

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
ATTORNEYS AT LAW

WWW.PRICEMEESE.COM

TICE CORPORATE CENTER
50 TICE BOULEVARD
SUITE 380
WOODCLIFF LAKE, NEW JERSEY 07677
PHONE: 201-391-3737
FAX: 201-391-9360

115 EAST STEVENS AVE
SUITE 109
VALHALLA, NEW YORK 10595

89 HEADQUARTERS PLAZA NORTH
SUITE 1446
MORRISTOWN, NJ 07960

PLEASE RESPOND TO WOODCLIFF LAKE OFFICE

January 26, 2024

Via Federal Express & Email

Borough of Spring Lake
Attn.: Matthew Zahorsky, P.E., Zoning Officer
Dina M. Zahorsky, RMC
423 Warren Avenue
Spring Lake NJ 07762

**Re: Application by New York SMSA Limited Partnership *d/b/a* Verizon Wireless for the
Installation of Small Wireless Facilities within the Borough of Spring Lake**

Dear Mr. Zahorsky and Ms. Zahorsky:

This office represents New York SMSA Limited Partnership *d/b/a* Verizon Wireless ("Verizon Wireless") with respect to regulatory matters in the State of New Jersey. Please accept this letter, with attachments, as Verizon Wireless' request for the Borough's consent to place six (6) Small Wireless Facilities¹ ("SWF") within the municipal rights-of-way.² This application is being filed pursuant to the Telecommunications Act of 1996³ (as detailed below), N.J.S.A. 48:3-19, N.J.S.A. 27:16-16 and Section 330-69 *et seq.* of the Revised General Ordinances of the Borough of Spring Lake (the "Small Cell Code"). Because the Small Cell Code does not explicitly state to whom this application must be filed, please be advised that I am filing this application simultaneously with both the Borough of Spring Lake ("Borough") Zoning Officer and Clerk.

Furthermore, please be advised when the Borough is available to meet with Verizon Wireless to discuss the subject application. *See* Section 330-71(A) of the Small Cell Code. My understanding is that Verizon Wireless representatives had previously reached out to the Borough to discuss this application but that the Borough was not willing to engage in discussions at that time.

¹ The proposed SWFs meet the definition of a "Small Wireless Facility" as set forth in the applicable Federal Communications Commission Regulation at 47 CFR § 1.6002(I).

² As the term "municipal rights-of-way" are defined by Section 330-69 of the Small Cell Code.

³ Telecommunications Act of 1996, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 *et seq.* (hereinafter, the "Act" or the "TCA").

Enclosed herewith, and pursuant to Section 330-70 of the Small Cell Code, is a proposed right-of-way agreement between the Borough and Verizon Wireless. Pursuant to its authority under the TCA, in 2018 the Federal Communications Commission ("FCC") adopted a Third Report and Order that governs how municipalities are to process SWFs.⁴ The Third Report and Order provides to following presumptively reasonable limits for municipal fees for SWF applications:

- (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. *See* ¶ 79 of the Order.

Section 330-74(A) of the Small Cell Code contains a lawful one time fee amount but also imposes an escrow fee requirement that would likely exceed the FCC's presumptively reasonable amounts. The Small Cell Code also unlawfully imposes a \$350 recurring annual fee per SWF. In light of the Third Report and Order, the proposed right-of-way agreement limits the required fees to those which the FCC has determined are presumptively reasonable, including a \$270 annual recurring fee.⁵ I note that the insurance and indemnification requirements are taken directly from the Small Cell Code and are acceptable to Verizon Wireless. I respectfully ask that the Borough Council approve same.

Enclosed please find the following documents submitted in support of this request:

1. With respect to SWF entitled JS Spring Lake 01 SC-site located nearest to 2530 Prospect Avenue:
 - a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated October 19, 2023.
2. With respect to SWF entitled JS Spring Lake 02 SC-site located nearest to 2021 Ocean Avenue:
 - a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated October 19, 2023.
3. With respect to SWF entitled JS Spring Lake 05 SC-site located nearest to 1603 Ocean Avenue:

⁴ In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT 17-29, WC 17-84, FCC 18-133, 33 FCC Rcd. 9,088, Sept. 26, 2018. ("Third Report and Order"). The Third Report and Order became effective as of January 14, 2019. 83 Fed. Reg. 51,867 (2018). ("Third Report and Order").

⁵ Verizon Wireless agrees to pay the \$270 recurring fee, notwithstanding the fact that any such requirement is, in fact, not permitted under New Jersey law. *See* N.J.S.A. 54:30A-124(a) (Which provides that "no municipal . . . governmental agency may impose any fees, taxes, levies or assessments in the nature of a local franchise, right-of-way, or gross receipts fee, tax or levy or assessment against . . . telecommunications companies."

- a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated May 31, 2023.
4. With respect to SWF entitled JS Spring Lake 07 SC-site located nearest to 1111 Ocean Avenue;
 - a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated October 19, 2023.
5. With respect to SWF entitled JS Spring Lake 08 SC-site located nearest to 300 Ocean Avenue;
 - a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated October 19, 2023.
6. With respect to SWF entitled JS Spring Lake 09 SC-site located nearest to 803 Ocean Avenue;
 - a. Fourteen (14) copies of plans prepared by Scherer Design Group dated January 19, 2024; and
 - b. Fourteen (14) copies of survey prepared by RWC Surveying dated May 31, 2023.
7. Fourteen (14) copies of an application addendum;
8. Fourteen (14) copies of a Certification of Ryan Maybeck on behalf of Verizon Wireless;
9. Fourteen (14) copies of a Certification of Tim Schneider on behalf of SQF, LLC;
10. Fourteen (14) copies of a draft letter to Jersey Central Power and Light ("JCP&L") authorizing replacement of JCP&L light poles;
11. Check in the amount of \$5,100.00 which represents the application fee; and
12. Check in the amount of \$2,500.00 which represents the required escrow.

Please note that Verizon Wireless pays the above application fee/escrow amount under protest as same exceeds the FCC's presumptively reasonable fees discussed above. Pursuant to the Federal Communication Commission ("FCC") 2018 Third Report and Order⁶, the presumptively reasonable filing fee for this matter is \$6,000.00. Between the application fee and escrow fee, Verizon Wireless is required to submit \$7,600.00 with respect to this application. Consequently, Verizon Wireless objects and pays same under protest.

Please be advised that, pursuant to Section 330-72(D)(1) of the Small Cell Code, there are no existing poles within the Borough that Verizon will or may use to install the subject facilities. Consequently, no list or inventory of said poles has been provided.

As you may be aware, pursuant to the FCC's applicable shot clock, the Borough has ninety (90) days to act on this application. 47 CFR § 1.6003(c)(iii). Consequently, I respectfully ask that the Borough process this application in a timely manner.

⁶ See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket Nos. 17-79/17-84 at ¶79 (2018).

If you would like to schedule a discussion related to the subject application, or have any questions related to same, please contact the undersigned. Thank you.

Sincerely,
Edward W. Purcell

Edward W. Purcell, Esq.

cc: Ms. Kathryn Windsor, Verizon Wireless
Mr. Nate Slack, Scherer Design Group
Ms. Colleen Connolly, P.E., Scherer Design Group
Ms. Diane Enright, NB+C

SMALL WIRELESS COMMUNICATIONS FACILITIES RIGHT OF WAY AGREEMENT

THIS SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2024 ("Effective Date"), by and between Borough of Spring Lake ("Borough") with a business address of 423 Warren Avenue, Spring Lake, NJ 07762 and New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon") with a business address of 180 Washington Valley Road Bedminster, NJ 07921. Borough and Verizon are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

In consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Grant. Subject to Laws (defined in Section 12) and this Agreement, Borough grants Verizon, and its affiliates and related entities, a nonexclusive license to (i) access, use and occupy the Borough's ROW (as defined below) 7 days a week, 24 hours a day, for the installation, construction, use, maintenance, operation, repair, modification, replacement, upgrade and removal of equipment, technologies, and related fiber materials, including utility poles and other structures, reasonably necessary to construct, access, connect, operate and provide power to its Small Wireless Facilities ("SWF") that enables or facilitates wireless communications, as approved by the Borough pursuant to the Revised General Ordinances of the Borough of Spring Lake (the "Code") and as same may be hereafter amended. For purposes of this Agreement, the "ROW" means the public rights-of-way owned, managed or controlled by the Borough and also ROW owned, managed and controlled by the County of Monmouth for which the Borough's approval is required. The Borough expressly reserves for itself the rights and uses of the ROW for its public purposes and for the public's health, safety and general welfare.

2. Term of Agreement. The term of this Agreement shall be for fifteen (15) years beginning on the Effective Date (the "Term").

3. Fees. Verizon shall pay fees to the Borough, as set forth at Section 330-74(A) of the Borough Code, to the extent that the totality of one time application fees and escrow and recurring fees do not exceed the Federal Communication Commission's presumptively reasonable amounts as set forth in paragraph 79 of the third report and order entitled In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment. WT Docket Nos. 17-79/17-84 at ¶79 (2018). Consequently, notwithstanding Section 330-74(A) of the Borough Code, the annual ROW occupancy fee shall be \$270 per SWF per year.

4. ROW Permit.

(a). The siting of SWFs in the ROW shall conform to the standards set forth in Section 330-72 of the Borough Code or any waiver therefrom as required by federal or state law. Prior to installing any equipment or poles, Verizon shall file a Right of Way Permit Application with the Borough as required by the Section 330-71 of the Borough Code.

