

**CENTER FOR MUNICIPAL SOLUTIONS**

**70 CAMBRIDGE DRIVE**

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December 29, 2017 (via e-mail and regular mail)

Zoning Board of Appeals/Planning Board

Village of Nelsonville, New York

258 Main Street

Nelsonville, NY 10516

Dear Board Members:

I have been retained by the Philipstown Cell Solutions Group to provide documentation to both of your Boards to assist so that you are able to make an informed decision on the application for a proposed new tower at15 Rockledge Road. I am one of the owners for the Center of Municipal Solutions (CMS). I have testified in front of hundreds of Boards across the Country as an expert in the siting of Wireless Facilities. My resume is attached at the end of this document. I have reviewed all of the documents provided on the Nelsonville web site as well as all documents provided by Ronald Graiff and offer the following comments:

THE APPLICANTS HAVE FAILED TO DEMONSTRATE THAT THEY HAVE A SIGNIFICANT GAP IN COVERAGE IN NELSONVILLE.

No significant gap in coverage has been provided by either carrier as no 850 MHz maps (original and ubiquitous cellular frequency band which can handle text and data) have been provided by either carrier. If the carriers have coverage in Nelsonville in the 850 MHz band, there is no “significant gap in coverage”. Maps of the 850 MHZ band need to be provided by both AT&T and Verizon, for without these maps there is no way for the Board(s) to determine how much service they presently have in the Village and if there is a significant gap in service. In his December 9, 2017 report on page 2 Mr. Graiff states that the request for 850 MHz maps is “somewhat flawed for two reasons: (1) the carriers are no longer actively utilizing that frequency for new builds (there will be no 850 MHz transmitters at the proposed site); (2) the science of radio frequency propagation is such that a higher frequency, i.e. 850 MHz will have poorer coverage than the lower frequency, i.e. 700 MHz. Indeed if such 850 MHz propagation plots were provided, the gaps in coverage might very well be even larger.” Mr. Graiff’s reasons are not sound and he apparently has not verified his assumptions. Firstly, carriers are utilizing 850 MHz for new builds in areas where they do not presently have reliable 850 MHz service. Secondly, in that 700 MHz service has only been available to the carriers for a few years, their 850 MHz service is operating at more locations, thus providing better coverage.

No drive test data has been submitted by either carrier. Drive test data shows the actual service level at locations throughout the Village. Mr. Graiff in his December 9, 2017 submittal states “Such drive tests are *nearly* the “gold standard” for determining coverage be it existing or new.” It is the existing drive test results that should be provided by both carriers for the frequency bands they are stating will be at the proposed site, as well as the 850 MHz band. I believe that both carriers have this information readily available for Nelsonville for all frequency bands including the 850 MHz band. Contrary to Mr. Graiff’s note 1 at the bottom of page two in his December 9, 2017, we are not suggesting or seeking a crane test for 15 Rockledge Road. In regards to his note 2, the only way to verify the calculated plots for Nelsonville is to have the drive test data for the Village of Nelsonville Roads. “Close proximity” drive test data in Philipstown does not verify the Nelsonville plots.

Why is -95 dBm service required in rural Nelsonville? Signal strength is measured in negative (-) dBm. For each less negative 3 dBm, the power doubles. (Ex. -102 dBm is double the power of -105 dBm and -99 dBm is 4 times the power of -105dBm) Thus -95 dBm is more than 10 times stronger than -105dBm. We have reviewed other Verizon applications were Verizon engineers have that stated that -105 dBm service is sufficient for in building coverage in rural areas. In the RF data in Verizon’s August 30, 2017 report (page 15 of 46) it shows complete -105 dBm 700MHz coverage in Nelsonville and even shows (page 14 of 46) some limited -95 dBm coverage.

