any land development objectives or policies. The proposed development is entirely consistent with the Town of West Tisbury Zoning Bylaws. It will require no variances to construct as proposed. And furthermore, the Applicant's Petition is consistent with the Special Permit provisions of M.G.L. c.40A the Telecommunications Act of 1996 governing such installations.

IV. The Island Plan & West Tisbury Master Plan

The Applicant's proposed development furthers certain goals and objectives of the Island Plan ("Plan") adopted by the Commission on December 10, 2009. (Citations that follow are from the Plan). The Plan, which is deemed "*both a blueprint and a call to action*" (p. 1-5), specifically enumerates the desire for "*a vital, balanced, local economy that is more self-reliant and more diverse.*" (p. 1-17). Reliable and uninterrupted telecommunications services are vital to a strong economy. There is scarcely a business in existence that does not rely on some sort of telecommunications and/or data transmissions in some manner. Whether to communicate with clients, customers, employees or suppliers, most businesses appreciate a reliable communications network. The Applicant's proposed installation will therefore be beneficial.

The Plan envisions "*attracting many young people to stay on the Island*" through an increase in "*knowledge-based jobs.*" (p. 1-18). Knowledge-based jobs can take on many forms, but most

would benefit from the availability of reliable high-speed telecommunications. Reliable communications benefit all residents, not just vacationers and second-home owners. This would support the Plan's assertion that "*a more diverse and stronger year-round economy would be good for the Island's residents.*" (p. 6-2).

The Plan mentions the "*need to concentrate efforts on building the **infrastructure and capacity** to export high-value services from the Island to other places*" (p. 6-4)(emphasis added); and that this might be accomplished through the "*development of more web-based jobs.*" (p. 6-4). Again, enhanced, high-speed telecommunications, with fast data-downloading abilities, benefit this objective. And this portion of such "infrastructure and capacity" is proposed to be constructed and maintained by the Applicant at no cost to the MVC or Island's residents.

The Plan cites to a statistic of "*roughly 3400 self-employed individuals*" on the Island (p. 6-5). In this day and age, when self-employed people rely so dearly on their ability to stay connected, it is hard to see the Applicant's proposed development as anything other than a valuable asset for those folks attempting to make a living on their own. Along those same lines, the Plan addresses those who "*work 'freelance' or for a remote employer via computer [and] telephone*" (p. 6-6); and the "*need to explore what **infrastructure and linkage improvements** could promote development of remote work professions*" (p. 6-6)(emphasis added). The facility being proposed by the Applicant will serve to provide infrastructure and linkage that will most definitely improve communications thereby supporting remote employees and freelance workers.

Remote employees, freelance workers, and many of the 3400 self-employed individuals use home offices rather than conventional office space. According to the Plan, "*[h]ome businesses play an important role in the Vineyard economy*" (p. 6-13). The provision of enhanced, high-speed wireless telecommunications will benefit home businesses, home offices, and self-employed individuals.

The foregoing are specific, Plan-related areas where the Applicant's proposed installation will benefit businesses and the local economy. What may not be as obvious is how the proposed facility will also benefit tourism and many of the Island's existing conventional summer-focused activities which are so vital to the Island's overall viability. Many of the people who vacation on the Island come from areas where enhanced wireless connectivity is already reliable, expected and, in fact, often taken for granted. Whether one intends to use a wireless device while on vacation is an option that should be left to the user; the decision should not be dictated by the existence of the infrastructure, or lack thereof. If one vacations on the Island and never turns their phone on, that is fine. But if a call needs to be made, especially one of an urgent nature, then service better be available. The Applicant's proposed installation will help this by filling significant gaps in coverage that currently exist in this section of West Tisbury.

The use is also consistent with the West Tisbury Master Plan because it supports uninterrupted wireless communications which benefit the public safety and convenience. Pages 60 and 61 of the West Tisbury Master Plan discuss Fire Protection and Emergency Services which stress the importance of a "*timely response to emergency calls*" as one of its objectives. Certainly allowing emergency calls to be made remotely, or during a power failure, when other forms of communications may be inoperable, benefits that objective.

The West Tisbury Master Plan also “*encourages economic activity that is in harmony with the rural character of the town.*” (See Goal, on page 32). Home Occupations are also encouraged as “*businesses [that] do not have to compete for expensive, commercially zoned land.*” (See Home Occupations on page 29). Wireless communications promote and assist the operation of Home Occupations by providing an efficient alternative to conventional land-line telecommunications. Should a business rely on wireless for its primary form of communications it is imperative that a reliable network exists. For the foregoing reasons the proposed installation will benefit economic activity and is indeed consistent with the goals and objectives of the West Tisbury Master Plan.

