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TARRYTOWN OFFICE

April 19, 2018

Honorable Chairman William Rice and
Members of the Zoning Board
Village of Nelsonville
258 Main Street
Nelsonville, NY 10516

RE: Homeland Towers, LLC, New York SMSA Limited Partnership d/b/a Verizon
Wireless and New Cingular Wireless PCS LLC d/b/a AT&T, Proposed Public
Utility Personal Wireless Communication Facility
15 Rockledge Road, Nelsonville, NY

Dear Hon. Chairman Rice and
Members of the Zoning Board of Appeals:

We are the attorneys for Homeland Towers, LLC ("Homeland Towers") and New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") in connection with the above referenced matter. New Cingular Wireless PCS LLC ("AT&T") is represented by Daniel Laub, Esq., of Cuddy & Feder LLP.

1. The April 16, 2018 Philipstown Cell Solution ("PCS") Submission was Untimely and Beyond the Scope of the Reopened Hearing and Should Not Be Included in the Record

As you will recall, on the April 4, 2018 the Village of Nelsonville Zoning Board of Appeals and Planning Board held a joint continued hearing for the sole purpose of reviewing variance applications regarding the visual impact mitigation aspects of the proposed alternative tower designs. The hearing on the application was previously closed and both the time for decision under New York State Law (See e.g. Village Law 7-725-A) and the Federal Shot Clock were extended to provide for follow up submissions and a continued hearing limited to review of proposed visual impact mitigation. At the April 4, 2018 meeting the joint hearing was closed but the record was left open for submission of written comments addressing only visual impact mitigation until April 16, 2018. The

record was not reopened for all purposes and interested parties, including the applicants, were specifically and expressly directed to limit comments to the proposals for visual impact mitigation.

Representatives for PCS elected to make a submission after business hours on April 16, 2018 and the submission is untimely. Moreover, the subject matter of the submission is beyond the agreed upon scope that was at the heart of the mutually agreed upon extensions. PCS admittedly submitted documentation and information that is wholly beyond the scope of visual mitigation of the proposal and instead seeks to insert into the record information about an alternate site.

The record is devoid of any objection from PCS as to the limits of the reopened hearing nor is there a request on the record to reopen the hearing more broadly. In fact, to re-open the hearing would require a super-majority vote of the Board.

This submission is prejudicial to Homeland Towers, Verizon and AT&T, counter to the productive schedule that was agreed upon and should be stricken from the record.

2. Butterfield is not a feasible alternative site

Since the Chairman of the ZBA has indicated that the April 16, 2018 PCS submission will be included in the administrative record, we must clearly state for the record that the contention by PCS that any potential site at Butterfield Hospital would be a feasible alternative to the proposed facility at Rockledge Road is wholly incorrect. As this question was raised previously at the joint meeting on February 27th I provided uncontradicted testimony that I personally contacted the office of the President of Unicorn Contracting (being the developer of the Butterfield site) in the fall of 2017 and he failed to return my call. Moreover, his secretary called my office at the same time and he was again provided my contact information to discuss the availability of the site, but failed to do so. Moreover, as I testified previously and as evidenced by the attached email from Philipstown Town Board Member Flaherty, my contact information was again provided to the President of Unicorn Contracting and he nevertheless refused to contact me. This information was all previously provided to the Zoning and Planning Boards many months ago. The statements in Mr. Biafore's affirmation attributed to unnamed agents of Unicorn Contracting with respect to unknown carriers more than two months prior are untimely, speculative, unconvincing, lacking in detail and credibility and are irrelevant. Tellingly, Mr. Biafore admits that he had the number of the Developer to call and inquire as to the identity of the alleged carriers interested in the Butterfield site, but he apparently failed to do so or did not receive the answer he was seeking. Moreover, Mr. Biafore admits that Cold Spring does not have specific regulations allowing the site to be used for wireless communications thereby requiring a use variance. It is also important to point out that in response to PCS' unsupported allegation that the applicants failed to review the site in good faith, it was actually the Village's own consultant, Ronald Graiff, that testified to the Village that he had represented the developer and conveyed that the Butterfield site was not being made available for wireless facilities.

Nevertheless, in response to the PCS April 16th submission, enclosed please find a supplemental report from PierCon dated April 18, 2018 demonstrating that the speculative Butterfield site is not a feasible alternative and will not remedy Verizon Wireless's significant gap in personal wireless services in the Village of Nelsonville. Moreover, please also note that as previously stated the proposed single 110 foot flagpole can be colored and fitted without a flag consistent with SHPO's recent approval, and it will be designed to support collocation of up to four carriers. Homeland Towers is willing to cap the height at 110 feet but is also willing to design the pole for a 10 foot extension for additional collocation at the approval of the Village and as consistent with SHPO's approval.

We look forward to a decision from both the Planning Board and Zoning Board on April 30, 2018.

If you have any questions or require additional information, please do not hesitate to call me at (914) 333-0700.

Respectfully submitted,
SNYDER & SNYDER, LLP

By: 
Robert D. Gaudio

RDG:cae

cc: Planning Board (7 copies)
Ronald Gainer, P.E. (by email)
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Verizon Wireless
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