The PierCon report dated 8/30/17 on page 3 states “For Verizon Wireless, the Cellular frequency band (850 MHz) handles mostly voice traffic”. This must mean that there is data usage in that band. Having the data provided for Verizon coverage in the 850 MHz band will show where there is service (voice and data) for Verizon in Nelsonville. This then raises the question as to why Verizon needs ubiquitous in-building 700 MHz coverage in Nelsonville for data only.

On November 25 and 26, 2017 over 120 voice and text calls were made by citizens using Verizon and AT&T phones. (See Philipstown Cell Solutions Group November 28, 2017 report Exhibit E pages 108 to 113) The calls were made at numerous locations, they were interior, exterior and in car. This volume of calls and text demonstrates that there is substantial, perhaps even ubiquitous service presently in Nelsonville. This is another reason why the drive test data and 850 MHz maps need to be provided.

Attorney Gaudioso made a statement on record that there is a significant gap. In his 11/22/17 letter he states the applicant does not have to demonstrate a significant gap in service and should the application be denied the applicants could bring a prohibition of service claim. The Village is not intending on prohibiting service for Verizon. The Village is merely asking for the need of the proposed site to be proven. To be “prohibiting service” the Village will have to say that NO Verizon facility or facilities can be located in the Village. There has not been any issue raised on prohibiting service.

CONSTRAINTS IN CAPACITY DO NOT CREATE A SIGNIFICANT GAP.

Is this site really a “need” for additional data capacity? In the technical reports provided, the frequency bands (700 MHz and 1900 MHz for AT&T, and the 700MHz and or 2100MHz for Verizon) are essentially used for data. If so, no capacity data has been provided. I have previously discussed that it does not appear that there is a significant gap in wireless service in Nelsonville. Mr. Graiff’s December 9, 2017 report confirms that the proposed site will be a data site meant to increase capacity, not to actually fill a gap in coverage.

To the best of our knowledge, sites are required based on a significant gap in coverage and the courts have ruled thusly. Capacity need does not demonstrate a significant gap in coverage.

THE APPLICATION BY VERIZON CANNOT BE CONSIDERED UNLESS THE “COVERAGE MAPS” HAVE BEEN PROVIDED AND THIS WAS NOT DONE UNTIL AUGUST 30, 2017 THUS THE SHOT CLOCK FOR VERIZON DID NOT START UNTIL THAT DATE

It is my understanding that at the last meeting that the shot clock was extended until January 8, 2018 I do not believe that this was necessary. Verizon’s submittal was on August 30, 2017 not July 19, 2017. In fact the Verizon coverage maps were not prepared until August 23, 2017 and August 24, 2017. Thus if Verizon is considered part of the application, then the clock must have started on 8/30/17 (The shot clock starts at the time the application is submitted but can be tolled if within 30 days the Village notifies the applicant that it is incomplete.) Thus, the shot clock could not expire any earlier than January 27, 2018. In addition, there was a September meeting at which the applicant was asked for additional material that should have stopped the shot clock until the material was supplied. As long as the community is actively pursuing that information that it needs to make an informed decision, then the shot clock should not be a major stumbling block. If the applicant says in writing that they will not provide any additional material and that they believe that their application is complete, the Board(s) should make a decision on what material they have.

OTHER LESS INTRUSIVE MEANS OF PROVIDING SERVICE HAVE NOT BEEN FULLY INVESTIGATED.

There are four churches in the area listed in the October 31, 2017 letter to the ZBA from Vincent Xavier of Homeland Towers. For numerous reasons, Mr. Xavier has dismissed all of these sites as possible facility locations. No propagation maps were provided for either carrier at any of the locations. No consideration was given to perhaps the use of multiple stealth unobtrusive sites. It is not in Homeland Towers’ best interest to identify a non tower solution.

There is also the possibility of an alternate location at 50 Fishkill Road. It is my understanding that the Philipstown Supervisor has agreed that a facility at this location is amenable with Philipstown. Back in an August 22, 2014 in a letter to Philipstown, Mr. Vincent of Homeland Towers stated: I believe the Town owned property located at 50 Fishkill Road (Philipstown Highway Department) would be suitable.” Coverage maps at that location need to be provided to determine the minimum height necessary for coverage in the Village.