V. Conclusion

The installation proposed by Verizon Wireless is in harmony with both the Town of West Tisbury Zoning Bylaws governing such installations as well as the Martha’s Vineyard Commission’s approval criteria of Developments of Regional Impact. Additionally, the proposed installation will help to further certain goals, objectives and strategies proffered by the Commission’s Island Plan and West Tisbury Master Plan.

In addition to state, regional and local law, certain provisions of federal law are also applicable to Verizon Wireless' proposal in that Verizon Wireless is a federally licensed communications provider. Pursuant to the Telecommunications Act of 1996 ("TCA"), Verizon Wireless is afforded certain protections in the analysis of local land use issues which, in effect, act as a federal overlay over the local permitting review process. Denying the Applicant the right to construct this Facility where no existing facilities or suitable tall structures currently exist would “*have the effect of prohibiting*” its service in the area. Such prohibition would violate the protective provisions of the TCA relating to this application. (47 U.S.C. Section 322(c)(7)(B)(i)). The Applicant requires the requested location to close significant gaps in its wireless network that currently exist in West Tisbury.

The TCA also provides that local governments must treat competing wireless service providers equally and “*shall not unreasonably discriminate among providers of functionally equivalent services.*” This provision is particularly relevant to the petition at hand as Verizon Wireless is a functionally equivalent service provider that competes with other service providers (other carriers) that previously obtained similar approvals to construct tower facilities in West Tisbury. The Martha’s Vineyard Commission also just recently approved a much taller and more visually obtrusive tower (120’ conventional monopole) in Oak Bluffs. Verizon Wireless now respectfully wishes to be treated with the same consideration in the analysis of its proposal that the Commission has afforded its competitors, which should result in an approval, as was previously granted to others.

Notwithstanding the relatively modest height requested, it is undisputed that the facility will indeed be visible from certain perspectives. There is nothing that can be done to completely hide the fact that a tower will exist on site. Wireless towers of the 21st century have replaced the telephone poles of the 20th century as part of the new infrastructure of civilized societies. Indeed, the Courts have made note of the inevitable, thus permissible, sighting and view of such

structures when it said "[i]t would be a rare event to be able to buffer a communications tower so that it is not visible at all." OPM - USA - Inc v. Brevard County, 7 F. Supp. 2d 1316 (M.D. Fla. 1997).

The same court went on to point out "*towers cannot always be compatible with the character of the surrounding property. If this were so, all towers would be grouped together. However, in order to meet the increasing demand by consumers for wireless services, telecommunication towers have to be separated and located in areas in which they may not have been traditionally located such as residential, commercial and rural areas.*" Id. In the present petition, the Applicant is proposing a structure that is compatible with the surrounding area. Either the offered monopine or stealth pole proposed will blend in with the surrounding terrain and will not alter or impact the character of surrounding properties.

The Applicant is also proposing a facility that will provide a tremendous benefit to the Town of West Tisbury and the Island generally. Wireless communications are good for public safety and convenience, good for economic development, and good for the residential quality of life in a community. It is an undeniable fact, whether the Commission members are, personally, wireless users or not, that our society as a whole has become increasingly enamored with, and dependent upon, wireless devices and enhanced wireless connectivity. The Applicant is, in effect, proposing to enhance the Town's (and Island's) (wireless) utility infrastructure at no cost to the Town or to the Commission. The proposed Facility will be unmanned and unoccupied and will have no impact on traffic. Water and sewer services are not required. Nitrogen loading is a non-issue. No impact on the school system will result. There will be no nuisance or disturbance created by the proposed installation – the proposed pole is just an inanimate object used to support radio antennas. The use proposed is really more of a "non-use" in the conventional sense in that, once constructed, nothing will occur on site.

The Town of West Tisbury already has a very extensive Personal Wireless Service Facilities bylaw in effect. That Bylaw is not only more comprehensive than any other on the Island, but its thoroughness rivals or exceeds most wireless bylaws found anywhere in New England. The Town of West Tisbury currently hosts more wireless facilities than any other town on the Island. The West Tisbury ZBA, therefore, is more fluent and experienced in wireless installations and wireless permitting than any other board or commission on the Island. The West Tisbury ZBA has respectfully asked that the Commission remand this Application back to them for the final decision regarding the proposed facility's location, height and style. Verizon Wireless respectfully asks that the Commission honor that request in light of the proposed facility's de minimis to non-existent regional impact.

Accordingly, the Martha's Vineyard Commission can, in clear conscience, approve this Application knowing that it conforms in all respects with the DRI approval criteria and the purpose and intent of the specific wireless communications provisions enumerated in the West Tisbury Zoning Bylaws. Furthermore, the proposed use and requested permit are consistent with federal law governing such federally licensed telecommunications installations.

For all the foregoing reasons, the Applicant respectfully requests approval of the Application, Plans and supporting materials as submitted.