(b). Verizon shall pay for any electricity service for Small Wireless Facilities.

(c). The term of any ROW permit issued under this agreement shall be coterminous with this agreement. Notwithstanding same, a ROW permit may be terminated prior to the expiration of this agreement: (i) by Borough upon written notice to Verizon, if Verizon fails to pay any amount when due and such failure continues for 30 days after Verizon's receipt of notice; (ii) by either Party upon written notice to the other Party, if such other Party fails to comply with this Agreement and the party has failed to initiate a cure within 60 days after receipt of written notice; (iii) by Verizon at any time for any reason or no reason; (iv) by Verizon in the event that Verizon fails to timely obtain or maintain, or is not satisfied with any governmental approval applicable to Verizon; or (v) by the Borough due to an SWF removal or relocation request, pursuant to Section 7, below.

5. Interference.

(a). Verizon will not cause unreasonable interference to Borough traffic, public safety or other communications signal equipment in the ROW. Borough agrees that Borough will not cause interference to Verizon's SWFs or use of same.

(b). If interference occurs, the non-interfering Party shall notify the interfering Party via telephone to Verizon's Network Operations Center at (800) 621-2622 or to Borough at (732) 449-0800, and the parties shall work together to cure the interference as soon as commercially possible.

6. Maintenance, Repairs and Modifications.

(a). Equipment Maintenance, Repairs and Modifications. Verizon shall keep and maintain all SWF equipment in commercially reasonable condition in accordance with any applicable and non-discriminatory standard maintenance requirements of Borough. Verizon may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning SWF equipment at any time. Verizon may maintain, repair, replace and make modifications to any Small Wireless Facility that do not materially change the appearance of the SWF or exceed the structural capacity of the supporting structure without requiring additional applications, permits or other Borough approval. Verizon shall obtain required permits and prior approvals from the Borough for all other work, subject to the terms of this Agreement.

(b). Emergency Events. Borough reserves the right to take all reasonable actions in the case of an emergency to protect the public health and safety of its citizens, and to ensure the safe operation of its rights of way and public facilities. The Parties will use reasonable efforts to coordinate any emergency responses. In case of an emergency affecting the SWF or Verizon's use of same, Verizon may access the ROW and perform necessary repairs to its SWF and to the pole without first obtaining any otherwise necessary permit(s) or authorization(s). A temporary replacement pole may be installed in the ROW with the Borough's approval. All emergency work in the ROW shall be conducted in a safe and good workmanlike manner and in accordance with Laws. The Parties shall provide notice to the other Party as soon as practicable under the circumstances and shall coordinate emergency efforts.

(c). Emergency Contacts. Verizon's network operations center may be reached 24/7 at (800) 621-2622. Borough's 24/7 emergency contact information is _____. Each Party will maintain the emergency contact information current at all times with the other Party.

7. Removal and Relocation. No later than 180 days after receipt of written notice from Borough, Verizon shall remove or relocate the SWF due to: (i) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of Borough traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street or sale of Borough property. The Borough shall require removal or relocation only if necessary to accommodate the purposes described herein, which may include termination of an affected Site Permit. The Borough shall cooperate with Verizon and use best efforts to identify a suitable alternative site for any SWF relocation, which shall not require an additional permit application. If Verizon fails to remove or relocate SWF within 180 days, Borough shall be entitled to remove the SWF at Verizon's expense. The Parties shall cooperate to the extent possible to ensure continuity of service during any relocation. Borough shall use best efforts to provide a reasonably equivalent location that affords Verizon substantially similar engineering objectives.

8. Insurance & Indemnification.

(a). Verizon shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. Verizon may use any

combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non-contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by Verizon. Prior to the commencement of any work pursuant to this Agreement, Verizon shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Verizon within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of Verizon or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Agreement. Verizon shall notify the Borough within fifteen (15) days of receipt of any claim or demand of Verizon or its subcontractors, agents, employees, officer, servants, designees, guests, or invitees by any aggrieved party for any work or action made pursuant to this Agreement. The Borough shall be named as an additional insured. Verizon shall provide Borough with renewal insurance.

(e). Verizon, its successors, assigns, contractors, sub-contractors, agents, servants, officers, professionals, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Verizon's actions under this Agreement and costs in connection therewith except to the extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the County of Monmouth, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Verizon's activities pursuant to the rights granted in this Agreement. This indemnification shall also specifically include that the Borough retains the right to choose its own defense counsel regarding any action at law or equity pursuant to this section.

9. Assignment. Verizon may assign this Agreement, any Site License, and/or related permits to any entity which (i) is an affiliate, subsidiary or successor of Verizon; or (ii) that acquires all or substantially all of the Verizon's assets in the market. Verizon shall provide the Borough notice of any such assignment. Otherwise, Verizon shall not assign or transfer this Agreement or the rights granted hereunder without the Borough's consent, which shall not be unreasonably withheld, delayed or conditioned.

10. Notices. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

If to Borough:

Borough of Spring Lake
423 Warren Avenue, P.O. Box 638
Spring Lake, NJ 07762
Attn: Business Administrator

With a copy to:

Borough of Spring Lake
423 Warren Avenue, P.O. Box 638
Spring Lake, NJ 07762
Attn: Borough Clerk's Office

If to Verizon:

New York SMSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921

Price Meese, P.C.
50 Tice Boulevard, Suite 380
Woodcliff Lake NJ, 07667
Attn.: Edward W. Purcell, Esq.

Attention: Network Real Estate

Notices shall be deemed effective upon delivery or refusal of delivery.

11. Taxes. If Borough is required by Law to collect any federal state, or local tax, fee, or other governmental imposition (each, a "Tax") from Verizon with respect to the transactions contemplated by this Agreement, then Borough shall bill such Tax to Verizon in the manner and for the amount required by Law. Verizon shall pay such billed amount of Tax to Borough, and Borough shall remit such Tax to the appropriate tax authorities as required by Law. Verizon shall have no obligation to pay any Tax for which Verizon is exempt. Otherwise, Verizon shall be responsible for paying all Taxes that are the legal responsibility of Verizon under Laws.

12. Laws; Non-discrimination: Definition of Small Cell Facility. The Parties shall comply with applicable state and federal laws including, without limitation, regulations and judicial decisions, Federal Communications Commission regulations and order ("Law" or "Laws").

13. Unauthorized Installation. An unauthorized installation is the installation of equipment in the ROW for which Verizon did not obtain the Borough approvals required under this Agreement ("Unauthorized Installation"). If the Borough believes an Unauthorized Installation has occurred, the Borough shall issue written notice to Verizon, including details as to the exact location of the Unauthorized Installation. Unless Verizon, within thirty (30) days from receipt of such written notice, either: (a) submits an application to obtain the required approvals from the Borough for the Unauthorized Installation; or (b) provides evidence to the Borough showing that the Unauthorized Installation was previously approved, Verizon shall pay a fine to the Borough in the amount of \$200. In addition to the fine, Verizon shall remove the equipment within 60 days of the Borough's written notice.

14. Miscellaneous. This Agreement shall be governed by the laws of the State of New Jersey and all other applicable Laws. The provisions of this Agreement may be waived or modified only by written agreement signed by both parties. This Agreement may be executed in counterparts. A scanned or electronic copy shall have the same legal effect as an original signed version. If one or more provisions in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect and the Parties shall amend this Agreement, if needed to effect the original intent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors. Nothing in this Agreement shall be construed to grant Verizon an interest in the Borough's ROW or Borough assets located in the ROW. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control. As to the subject matter hereof, this Agreement is the complete agreement of the Parties. The Parties represent and warrant that the individuals executing this Agreement are duly authorized.

IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year listed above.

Borough of Spring Lake

New York SMSA Limited Partnership
d/b/a Verizon Wireless

(Signature)

Printed Name:
Title:
Date:

(Signature)

Printed Name:
Title:
Date:

BOROUGH OF SPRING LAKE
NEW YORK SMSA L.P., d/b/a VERIZON WIRELESS
APPLICATION FOR THE INSTALLATION OF SMALL WIRELESS FACILITIES
WITHIN THE BOROUGH OF SPRING LAKE
Various Locations within the Public Rights-Of-Way¹

Introduction

New York SMSA Limited Partnership, d/b/a Verizon Wireless ("Verizon Wireless" or the "Applicant") is licensed by the Federal Communications Commission ("FCC") to provide wireless communications services. In this application, Applicant seeks consent to install six (6) Small Wireless Facilities ("SWF")² within the public rights-of-way in the Borough of Spring Lake which will be owned by SQF, LLC and operated by Verizon Wireless. The purpose of this SWF application is to provide additional wireless capacity to residents and visitors in the Borough. Over the summer months there is an exponential increase of visitors to the Borough's beaches. That increased demand on Verizon Wireless' network far outstrips available capacity which, in turn, has inhibited the ability of residents and visitors to make and receive phone calls or text messages or use their devices to access the internet. This application will help ameliorate this serious wireless capacity problem.

This application is being filed pursuant to the Telecommunications Act of 1996,³ N.J.S.A. 48:3-19, N.J.S.A. 27:16-16, and Section 330-69 *et seq.* of the Revised General Ordinances of the Borough of Spring Lake (the "Small Cell Code"). As an initial matter, the Small Cell Code uses the term "utilities" or "utility" in place of the word "applicant" and does not define said terms. Because Verizon Wireless is not a public utility regulated by the New Jersey Board of Public

¹ As the term "municipal rights-of-way" are defined by Section 330-69 of the Small Cell Code.