Why hasn’t a possible small Distributed Antenna system (DAS) system been proposed? The DAS antennas are placed in the right of way on existing utility poles or new poles if required. They are below the tree line and are significantly less obtrusive than the proposed tower. Both carriers are implementing DAS systems throughout the country and many are in residential areas where the siting of a “tower” would be obtrusive. (For example, Mount Vernon and Pelham Manor) The DAS system can handle multiple carriers and could be expanded to cover outside the Village. (for example Cold Spring) This solution would eliminate any threat by Mr. Gaudioso of the Village “prohibiting service”. Multiple, less obtrusive locations and options exist which Homeland Towers has failed to pursue in good faith or with any serious diligence.

WHAT AREA WILL THE PROPOSED SITE COVER IF PERMITTED?

In order for the coverage maps to show how much of the coverage is for the Village of Nelsonville there should be village boundaries shown on all maps. The AT&T report prepared by Mr. Penesso states on page 5 that 7.18 square miles of coverage will result from this site. The Nelsonville web site says Village is 1.004 square miles. Thus AT&T’s coverage is less than 14% in Nelsonville even if it covers all of Nelsonville. Why must Nelsonville have an obtrusive tower, the coverage from which will be more than eighty six (86) percent outside of the Village?

THE HEIGHT OF THE FACILITY AS PROPOSED COULD EVENTUALLY BE ONE HUNDRED AND THIRTY (130) FEET.

If the tower is approved, Federal Law states that a height increase of up to twenty (20) feet can still qualify as an “eligible” facility. This “eligible” facility collocation must be approved by the Village and a “proof of need” is not required by the applicant. Based on what has been requested, the tower could go up to per Federal Law and tower can be increased by up to 20 feet and still qualify as an “eligible” facility. This would mean that the tower could eventually be one hundred and thirty (130) feet tall.

If, as requested, Verizon is at 105 and AT&T at 96, and these are the minimum heights needed (I do not agree with this proposal) then if other carriers wanted to go on the tower, (as stated above they do not have to prove height) they could request an increase of up to twenty (20) feet and the Village must approve.

ADDITIONAL DETAILS IN THE RECORD

AT&T says they need to replace a site that was at the hospital in Cold Spring - Mr. Penesso states in his July 19, 2017 RF submittal “A significant gap in reliable wireless service exists in the Village of Nelsonville and neighboring communities as a result of the decommissioning of AT&T’s facility at the Hospital Facility.” Had AT&T not lost the site at the hospital, the RF engineer states that AT&T would not need the Nelsonville site. (If this is true then why is the new site not having the 850 MHz service and only having frequency bands used for data?)Why does Nelsonville have to replace coverage for a site that was decommissioned in Cold Spring?

The loss of the McKeel Corners site should not be included as a reason for needing the proposed site in Nelsonville. A new site is being proposed in that area that will provide similar coverage as the McKeel Corners site. Why does Nelsonville have to replace coverage for a site that was decommissioned in Philipstown?

TESTIMONY

To the best of my knowledge there has been no testimony by Verizon or AT&T’s RF engineers. Why is technical data being presented by someone other than the person who provided the data? This would allow for the Boards to ask questions of the individuals who prepared the reports and thus get a full understanding of the application material provided. Should the Board(s) decide, I remain available to cross examine the applicant’s engineers.

In conclusion the applicants have not demonstrated a significant gap in coverage, have not reviewed all lesser intrusive means of providing the service they state they need and have not proven the need for a tower at the proposed location.