² The proposed SWFs meet the definition of a "Small Wireless Facility" as set forth in the applicable Federal Communications Commission Regulation at 47 CFR § 1.6002(l).

³ Telecommunications Act of 1996, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 *et seq.* (hereinafter, the "Act" or the "TCA").

Utilities (“NJBP”)), it is not clear that the Small Cell Code applies to its installations. Having said that, and without waiving any objections to the contrary, Verizon Wireless has submitted this application in accordance with the requirements of the Wireless Code.

Please be advised that for the proposed sites along Ocean Avenue, which is a county roadway, Verizon Wireless has also filed for approvals from the County of Monmouth.

Section 330-71(F) of the Small Cell Code provides that no application will be approved unless same complies with the “Borough’s Wireless Siting Plan.” Said plan was not attached to the approved ordinance and Verizon Wireless has been informed that no such plan exists.⁴ Please be advised that such a plan, even if it did exist, would violate the applicable federal law. In September 2018, pursuant to the TCA, the FCC adopted a Declaratory Ruling and Third Report and Order entitled: “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” (the “Third Report and Order”)⁵, which prohibits unreasonable conditions for access to the public rights-of-way by wireless carriers. With respect to the Borough’s Wireless Siting Plan, the Third Report and Order provides that “local jurisdictions do not have the authority . . . to dictate the design of a provider’s network.” *See*, Third Report and Order at FN 84 (citing Bastian v. AT&T Wireless Services, 205 F.3d 983, 89 (7th Cir. 2000)). Because the “Borough’s Wireless Siting Plan” would effectively be dictating Verizon Wireless’ network, same would violate the Third Report and Order, and therefore be invalid. Notwithstanding the issues raised above, Verizon Wireless will request certain waivers from the

⁴ This conclusion is based upon the Borough’s October 2, 2023 response to an Open Public Records Act request for the Borough’s Wireless Siting Plan where Ms. Zahorski stated that “no responsive documents exist.”

⁵ *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-29, WC 17-84, FCC 18-133, 33 FCC Red. 9,088, Sept. 26, 2018. The Order became effective as of January 14, 2019. 83 Fed. Reg. 51,867 (2018) and was affirmed, in part, in *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), cert denied 141 S.Ct. 2855 (2021).

Small Cell Code.

Additionally, Verizon Wireless notes that, in order to replace certain Jersey Central Power & Light ("JCP&L") light poles, as proposed by the subject application, JCP&L requires written municipal approval for same. Attached to this application is a draft letter which, upon approval of the subject sites, Verizon Wireless requests that the Borough transmit to JCP&L.

This addendum has three parts. Section (A) will set forth the existing regulatory framework that governs how the Borough must process this application. Section (B) will provide an overview of the six (6) proposed SWF locations and their compliance with the Small Cell Code. Lastly, Section (C) will discuss the specific waivers requested from the Small Cell Code and the basis for same.

A. Regulatory Framework

In 1996, Congress enacted the TCA as a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans"⁶

Congress has declared that there is a need for wireless communication services, including "personal wireless services,"⁷ as set forth in the Act, and the rules, regulations and orders of the FCC promulgated pursuant thereto. To foster its pro-competitive, deregulatory national policy, Congress included provisions in the Act that encourage competition by restricting the regulation of the placement of personal wireless service facilities by State and local governments and instrumentalities thereof.

⁶ The Act, S. Rep. 104-230, at 1 (Feb. 1, 1996) (Conf. Report).

⁷ Personal wireless service facilities include "Small Wireless Facilities," as defined by the Federal Communications Commission ("FCC") in 47 C.F.R. § 1.6002(l).

Section 332(c)(7) of the Act imposes substantive and procedural limitations on State and local governments and instrumentalities thereof to ensure that the Act's pro-competitive goals are not frustrated, and it expressly preempts any action or inaction by State or local governments or their agents that effectively prohibits the provision of wireless services. Section 253 of the Act prohibits State or local authorities from erecting barriers that may prohibit or may have the effect of prohibiting the ability of any entity to provide telecommunications services, including taking action or inaction that results in an unreasonable delay in the deployment of the provider's facilities and provision of telecommunications services.⁸

Section 253(a) of the Act provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In its Third Report and Order, the FCC confirmed that the "materially inhibit" standard is the proper standard to be used to determine whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332 of the TCA.⁹ As further explained by the FCC,

a state or local government legal requirement will have the effect of prohibiting wireless telecommunications service if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing a new service or otherwise improving service capabilities.¹⁰

Significantly, in its Third Report and Order, the FCC also

confirm[ed] that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within

⁸ 47 U.S.C. § 253(a).

⁹ Third Report and Order at p. 4, ¶ 10.

¹⁰ Third Report and Order at p. 17, ¶ 37.

such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.¹¹

The FCC's "materially inhibit" standard was recently adopted by the United States Court of Appeals for the Third Circuit in Cellco Partnership v. White Deer Township Zoning Hearing Board.¹² Consequently, same is the law in New Jersey.

B. Site Locations.

1. 1. JS Spring Lake 01 SC

Proposed utility pole that includes a SWF.

Nearest to 2530 Prospect Avenue.

ROW: Borough.

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	Yes.
Maximum of 18" from curb line	Yes.
Replacing an existing pole	No. Waiver Requested.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	Yes.
Allows adequate room for the public to pass and re-pass across the right-of-way	
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties	Yes.
Pole, cabinet, or similar facilities placed within 150' of the beach	Yes (220' +/-)
Pole, cabinet, or similar facilities placed within 150' of any dunes	Yes (244' +/-)
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (390' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	Yes (390' +/-)
Each pole mounted cabinet does not exceed 16 cubic feet	Yes.
Each pole mounted antenna does not exceed 3	Yes.

¹¹ Third Report and Order at p. 9.134, ¶ 92.

¹² 74 F.4th 96 (2023).

cubic feet.	
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2. JS Spring Lake 02 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 2021 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	Yes.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	Yes (150' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (75' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (280' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes.

3. JS Spring Lake 05 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 1603 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the	No (44'-11"). Waiver Requested.

surrounding streetscape	
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (105' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (2' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (225' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes.

4. JS Spring Lake 07 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 1111 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in	Yes.

compatibly with its background and so as to minimize it's visual impact on surrounding properties	
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (125' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (20' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (220' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

5. JS Spring Lake 08 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 300 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (125' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed	No (30' +/-) Waiver Requested.

within 150' of any dunes	
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (270' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

6. JS Spring Lake 09 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 803 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (130' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (25' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (285' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

C. Requested Waivers.

As set forth above, Verizon Wireless requests waivers from certain aspects of the Small Cell Code. Certain waivers are required to comply with requirements of the County of Monmouth (the "County"). Other waivers are required for public safety reasons or because enforcement of same would "materially inhibit" the ability of Verizon Wireless to provide service.

With respect to JS Spring Lake 01 SC, which is located on a Borough road, a new pole is required because all existing utility poles in the area carry primary power and are not usable. By way of background, and under applicable utility regulations, Verizon Wireless cannot place its facilities on top of a utility pole that is carrying primary power. Consequently, without this waiver, Verizon Wireless would not be able to provide needed improvements to its service to this area of the Borough. Consequently, a new pole is needed, and a waiver is requested to permit same.

The balance of the SWFs are located along Ocean Avenue, which is a right-of-way owned and managed by the County of Monmouth (the "Ocean Avenue Sites"). Such rights-of-way are included in the definition of "municipal rights-of-way" as same is defined at Section 330-69 of the Small Cell Code. It should be noted that the Borough's consent is required for Verizon Wireless to use the County's rights-of-way. *See N.J.S.A. 27:16-6.*

For the Ocean Avenue Sites, Verizon Wireless requests a waiver from the Small Cell Ordinance's requirement that any pole be no farther than 18' away from the curb line. *See* Section 330-72(C) of the Borough Code. Verizon Wireless proposes that the Ocean Avenue Sites be located 6' away from the curb line because same is required by County Regulations. *See* Section 5.3-12 of the County of Monmouth Development Regulations, Volume II. Consequently, it is appropriate that the Borough waive this requirement.

Verizon Wireless also requests that the Borough waive its height requirements (35' or

110% of the surrounding streetscape) for the Ocean Avenue Sites. The proposed poles replace existing light poles owned and operated by JCP&L with the pole luminaires at 31'-6". In order to safely light the adjacent roadway, these luminaires must stay at a uniform height of 31'-6" and cannot be lowered. The inability of Verizon Wireless to lower the luminaires forces the height of the pole to be taller. This, taken with the fact that the Borough requires that three (3) carriers be able to collocate on the poles, means that the height of the pole can only be lowered to 44'-11".

Verizon Wireless also requests that the Borough waive its locational requirements for the Ocean Avenue Sites. The Small Cell Code prohibits the placement of SWFs within 150' of Ocean Avenue, the beach, dunes, or the high water line. *See* Section 330-72(H)(5). As referenced above, the proposed applications are meant to provide additional wireless capacity necessitated by increased demand on its network during the summer months. In order to fill this capacity "gap," Verizon Wireless must site these SWFs close to the beach where the increased usage takes place. According to the Small Cell Code, the closest location that Verizon Wireless could site the proposed facilities would be 150' west of Ocean Avenue. Unfortunately, these locations are located mid-block along the streets that are perpendicular to Ocean Avenue and the propagation of the wireless signal from the SWFs would be blocked by adjacent structures. Consequently, compliance with the Small Cell Code is not feasible because same would materially inhibit Verizon Wireless' ability to provide service to its customers. Consequently, Verizon Wireless requests that this siting requirement be waived for the Ocean Avenue Sites.

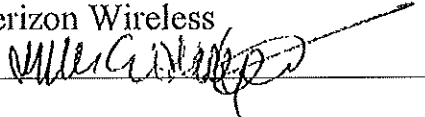
With respect to the above waiver requests, Verizon Wireless respectfully requests the opportunity to provide additional expert testimony on why the above waivers are necessary from an engineering, technical and/or radio-frequency perspective.

CERTIFICATION OF APPLICANT

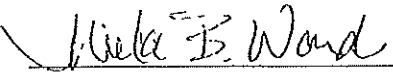
State of New Jersey) SS:
County of Somerset

Ryan Edward Maybeck, of full age being duly sworn according to law on his oath deposes and says that he is the Senior Manager of Real Estate and Regulatory of New York SMSA Limited Partnership d/b/a Verizon Wireless ("Applicant") and is authorized to sign this certification with respect to Applicant's proposal to place six (6) Small Wireless Facilities ("SWF") within the Borough of Spring Lake. With respect to same, Applicant shall market the availability of its approved SWFs to all major wireless carriers in the marketplace and will encourage, manage and coordinate the location and placement of any interested carrier's equipment on said SWFs.

I also authorize the law firm of Price Meese Shulman & D'Arminio, P.C. and the engineering firm of Scherer Design Group to speak with representatives of the Borough of Spring Lake and/or County of Monmouth with respect to the subject application.

New York SMSA Limited Partnership
d/b/a Verizon Wireless
By: 

Witnessed before me
this 28th day of November, 2023.


NOTARY



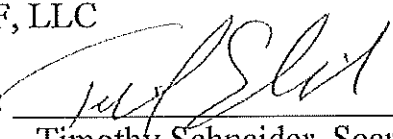
Mila B Ward
NOTARY PUBLIC
State of New Jersey
ID # 60165243
My Commission Expires
July 19, 2026

CERTIFICATION OF SQF, LLC

State of Maine)
County of Cumberland) SS:

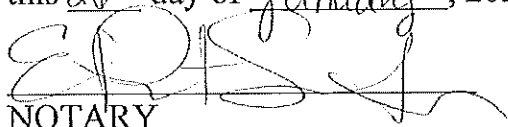
Tim Schneider, of full age being duly sworn according to law on his oath deposes and says that s/he is the Secretary of SQF, LLC ("SQF") which will own five (5) replacement light poles ("Light Poles") that are proposed to be placed within the Borough of Spring Lake ("Borough") as part of an application by New York SMSA Limited Partnership d/b/a *Verizon Wireless* to install five (5) Small Wireless Facilities ("SWFs") along Ocean Avenue. I am authorized to sign this certification with respect to same. SQF shall market the availability of said approved Light Poles to all major wireless carriers in the marketplace and will encourage, manage and coordinate the location and placement of any interested carrier's equipment on said Light Poles.

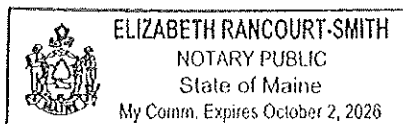
SQF, LLC

By: 

Timothy Schneider, Secretary

Witnessed before me
this 26th day of January, 2024.


NOTARY



[Municipal Letterhead]

[Date]

Jersey Central Power and Light Company
300 Madison Avenue
Morristown, NJ 07962-1911

Re: Request for Removal of JCP&L Light Standard

[Salutation]

Please accept this request and letter evidencing that the Borough of Spring Lake (County of Monmouth) requests the removal of a light fixtures and poles located identified on Exhibit "A." We understand that there will be costs associated with the removal of these facilities. All costs will be billed to New York SMSA Limited Partnership d/b/a Verizon Wireless ('Verizon').

Once removed, the fixture will be replaced by Verizon with a new light pole and fixture containing an integrated wireless node. The new light pole and fixture will be owned by others, not JCP&L, on a metered service. We understand that JCP&L will not be responsible for any liabilities after the removal of the pole and fixture as well as any future maintenance of the new pole, light and wireless installation as noted above.

All questions and invoices should be addressed to Verizon as follows:

Greg Talluto
5 East 1st Street
Clifton, NJ 07011
sbreslin@tilsontech.com

Sincerely,

[Name]

[Title]

[Phone]

ORIGIN ID: GMYA (201) 391-3737 JENNIFER GUTIERREZ 50 TICE BOULEVARD WOODCLIFF LAKE, NJ 07677 UNITED STATES US		SHIP DATE: 26 JAN 24 ACTWGT: 10.00 LB CAD: 253456487/INET4700
TO MATTHEW ZAHORSKY, ZONING OFFICER BOROUGH OF SPRING LAKE DINA ZAHORSKY, RMC 423 WARREN AVENUE SPRING LAKE NJ 07762		BILL SENDER
(201) 391-3737 INV: REF: 70001029966 PO: DEPT:		

TRK# 1 of 3 0201 7749 6590 9737 ## MASTER ## K1 MJXA NJ-US EWR 07762	MON - 29 JAN 10:30A PRIORITY OVERNIGHT
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J241024011001uv

583J3/B0149AE3

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ORIGIN ID:GMVA (201) 391-3737 JENNIFER GUTIERREZ 50 TICE BOULEVARD WOODCLIFF LAKE, NJ 07677 UNITED STATES US		SHIP DATE: 26JAN24 ACTWGT: 10.00 LB CAD: 253456487/IN/ET4700
TO MATTHEW ZAHORSKY, ZONING OFFICER BOROUGH OF SPRING LAKE DINA ZAHORSKY, RMC 423 WARREN AVENUE SPRING LAKE NJ 07762		BILL SENDER
PO: (201) 391-3737 INV: REF: 70001.029966 DEPT:	583J3/B0149AE3	

2 of 3 MPS# 7749 6590 9760 Mst# 7749 6590 9737 0263 0201	MON - 29 JAN 10:30A PRIORITY OVERNIGHT NJ-US 07762 EWR
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J241024011001ur

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ORIGIN ID:GMVA (201) 391-3737 JENNIFER GUTIERREZ 50 TICE BOULEVARD WOODCLIFF LAKE, NJ 07677 UNITED STATES US		SHIP DATE: 26JAN24 ACTWGT: 10.00 LB CAD: 253456487/INET4700
TO MATTHEW ZAHORSKY, ZONING OFFICER BOROUGH OF SPRING LAKE DINA ZAHORSKY, RMC 423 WARREN AVENUE SPRING LAKE NJ 07762		BILL SENDER
PO: (201) 391-3737 INV: REF: 70001.029966 DEPT:	583J3/B014/9AE3	

MP# 7749 6590 9895 Mstr# 7749 6590 9737 0263 0201	3 of 3 MON - 29 JAN 10:30A PRIORITY OVERNIGHT NJ-US 07762 K1 MJXA EWR
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Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

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BOROUGH OF SPRING LAKE
NEW YORK SMSA L.P., d/b/a VERIZON WIRELESS
APPLICATION FOR THE INSTALLATION OF SMALL WIRELESS FACILITIES
WITHIN THE BOROUGH OF SPRING LAKE
Various Locations within the Public Rights-Of-Way¹

Introduction

New York SMSA Limited Partnership, d/b/a Verizon Wireless (“Verizon Wireless” or the “Applicant”) is licensed by the Federal Communications Commission (“FCC”) to provide wireless communications services. In this application, Applicant seeks consent to install six (6) Small Wireless Facilities (“SWF”)² within the public rights-of-way in the Borough of Spring Lake which will be owned by SQF, LLC and operated by Verizon Wireless. The purpose of this SWF application is to provide additional wireless capacity to residents and visitors in the Borough. Over the summer months there is an exponential increase of visitors to the Borough’s beaches. That increased demand on Verizon Wireless’ network far outstrips available capacity which, in turn, has inhibited the ability of residents and visitors to make and receive phone calls or text messages or use their devices to access the internet. This application will help ameliorate this serious wireless capacity problem.

This application is being filed pursuant to the Telecommunications Act of 1996,³ N.J.S.A. 48:3-19, N.J.S.A. 27:16-16, and Section 330-69 *et seq.* of the Revised General Ordinances of the Borough of Spring Lake (the “Small Cell Code”). As an initial matter, the Small Cell Code uses the term “utilities” or “utility” in place of the word “applicant” and does not define said terms. Because Verizon Wireless is not a public utility regulated by the New Jersey Board of Public

¹ As the term “municipal rights-of-way” are defined by Section 330-69 of the Small Cell Code.

² The proposed SWFs meet the definition of a “Small Wireless Facility” as set forth in the applicable Federal Communications Commission Regulation at 47 CFR § 1.6002(l).

³ Telecommunications Act of 1996, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 *et seq.* (hereinafter, the “Act” or the “TCA”).

Small Cell Code.

Additionally, Verizon Wireless notes that, in order to replace certain Jersey Central Power & Light ("JCP&L) light poles, as proposed by the subject application, JCP&L requires written municipal approval for same. Attached to this application is a draft letter which, upon approval of the subject sites, Verizon Wireless requests that the Borough transmit to JCP&L.