Sincerely,

R.A. Comi (electronic signature)

Richard A. Comi

CMS

CC: Philipstown Cell Solutions Group (via e-mail)

Todd Steckler, Esq. (via e-mail)

RICHARD ANGELO COMI

70 Cambridge Road

Glenmont, New York 12077

(518)439-3079

SUMMARY OF RELATED SKILLS AND QUALIFICATIONS

Systems

Excellent understanding, from a practical use and technical perspective, of telecommunications systems

including hardware, line systems and data/voice system enhancements.

Recognized for ability to analyze system needs, determine appropriate technical and organizational enhancements and implement to achieve results.

Practical, hands-on experience in on-line management of systems including switches, interfaces and other equipment requiring attention to detail, responsiveness and accountability for in-filed operations.

Experienced in troubleshooting; strong skills in managing networks and complex system/line configurations.

Management/Administration

Significant senior level management experience with bottom-line accountability for sales, marketing, finance, profitability, operations and distribution.

Skilled in business development; initiated new business reaching sales level of $3 million in 18 months and profitability in nine months.

Excellent record of accomplishment in managing cost reduction programs while concurrently improving service to the users.

Able to manage multiple organizational units and priorities with efficiency and results.

Experienced in supervising craft, management and support personnel.

Fiscally accountable… managed with accountability operating budgets in excess of $17 million.

Skilled in budget preparation, analysis and subsequent management to profit and cost standards.

Skilled in personnel/human resource development including training, career planning and organizational development.

Specific focus on determining training and development needs and implementing targeted programs to meet needs.

EXPERIENCE REVIEW

COMI TELECOMMUNICATION SERVICES/

THE CENTER FOR MUNICIPAL SOLUTIONS

Glenmont, New York 1995-Present

Owner/Founder

Utilizing his extensive industry background, he established a municipal consulting and master agent organization.

With his in depth knowledge of cellular, PCS and other wireless industries, he provides leadership and organizational skills to a nationwide group on independent municipal consultants. As a zealous advocate of local government, he is virtually unique in the wireless consulting arena, as he exclusively serves local governments. He has worked with over a hundred communities on Wireless Ordinances, Siting issues, and municipal leases. He has prevented numerous communities from making drastic mistakes, some of which would have been virtually irreversible. In addition, his ability to deal with operators as a true equal has resulted in gains for municipalities that they never expected. His knowledge goes well beyond the mere technology and operations of a company, and includes the legal and procedural requirements associated with telephony, cellular and PCS applications and permitting.

…continued…

RICHARD ANGELO COMI

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GFCC (GLENS FALLS COMMUNICATION CORP.)

Glens Falls, New York 1993-1995

President, Owner

Responsible for all aspects of established business including financial, management, sales and operations. Purchased business as 100% owner; developed staff of 16 including management, technical and clerical support; negotiated large customer contracts, purchase equipment to include new DSC600 and new PC LAN billing system.

CELLULAR ONE OF UPSTATE NEW YORK

Delmar, New York 1990-1993

Vice President-Chief Operating Officer

Retained to organize, launch and manage this start-up cellular phone service organization. Established cellular system in five months. Brought to level of profitability in first nine months… exceeded sales objective by 42% in year one… negotiated major contracts with vendors, suppliers and joint venture partners resulting in rapid growth, profitability and overall market share. Developed distribution base (dealer) and directed sales force management. Recruited and directed executive management staff with accountability for finance, sales, marketing, dealer services, customer service and technical operations.

Directed business operations employing 20 and generating $3 million in annual revenues. Organized administrative, finance, customer service and operational units with bottom-line responsibility for budgeting and control.

NEW YORK TELEPHONE COMPANY

Syracuse and Albany, New York 1971-1989

During tenure, served as

Director, Network Operations, Maintenance-Northeast

Director of Operations, Network Services Administration-Northeast and Central

Operations Supervisor-Upstate New York

Traffic Superintendent- Syracuse

Dial Service Supervisor-Syracuse

In most recent management capacity, assumed responsibility for operations, maintenance and general management of system involving 95 switches, 100K special services (private line, data, voice, 1.5 service and DDS) and various switching technologies. Administratively responsible for staff of 365 and budget resource allocation of over $17 million. In previous capacity as Director of Operations, Network Services Administration, managed a 2 million subscriber network, 225 employees and budget over $8 million.