This addendum has three parts. Section (A) will set forth the existing regulatory framework that governs how the Borough must process this application. Section (B) will provide an overview of the six (6) proposed SWF locations and their compliance with the Small Cell Code. Lastly, Section (C) will discuss the specific waivers requested from the Small Cell Code and the basis for same.

A. Regulatory Framework

In 1996, Congress enacted the TCA as a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans"⁶

Congress has declared that there is a need for wireless communication services, including "personal wireless services,"⁷ as set forth in the Act, and the rules, regulations and orders of the FCC promulgated pursuant thereto. To foster its pro-competitive, deregulatory national policy, Congress included provisions in the Act that encourage competition by restricting the regulation of the placement of personal wireless service facilities by State and local governments and instrumentalities thereof.

⁶ The Act, S. Rep. 104-230, at 1 (Feb. 1, 1996) (Conf. Report).

⁷ Personal wireless service facilities include "Small Wireless Facilities," as defined by the Federal Communications Commission ("FCC") in 47 C.F.R. § 1.6002(l).

Section 332(c)(7) of the Act imposes substantive and procedural limitations on State and local governments and instrumentalities thereof to ensure that the Act's pro-competitive goals are not frustrated, and it expressly preempts any action or inaction by State or local governments or their agents that effectively prohibits the provision of wireless services. Section 253 of the Act prohibits State or local authorities from erecting barriers that may prohibit or may have the effect of prohibiting the ability of any entity to provide telecommunications services, including taking action or inaction that results in an unreasonable delay in the deployment of the provider's facilities and provision of telecommunications services.⁸

Section 253(a) of the Act provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In its Third Report and Order, the FCC confirmed that the "materially inhibit" standard is the proper standard to be used to determine whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332 of the TCA.⁹ As further explained by the FCC,

a state or local government legal requirement will have the effect of prohibiting wireless telecommunications service if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing a new service or otherwise improving service capabilities.¹⁰

Significantly, in its Third Report and Order, the FCC also

confirm[ed] that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within

⁸ 47 U.S.C. § 253(a).

⁹ Third Report and Order at p. 4, ¶ 10.

¹⁰ Third Report and Order at p. 17, ¶ 37.

cubic feet.	
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2. JS Spring Lake 02 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 2021 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	Yes.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	Yes (150' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (75' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (280' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes.

3. JS Spring Lake 05 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 1603 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the	No (44'-11"). Waiver Requested.

surrounding streetscape	
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (105' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (2' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (225' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes.

4. JS Spring Lake 07 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 1111 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes.
Is finished and/or painted so as to blend in	Yes.

compatibly with its background and so as to minimize it's visual impact on surrounding properties	
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (125' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (20' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (220' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

5. JS Spring Lake 08 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 300 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested.
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (125' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed	No (30' +/-) Waiver Requested.

within 150' of any dunes	
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (270' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

6. JS Spring Lake 09 SC

Proposed Replacement Smart Pole that includes a SWF.

Nearest to 803 Ocean Avenue.

ROW: County

Small Cell Code Requirement	Compliance
Maximum of 35' or 110% of heights in the surrounding streetscape	No (44'-11"). Waiver Requested
Maximum of 18" from curb line	No (6'). Waiver Requested.
Replacing an existing pole	Yes.
Located within the municipal right-of-way	Yes.
At least 1500 linear feet away from any other existing or proposed SWF	Yes.
Does not inhibit sight triangles	N/A.
Allows adequate room for the public to pass and re-pass across the right-of-way	Yes
Is finished and/or painted so as to blend in compatibly with its background and so as to minimize it's visual impact on surrounding properties	Yes.
Can accommodate at least 3 carriers	Yes. The proposed pole can provide two (2) carriers with a full antenna array each and a third carrier with more limited antenna space.
Pole, cabinet, or similar facilities placed within 150' of the beach	No (130' +/-) Waiver Requested.
Pole, cabinet, or similar facilities placed within 150' of any dunes	No (25' +/-) Waiver Requested.
Pole, cabinet or similar facilities placed within 150' of mean high water line	Yes (285' +/-)
Pole cabinet or similar facilities placed within 150' of Ocean Avenue (Route 18)	No. Waiver Requested.
Each pole mounted cabinet does not exceed 16 cubic feet	N/A
Each pole mounted antenna does not exceed 3 cubic feet.	Yes

C. Requested Waivers.

As set forth above, Verizon Wireless requests waivers from certain aspects of the Small Cell Code. Certain waivers are required to comply with requirements of the County of Monmouth (the "County"). Other waivers are required for public safety reasons or because enforcement of same would "materially inhibit" the ability of Verizon Wireless to provide service.

With respect to JS Spring Lake 01 SC, which is located on a Borough road, a new pole is required because all existing utility poles in the area carry primary power and are not usable. By way of background, and under applicable utility regulations, Verizon Wireless cannot place its facilities on top of a utility pole that is carrying primary power. Consequently, without this waiver, Verizon Wireless would not be able to provide needed improvements to its service to this area of the Borough. Consequently, a new pole is needed, and a waiver is requested to permit same.

The balance of the SWFs are located along Ocean Avenue, which is a right-of-way owned and managed by the County of Monmouth (the "Ocean Avenue Sites"). Such rights-of-way are included in the definition of "municipal rights-of-way" as same is defined at Section 330-69 of the Small Cell Code. It should be noted that the Borough's consent is required for Verizon Wireless to use the County's rights-of-way. *See N.J.S.A. 27:16-6.*

For the Ocean Avenue Sites, Verizon Wireless requests a waiver from the Small Cell Ordinance's requirement that any pole be no farther than 18' away from the curb line. *See* Section 330-72(C) of the Borough Code. Verizon Wireless proposes that the Ocean Avenue Sites be located 6' away from the curb line because same is required by County Regulations. *See* Section 5.3-12 of the County of Monmouth Development Regulations, Volume II. Consequently, it is appropriate that the Borough waive this requirement.

Verizon Wireless also requests that the Borough waive its height requirements (35' or

110% of the surrounding streetscape) for the Ocean Avenue Sites. The proposed poles replace existing light poles owned and operated by JCP&L with the pole luminaires at 31'-6". In order to safely light the adjacent roadway, these luminaries must stay at a uniform height of 31'-6" and cannot be lowered. The inability of Verizon Wireless to lower the luminaires forces the height of the pole to be taller. This, taken with the fact that the Borough requires that three (3) carriers be able to collocate on the poles, means that the height of the pole can only be lowered to 44'-11".

Verizon Wireless also requests that the Borough waive its locational requirements for the Ocean Avenue Sites. The Small Cell Code prohibits the placement of SWFs within 150' of Ocean Avenue, the beach, dunes, or the high water line. *See* Section 330-72(H)(5). As referenced above, the proposed applications are meant to provide additional wireless capacity necessitated by increased demand on its network during the summer months. In order to fill this capacity "gap," Verizon Wireless must site these SWFs close to the beach where the increased usage takes place. According to the Small Cell Code, the closest location that Verizon Wireless could site the proposed facilities would be 150' west of Ocean Avenue. Unfortunately, these locations are located mid-block along the streets that are perpendicular to Ocean Avenue and the propagation of the wireless signal from the SWFs would be blocked by adjacent structures. Consequently, compliance with the Small Cell Code is not feasible because same would materially inhibit Verizon Wireless' ability to provide service to its customers. Consequently, Verizon Wireless requests that this siting requirement be waived for the Ocean Avenue Sites.

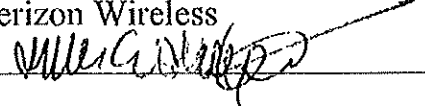
With respect to the above waiver requests, Verizon Wireless respectfully requests the opportunity to provide additional expert testimony on why the above waivers are necessary from an engineering, technical and/or radio-frequency perspective.

CERTIFICATION OF APPLICANT

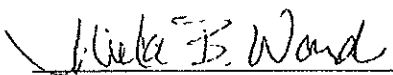
State of New Jersey) SS:
County of Somerset

Ryan Edward Maybeck, of full age being duly sworn according to law on his oath deposes and says that he is the Senior Manager of Real Estate and Regulatory of New York SMSA Limited Partnership d/b/a Verizon Wireless ("Applicant") and is authorized to sign this certification with respect to Applicant's proposal to place six (6) Small Wireless Facilities ("SWF") within the Borough of Spring Lake. With respect to same, Applicant shall market the availability of its approved SWFs to all major wireless carriers in the marketplace and will encourage, manage and coordinate the location and placement of any interested carrier's equipment on said SWFs.

I also authorize the law firm of Price Meese Shulman & D'Arminio, P.C. and the engineering firm of Scherer Design Group to speak with representatives of the Borough of Spring Lake and/or County of Monmouth with respect to the subject application.

New York SMSA Limited Partnership
d/b/a Verizon Wireless
By: 

Witnessed before me
this 28th day of November, 2023.



NOTARY



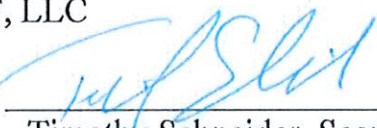
Mila B Ward
NOTARY PUBLIC
State of New Jersey
ID # 50165243
My Commission Expires
July 19, 2026

CERTIFICATION OF SQF, LLC

State of Maine)
County of Cumberland) SS:

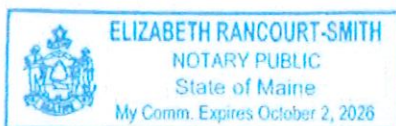
Tim Schneider, of full age being duly sworn according to law on his oath deposes and says that s/he is the Secretary of SQF, LLC ("SQF") which will own five (5) replacement light poles ("Light Poles") that are proposed to be placed within the Borough of Spring Lake ("Borough") as part of an application by New York SMSA Limited Partnership d/b/a *Verizon Wireless* to install five (5) Small Wireless Facilities ("SWFs") along Ocean Avenue. I am authorized to sign this certification with respect to same. SQF shall market the availability of said approved Light Poles to all major wireless carriers in the marketplace and will encourage, manage and coordinate the location and placement of any interested carrier's equipment on said Light Poles.

SQF, LLC

By: 
Timothy Schneider, Secretary

Witnessed before me
this 26th day of January, 2024.


NOTARY



[Municipal Letterhead]

[Date]

Jersey Central Power and Light Company
300 Madison Avenue
Morristown, NJ 07962-1911

Re: Request for Removal of JCP&L Light Standard

[Salutation]

Please accept this request and letter evidencing that the Borough of Spring Lake (County of Monmouth) requests the removal of a light fixtures and poles located identified on Exhibit "A." We understand that there will be costs associated with the removal of these facilities. All costs will be billed to New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon").

Once removed, the fixture will be replaced by Verizon with a new light pole and fixture containing an integrated wireless node. The new light pole and fixture will be owned by others, not JCP&L, on a metered service. We understand that JCP&L will not be responsible for any liabilities after the removal of the pole and fixture as well as any future maintenance of the new pole, light and wireless installation as noted above.

All questions and invoices should be addressed to Verizon as follows:

Greg Talluto
5 East 1st Street
Clifton, NJ 07011
sbreslin@tilsontech.com

Sincerely,

[Name]

[Title]

[Phone]

SMALL WIRELESS COMMUNICATIONS FACILITIES RIGHT OF WAY AGREEMENT

THIS SMALL WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2024 ("Effective Date"), by and between Borough of Spring Lake ("Borough") with a business address of 423 Warren Avenue, Spring Lake, NJ 07762 and New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon") with a business address of 180 Washington Valley Road Bedminster, NJ 07921. Borough and Verizon are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

In consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Grant. Subject to Laws (defined in Section 12) and this Agreement, Borough grants Verizon, and its affiliates and related entities, a nonexclusive license to (i) access, use and occupy the Borough's ROW (as defined below) 7 days a week, 24 hours a day, for the installation, construction, use, maintenance, operation, repair, modification, replacement, upgrade and removal of equipment, technologies, and related fiber materials, including utility poles and other structures, reasonably necessary to construct, access, connect, operate and provide power to its Small Wireless Facilities ("SWF") that enables or facilitates wireless communications, as approved by the Borough pursuant to the Revised General Ordinances of the Borough of Spring Lake (the "Code") and as same may be hereafter amended. For purposes of this Agreement, the "ROW" means the public rights-of-way owned, managed or controlled by the Borough and also ROW owned, managed and controlled by the County of Monmouth for which the Borough's approval is required. The Borough expressly reserves for itself the rights and uses of the ROW for its public purposes and for the public's health, safety and general welfare.

2. Term of Agreement. The term of this Agreement shall be for fifteen (15) years beginning on the Effective Date (the "Term").

3. Fees. Verizon shall pay fees to the Borough, as set forth at Section 330-74(A) of the Borough Code, to the extent that the totality of one time application fees and escrow and recurring fees do not exceed the Federal Communication Commission's presumptively reasonable amounts as set forth in paragraph 79 of the third report and order entitled In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment. WT Docket Nos. 17-79/17-84 at ¶79 (2018). Consequently, notwithstanding Section 330-74(A) of the Borough Code, the annual ROW occupancy fee shall be \$270 per SWF per year.

4. ROW Permit.

(a). The siting of SWFs in the ROW shall conform to the standards set forth in Section 330-72 of the Borough Code or any waiver therefrom as required by federal or state law. Prior to installing any equipment or poles, Verizon shall file a Right of Way Permit Application with the Borough as required by the Section 330-71 of the Borough Code.

(b). Verizon shall pay for any electricity service for Small Wireless Facilities.

(c). The term of any ROW permit issued under this agreement shall be coterminous with this agreement. Notwithstanding same, a ROW permit may be terminated prior to the expiration of this agreement: (i) by Borough upon written notice to Verizon, if Verizon fails to pay any amount when due and such failure continues for 30 days after Verizon's receipt of notice; (ii) by either Party upon written notice to the other Party, if such other Party fails to comply with this Agreement and the party has failed to initiate a cure within 60 days after receipt of written notice; (iii) by Verizon at any time for any reason or no reason; (iv) by Verizon in the event that Verizon fails to timely obtain or maintain, or is not satisfied with any governmental approval applicable to Verizon; or (v) by the Borough due to an SWF removal or relocation request, pursuant to Section 7, below.

5. Interference.

(a). Verizon will not cause unreasonable interference to Borough traffic, public safety or other communications signal equipment in the ROW. Borough agrees that Borough will not cause interference to Verizon's SWFs or use of same.

(b). If interference occurs, the non-interfering Party shall notify the interfering Party via telephone to Verizon's Network Operations Center at (800) 621-2622 or to Borough at (732) 449-0800, and the parties shall work together to cure the interference as soon as commercially possible.

6. Maintenance, Repairs and Modifications.

(a). Equipment Maintenance, Repairs and Modifications. Verizon shall keep and maintain all SWF equipment in commercially reasonable condition in accordance with any applicable and non-discriminatory standard maintenance requirements of Borough. Verizon may conduct testing and maintenance activities, and repair and replace damaged or malfunctioning SWF equipment at any time. Verizon may maintain, repair, replace and make modifications to any Small Wireless Facility that do not materially change the appearance of the SWF or exceed the structural capacity of the supporting structure without requiring additional applications, permits or other Borough approval. Verizon shall obtain required permits and prior approvals from the Borough for all other work, subject to the terms of this Agreement.

(b). Emergency Events. Borough reserves the right to take all reasonable actions in the case of an emergency to protect the public health and safety of its citizens, and to ensure the safe operation of its rights of way and public facilities. The Parties will use reasonable efforts to coordinate any emergency responses. In case of an emergency affecting the SWF or Verizon's use of same, Verizon may access the ROW and perform necessary repairs to its SWF and to the pole without first obtaining any otherwise necessary permit(s) or authorization(s). A temporary replacement pole may be installed in the ROW with the Borough's approval. All emergency work in the ROW shall be conducted in a safe and good workmanlike manner and in accordance with Laws. The Parties shall provide notice to the other Party as soon as practicable under the circumstances and shall coordinate emergency efforts.

(c). Emergency Contacts. Verizon's network operations center may be reached 24/7 at (800) 621-2622. Borough's 24/7 emergency contact information is _____. Each Party will maintain the emergency contact information current at all times with the other Party.

7. Removal and Relocation. No later than 180 days after receipt of written notice from Borough, Verizon shall remove or relocate the SWF due to: (i) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of Borough traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street or sale of Borough property. The Borough shall require removal or relocation only if necessary to accommodate the purposes described herein, which may include termination of an affected Site Permit. The Borough shall cooperate with Verizon and use best efforts to identify a suitable alternative site for any SWF relocation, which shall not require an additional permit application. If Verizon fails to remove or relocate SWF within 180 days, Borough shall be entitled to remove the SWF at Verizon's expense. The Parties shall cooperate to the extent possible to ensure continuity of service during any relocation. Borough shall use best efforts to provide a reasonably equivalent location that affords Verizon substantially similar engineering objectives.

8. Insurance & Indemnification.

(a). Verizon shall at all times maintain a commercial general liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy in the amount of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. Verizon may use any

combination of primary and excess insurance to meet the total limits required. Such coverage shall be primary, non-contributory and shall contain a waiver of subrogation. Evidence of same shall be provided prior to the commencement of any work of any kind by Verizon. Prior to the commencement of any work pursuant to this Agreement, Verizon shall file with the Borough, a Certificate(s) of Insurance with any required endorsements evidencing the coverage provided by said liability and excess liability policies. The Borough shall notify Verizon within fifteen (15) days after the receipt of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of Verizon or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Agreement. Verizon shall notify the Borough within fifteen (15) days of receipt of any claim or demand of Verizon or its subcontractors, agents, employees, officer, servants, designees, guests, or invitees by any aggrieved party for any work or action made pursuant to this Agreement. The Borough shall be named as an additional insured. Verizon shall provide Borough with renewal insurance.

(e). Verizon, its successors, assigns, contractors, sub-contractors, agents, servants, officers, professionals, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, or related judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Verizon's actions under this Agreement and costs in connection therewith except to the extent that such claims, demands, suits, or actions are the result of the negligence or willful misconduct of the County of Monmouth, its successors, assigns, elected officials, officers, employees, servants, contractors, designees or invitees. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys' fees, court costs and any other expenses that may be incurred by the Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Verizon's activities pursuant to the rights granted in this Agreement. This indemnification shall also specifically include that the Borough retains the right to choose its own defense counsel regarding any action at law or equity pursuant to this section.

9. Assignment. Verizon may assign this Agreement, any Site License, and/or related permits to any entity which (i) is an affiliate, subsidiary or successor of Verizon; or (ii) that acquires all or substantially all of the Verizon's assets in the market. Verizon shall provide the Borough notice of any such assignment. Otherwise, Verizon shall not assign or transfer this Agreement or the rights granted hereunder without the Borough's consent, which shall not be unreasonably withheld, delayed or conditioned.