Recognized for accomplishments in planning and implementing central office consolidations, reducing labor and operations costs and concurrently improving service levels. Contributed to technical enhancement of systems, networks and service levels.

EDUCATIONAL/SPECIALIZED TRAINING

Masters in Business Administration

SYRACUSE UNIVERSITY, 1977

Bachelor of Science

UNITED STATES MILITARY ACAMEMY, WEST POINT, 1967

MILITARY

UNITED STATES ARMY, 1967-1971

Captain; Honorable Discharge; Vietnam Era Veteran

\*Received Bronze Medal for Meritorious Service and Army Commendation for Achievement

RICHARD A. COMI

My name is Richard A. Comi. I am owner of Comi Telecommunication Services and co-founder of the Center for Municipal Solutions (“CMS”), which provides services exclusively to local government, relative to regulation of the siting, placement, construction, and modification of wireless telecommunications facilities.

I hold a Bachelor of Science in engineering from the United States Military Academy at West Point; and a Masters of Business Administration from Syracuse University. I have over thirty-two years of experience in the telecommunications industry.

During my career in the telecommunications industry, I have attended hundreds of hours of training on network design and operation of telecommunication systems. Moreover, as a Chief Operating Officer, I had complete responsibility for the design, construction, marketing, and operation of one of the largest Cellular RSA’s in the country.

I have been asked, as an industry expert, to conduct seminars at numerous conferences for municipal organizations on the regulation of the siting, placement, construction, and modification of wireless telecommunications facilities. Some of these organizations include the National Association of Small Towns; the New York State Association of Towns; The Florida Municipal League; The New Mexico League of Cities; the New Mexico Association of Counties; and numerous other municipal counties and groups. By request I have also conducted seminars on these subjects for scores of individual local governments.

I have drafted and designed wireless siting ordinances that are now in effect in hundreds of communities, and have further reviewed hundreds of other wireless ordinances. I have reviewed thousands of wireless siting applications, including inspecting the construction of the site when appropriate. The “siting process” used by CMS, including preparation of ordinance and review of applications and site construction, when permitted, are endorsed “services” of the West Virginia Municipal League.

Expert Witness Experience:

Court Testimony: Nextel v City of New Rochelle; NY, Federal District Court Manhattan New York; November 2001: Provided expert testimony on proof of need, site value, call and drive testing and Ordinance preparation

Court Testimony: American Tower v. City of Huntsville, Alabama, United States District Court for the Northern District of Alabama Northeastern Division, June 2005; Provided expert testimony on proof of need, RF emissions, structural, aesthetics, and nearby property value.

Affidavit Testimony: Nextel v City of Mount Vernon, NY, U.S. District Court of Southern New York; November 2003: Provided affidavit on proof of need, call and drive testing.

Affidavit Testimony: American Tower v. City of Huntsville, Alabama, United States District Court for the Northern District of Alabama Northeastern Division, March 2004: Provided affidavit on proof of need, RF emissions, structural, aesthetics, and nearby property value.

Affidavit Testimony: New Cingular Wireless v City of Rye, NY, United States District Court Southern District of New York, January 2006: Provided affidavit on proof of need, RF emissions, structural, aesthetics, and nearby property value

Publications:

Towers and Wireless Facilities . . . 1 Million More - Are You Prepared to Deal with the Situation? Co-authored for PSATS (The Pennsylvania State Association of Township Supervisors); 2002

##### TOWERS AND WIRELESS FACILITIES . . . THEIR IMPACT AND HOW TO DEAL WITH IT (Co-authored originally for the CMS web site, but subsequently picked up and widely distributed in the Internet); 2003

TOWER AND WIRELESS ORDINANCES – Co-authored for The Missouri Municipal Review; 2008