10. Notices. Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either party notifies the other of a change of address, notices shall be delivered as follows:

If to Borough:

Borough of Spring Lake
423 Warren Avenue, P.O. Box 638
Spring Lake, NJ 07762
Attn: Business Administrator

With a copy to:

Borough of Spring Lake
423 Warren Avenue, P.O. Box 638
Spring Lake, NJ 07762
Attn: Borough Clerk's Office

If to Verizon:

New York SMSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921

Price Meese, P.C.
50 Tice Boulevard, Suite 380
Woodcliff Lake NJ, 07667
Attn.: Edward W. Purcell, Esq.

Notices shall be deemed effective upon delivery or refusal of delivery.

11. Taxes. If Borough is required by Law to collect any federal state, or local tax, fee, or other governmental imposition (each, a "Tax") from Verizon with respect to the transactions contemplated by this Agreement, then Borough shall bill such Tax to Verizon in the manner and for the amount required by Law. Verizon shall pay such billed amount of Tax to Borough, and Borough shall remit such Tax to the appropriate tax authorities as required by Law. Verizon shall have no obligation to pay any Tax for which Verizon is exempt. Otherwise, Verizon shall be responsible for paying all Taxes that are the legal responsibility of Verizon under Laws.

12. Laws; Non-discrimination: Definition of Small Cell Facility. The Parties shall comply with applicable state and federal laws including, without limitation, regulations and judicial decisions, Federal Communications Commission regulations and order ("Law" or "Laws").

13. Unauthorized Installation. An unauthorized installation is the installation of equipment in the ROW for which Verizon did not obtain the Borough approvals required under this Agreement ("Unauthorized Installation"). If the Borough believes an Unauthorized Installation has occurred, the Borough shall issue written notice to Verizon, including details as to the exact location of the Unauthorized Installation. Unless Verizon, within thirty (30) days from receipt of such written notice, either: (a) submits an application to obtain the required approvals from the Borough for the Unauthorized Installation; or (b) provides evidence to the Borough showing that the Unauthorized Installation was previously approved, Verizon shall pay a fine to the Borough in the amount of \$200. In addition to the fine, Verizon shall remove the equipment within 60 days of the Borough's written notice.

14. Miscellaneous. This Agreement shall be governed by the laws of the State of New Jersey and all other applicable Laws. The provisions of this Agreement may be waived or modified only by written agreement signed by both parties. This Agreement may be executed in counterparts. A scanned or electronic copy shall have the same legal effect as an original signed version. If one or more provisions in this Agreement is found to be invalid, illegal or otherwise unenforceable, all other provisions will remain unaffected and shall be deemed to be in full force and effect and the Parties shall amend this Agreement, if needed to effect the original intent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors. Nothing in this Agreement shall be construed to grant Verizon an interest in the Borough's ROW or Borough assets located in the ROW. Neither Party shall be responsible for delays in the performance of its obligations caused by events beyond the Party's reasonable control. As to the subject matter hereof, this Agreement is the complete agreement of the Parties. The Parties represent and warrant that the individuals executing this Agreement are duly authorized.

IN WITNESS WHEREOF, the Parties have executed, or caused their respective duly authorized representatives to execute, this Agreement as of the day and year listed above.

Borough of Spring Lake

New York SMSA Limited Partnership
d/b/a Verizon Wireless

(Signature)

(Signature)

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

RESOLUTION NO: _____

RESOLUTION OF THE [BOROUGH/TOWNSHIP/CITY] OF [INSERT NAME OF MUNICIPALITY], COUNTY OF [INSERT NAME OF COUNTY], OPPOSING ASSEMBLY BILL NO. 4/SENATE BILL NO. 50, WHICH PROPOSES TO OVERHALL THE FAIR HOUSING ACT ("FHA") IN A WAY THAT IMPOSES UNREALISTIC OBLIGATIONS WITH UNREALISTIC DEADLINES BASED UPON ONEROUS STANDARDS.

Mount Laurel II

WHEREAS, in 1983, the Supreme Court decided a landmark case, commonly referred to as Mount Laurel II; and

WHEREAS, Mount Laurel II and its progeny generated substantial litigation culminating in the enactment of the New Jersey Fair Housing Act in 1985 ("FHA"); and

The Fair Housing Act of 1985

WHEREAS, the Legislature enacted the FHA to restore home rule, to bring the fair share numbers back to reality and to reduce the burdens of Mount Laurel compliance; and

WHEREAS, more specifically, the FHA sought *to restore home rule* by imposing a moratorium on the builder's remedy and by providing an administrative process that municipalities could voluntarily pursue wherein they would be insulated from developers seeking builder's remedies to try to compel them to capitulate their zoning demands; and

WHEREAS, the FHA sought *to bring the fair share numbers back to reality* by among other things defining the prospective need as the need "based on development and growth which is reasonably likely to occur" and by calling for the fair share to be adjusted to a number lower than the fair share formula generated if the municipality lacked sufficient land to satisfy the obligation generated by the fair share formula; and

WHEREAS, the FHA sought *to reduce the burdens on municipalities* by prohibiting any requirement for municipalities to expend their own resources to comply; and

The New Jersey Council on Affordable Housing

WHEREAS, the FHA created COAH and conferred "primary jurisdiction" on COAH to administer the FHA and to implement the affordable housing policies of our State; and

WHEREAS, all acknowledge -- even Fair Share Housing Center ("FSHC") -- that COAH functioned just fine in Rounds 1 and 2; and

WHEREAS, COAH did not adopt valid regulations for Round 3 despite multiple efforts to do so and made no efforts to cure the bottleneck the third time COAH voted 3-3 on Round 3 regulations; and

Mount Laurel IV

WHEREAS, in 2015, the Supreme Court issued a decision, commonly referred to as Mount Laurel IV, in response to a motion to transfer the responsibilities of COAH back to the courts in light of COAH's failure to adopt valid regulations; and

WHEREAS, in Mount Laurel IV, the Supreme Court returned the task of implementing the doctrine back to the Courts because COAH had failed to do its job and made no effort to cure the roadblock when it voted 3-3 on the third iteration of Round 3 regulations; and

WHEREAS, notwithstanding the foregoing, the Court emphasized that it preferred the administrative remedy created by the FHA to a judicial one and hoped that COAH would be effective so that towns could comply once again through the administrative process created by the FHA; and

WHEREAS, the Court process proved to be far more expensive than the COAH process and was ill-suited for resolving comprehensive planning disputes over affordable housing matters; and

WHEREAS, the Round 3 process was a disaster with judges pressing municipalities to comply before even establishing the obligations with which they must comply; and

WHEREAS, ultimately, on March 8, 2018, after a 41-day trial in Mercer County, Judge Jacobson issued an opinion in which she set forth a fair share methodology; and

WHEREAS, in that trial and in various other instances throughout the state, FSHC took the position that the Statewide obligation should exceed 300,000 to be addressed between 2015 and 2025; and

WHEREAS, municipalities, through Dr. Robert Powell, presented evidence that, in a best case scenario, the State could only absorb less than 40,000 affordable units and thus argued that FSHC's calculations was not grounded in reality whatsoever; and

WHEREAS, the Court, having been constrained by the Supreme Court to prescriptively utilize a formula from 1993, ultimately concluded that the Statewide obligation to be constructed between 2015-2025 was roughly 153,000 units; and

The 354 Settlements with FSHC

WHEREAS, FSHC reports that it entered 354 settlements in Round 3; and

WHEREAS, many municipalities are reeling under the burden of satisfying their obligations under those settlements entered between 2015 and 2023; and

WHEREAS, many of those Round 3 settlements will result in development during the Round 4 period; and

WHEREAS, Round 4 is set to begin on July 1, 2025 and there is no comprehensive analysis on the impacts of the 354 Round 3 settlements and over-zoning described above; and

WHEREAS, indeed, the A4/S50 Bill fails to consider the impact from affordable housing projects that were approved during the Third Round, but are still not yet under construction, as said projects, as well as additional future projects, will impact legitimate public concerns like infrastructure, the environment, schools, traffic, parking and open space; and

WHEREAS, the Round 3 process destroyed the balance achieved by the Fair Housing Act in 1985; and

A-4/S-50

WHEREAS, on December 19, 2023, against the above backdrop, the Housing Committee of the Assembly (a) unveiled the Legislation (A-4) – a detailed 69-page bill that the Chairwoman of the Housing Committee announced had been worked on for a long time; and (b) scheduled the bill for a vote at a hearing scheduled less than 24 hours later; and

WHEREAS, on December 19, 2023, the Administrative Office of the Courts wrote to the Legislature and made clear that it could not structure the bill in the manner set forth in the proposed legislation; and

WHEREAS, notwithstanding the foregoing, on December 20, 2023, the Housing Committee voted the bill out of the Committee and announced that the bill needed to be ready for signing by the Governor before the end of the lame duck session on January 8, 2024; and

WHEREAS, the perception that the Legislative designed was to adopt the bill before the public had an opportunity to review it and provide meaningful comment was as real as it was unmistakable; and

WHEREAS, consequently, the Legislature did not ram the bill through in the lame duck session; and

WHEREAS, instead, on January 29, 2024, the Housing Committee of the Assembly met to consider a new version of A-4 and voted to release it out of the Committee; and

WHEREAS, on February 8, 2024, as a result of comments, letters and resolutions challenging this new version of A-4, the Appropriations Committee of the Assembly announced a number of changes to the Bill; and

WHEREAS, one witness likened the summary presented to the public at the February 8, 2024 Appropriations meeting to that of an auctioneer; and

WHEREAS, the Appropriations Committee voted the bill out of the Committee at its February 8, 2024 meeting before the public had an opportunity to even see the changes, much less process their significance and comment on them; and

WHEREAS, the bill has been improved marginally as it has evolved from its initial version in December of 2023 to the current version voted out of the Appropriations Committee of the Assembly on February 8, 2024; and

WHEREAS, despite elimination of just some of the gross excesses of the prior version of the bill, the current bill released after the February 8, 2024 Appropriations Committee meeting is still severely flawed; and

WHEREAS, the Bill still creates a judicial entity made up of 3-7 retired Mount Laurel judges called “The Program”, which, unlike COAH, is not comprised of an equal number of municipal and housing representatives, and is not made up of an equal number of Republicans and Democrats, thereby depriving the citizens of our State of the carefully crafted COAH Board that included a diversity of interests and that was the centerpiece of the FHA adopted in 1985; and

WHEREAS, the Bill still does not require the promulgation of affordable housing obligations, or the adoption of substantive regulations, in a way that utilizes an open and transparent process that COAH used and that gave all interested parties an opportunity to comment and receive COAH’s response to their comments; and

WHEREAS, as detailed below, the bill creates a patently unreasonable responsibility on municipalities by imposing an obligation on them to create a realistic opportunity for satisfaction of a fair share that is itself unrealistic; and

WHEREAS, the current version still details the methodology to be used for determining the fair share numbers of municipalities in Round 4 and in subsequent rounds; and

WHEREAS, the current version still presumes that 40 percent of all new households will qualify as low or moderate; and

WHEREAS, the current version still calls for the determination of the prospective need by subtracting the number of households reported in the 2010 Decennial Census from the number of households reported in the 2020 Decennial Census and multiplying that figure by 40 percent; and

WHEREAS, we calculate the statewide need number to be 84,690 based upon the formula set forth in the bill; and

WHEREAS, the current version of the Bill calls for 84,690 to be adjusted by the number of conversions and demolitions; and

WHEREAS, the statewide fair share would be increased from 84,690 to 96,780, if we assume the same number of demolitions and conversions used by Judge Jacobson in her formula for Round 3 that will apply in Round 4; and

WHEREAS, we can estimate the obligation of each municipality if we assume that the same percentage of the regional need in Round 3 for each municipality applies in Round 4; and

WHEREAS, we have widely distributed our estimates and invited input after acknowledging that we have done the best we can to formulate estimates in very limited time; and

WHEREAS, other than an analysis of the allocation factors by an expert for the American Planning Association (Creigh Rahenkamp) who identified problems with the allocation factors, nobody has accepted our invitation to review and comment on our rough estimates; and

WHEREAS, to the contrary, the Executive Director of Fair Share Housing Center testified that he did not have a calculation of the fair share numbers; and

WHEREAS, more importantly, no committee of the Assembly or Senate has identified the fair share obligations municipalities should expect based upon the formula set forth in the bill; and

WHEREAS, the 96,780 fair share number estimated for Round 4 compares to the roughly 211,000 COs issued between 2010 and 2020; and

WHEREAS, the 96,780 fair share number divided by 211,000 COs equals roughly 46 percent (45.867 percent to be more precise); and

WHEREAS, all municipalities should be able to cure any violations of the prohibition against exclusionary zoning with inclusionary zoning; and

WHEREAS, traditional inclusionary zoning ordinances generally require no more than 20 percent of the units to be affordable; and

WHEREAS, it is mathematically impossible to satisfy a 46 percent problem with a 20 percent solution and, therefore, the number generated by the statutory formula is patently excessive; and

WHEREAS, while this mathematical error conceptually may have existed at COAH, COAH utilized its discretion to reduce the statewide number to roughly 5,000 units per year in Rounds 1-2 (or lower for prospective need in its attempted regulations in 2014); and

WHEREAS, in addition, COAH's Round 2 regulations had flexible standards, Regional Contribution Agreements (RCAs), an achievable bonus structure, waivers and other flexible standards to further mitigate the problem; and

WHEREAS, had COAH not mitigated the problem, it is likely that the regulations would have been challenged by municipalities; and

WHEREAS, as detailed below, the Bill still fails to account for the enormous burdens on municipalities to comply with their Round 3 obligations before imposing very substantial additional burdens on those 354 municipalities for Round 4; and

WHEREAS, a representative of FSHC testified that it has entered into 354 settlements and that it would furnish those settlements to the Housing Committee, which it has failed to do; and

WHEREAS, we have pressed FSHC to advise how much development will take place in Round 4 as a result of municipalities implementing the 354 settlements reached in Round 3; and

WHEREAS, Adam Gordon on behalf of FSHC has indicated he doesn't know the answer to this question and no committee of the Assembly or Senate has even hinted at what the answer might be; and

WHEREAS, the Bill requires municipalities to create a realistic opportunity for satisfaction of a fair share without taking into account how many affordable units can realistically be achieved through traditional inclusionary zoning (where generally one out of every five units must be affordable); and

WHEREAS, we also sought to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning by urging the Legislature to do a market study since the strength of the housing market will determine the number of market units that can reasonably be anticipated that are essential to generating one affordable unit for every four market units constructed; and

WHEREAS, the Legislature has not furnished a market study in response to our repeated emphasis on the need for one to ascertain how many affordable units could be realistically achieved through traditional inclusionary zoning; and

WHEREAS, as explained below, the bill dilutes the protections to which a municipality is currently entitled as it seeks to comply voluntarily and even after it secures approval of its affordable housing plan; and

WHEREAS, current laws preserve a municipality's immunity in the absence of proof that the municipality is "determined to be constitutionally noncompliant", the proposed bill does not give municipalities seeking to comply voluntarily the same measure of protection the Supreme Court deemed appropriate; and

WHEREAS A4/S50 subjects municipalities to litigation not only as they seek approval of their Housing Element and Fair Share Plans, but also even after they secure approval of those plans; and

WHEREAS, more specifically, A4/S50 provides municipalities a "compliance certification" if the municipality secures approval of its affordable housing plan; however, that certification does not prevent an interested party from "alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element,

or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine”; and

WHEREAS, the Bill suffers from a myriad of additional flaws; and

WHEREAS, under current laws, a municipality would have a right to rely on the fair share number that COAH provides; however, under the new bill a municipality would only have a presumption of validity that the number the DCA provides to the municipality is appropriate and FSHC, a deep pocketed developer or any other interested party could seek to overcome that presumption through litigation; and

WHEREAS, the A4/S50 Bill replaces a straightforward system by which a municipality could secure bonus credits up to a 25 percent cap with a highly complicated system for securing bonuses with many conditions attached to various forms of bonus.; and

WHEREAS, the Legislature previously capped the fair share of any municipality down to 1,000 in recognition that any obligation above 1,000 would be “onerous”; A4/S50 applies the 1,000-unit cap only to a component of the municipality’s fair share -- the prospective need – and authorizes the imposition of an obligation that is onerous; and

WHEREAS, the A4/S50 Bill creates unfair requirements and ambiguity when it comes to the Vacant Land Adjustment process, which could lead to municipalities that lack sufficient vacant land being required to produce more affordable housing units than is practical; and

WHEREAS, the A4/S50 Bill includes many other provisions and changes to the FHA that are impractical and devoid of any consideration of the burdens created by the statute; and

WHEREAS, as a result of the facts set forth above, a bill that boasts of its effectiveness in reducing costs and litigation will clearly have the exact opposite effect; and

WHEREAS, in addition to all the concerns expressed above, a bill that so radically changes the affordable housing laws of our state still needs considerable work; and

WHEREAS, indeed, as the following facts demonstrate, the Legislature has yet to do the most fundamental due diligence before enacting a statute with such broad ramifications;

1. The Legislature has not and cannot inform the public of the fair share obligations the bill, if enacted, would impose on the public;
2. The Legislature has not and cannot inform the public of the obligations that municipalities will satisfy in Round 4 from the 354 settlements achieved in Round 3 before heaping substantial additional burdens on them for Round 4;
3. The Legislature has not and cannot inform the public of the number of affordable units that can realistically be achieved through traditional inclusionary zoning while imposing obligations on municipalities to create a realistic opportunity for a fair share that far

exceeds any number a municipality can realistically achieve through inclusionary zoning;
and

WHEREAS, as a result of the pronounced lack of due diligence, the bill will likely force taxes to increase dramatically and will foster serious overdevelopment creating unreasonable burdens on our schools, public services, roads, sewer and water infrastructure; and

WHEREAS, the Legislature clearly can and should upgrade the affordable housing policies of our State; however, the current Version of A4 is not the answer and the most fundamental diligence can and should be exercised before adopting such a bill.

NOW, THEREFORE, BE IT RESOLVED, that for all of the above reasons, the [Council/Committee/Board of Commissioners] of [Insert Name Of Municipality and if they are a Borough, Township or City], objects to and opposes Assembly Bill No. 4/Senate Bill No. 50, and requests that the bill be tabled, re-written and re-introduced in way that imposes achievable obligations and facilitates the ability of the municipality to satisfy its obligations.

A certified copy of this resolution shall be sent to the Legislators in the State Assembly and Senate representing our District immediately.