

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT
BUILDING CODE COMMISSION

IN RE: PETITION FOR DECLARATORY
STATEMENT BY VERIZON WIRELESS
PERSONAL COMMUNICATIONS, LP
d/b/a VERIZON WIRELESS

DCA 08-DEC-062

**AMENDED PETITION FOR DECLARATORY STATEMENT
BEFORE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
BUILDING CODE COMMISSION**

Petitioner, VERIZON WIRELESS PERSONAL COMMUNICATIONS, LP d/b/a VERIZON WIRELESS ("Petitioner" or "VZW"), by and through its undersigned attorneys, hereby submits this Amended Petition for Declaratory Statement to Florida Department of Community Affairs (herein "Department"), Building Code Commission, pursuant to Sections 120.565, 553.76 and 553.775, Florida Statutes and Rules 28-105.001, 28-105.002, and 28-105.003, Florida Administrative Code, and state the following:

THE PARTIES

1. Petitioner is a foreign Limited Partnership and has its principal place of business at 1 Verizon Wireless Way, Basking Ridge, New Jersey 07920. Petitioner is authorized to conduct business in Florida. For purposes of this proceeding, VZW's address and telephone number are that of its undersigned counsel.

2. The Department of Community Affairs, Florida Building Commission ("FBC") is the agency affected by these proceedings based upon its power and authority

to ensure consistent, effective, and efficient enforcement and compliance with the Florida Building Code ("Code"). *See Sections 553.76 553.775, Florida Statutes.* The FBC's principal address is Department of Community Affairs, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

STATEMENT OF ULTIMATE FACTS

3. VZW provides commercial wireless communication services to customers in Florida and throughout the United States, utilizing, in part, communications towers.

4. Currently, VZW owns approximately three hundred (300) communication towers located in Florida, and leases space for the co-location of communications antenna on approximately twelve hundred (1200) additional communications towers owned by others. Additionally, VZW leases space on its own communications towers to other wireless providers for the co-location of communications antenna.

5. VZW regularly expands its network and expects to continue to construct as owner or lease as lessee additional communication towers and antenna attachments in Florida.

6. The construction, modification, and collocation of equipment on towers are governed by the Code. Specifically, a tower upon which antennae and other wireless network equipment is to be installed must meet the standards of the Code.

7. Among the standards that must be met for buildings and structures, including wireless towers, are their ability to withstand wind loads. Under the Florida Building Code, structural wind load requirements are calculated using a formula, one component of which is the "importance factor." *See Section 1609 of the Florida Building Code.*

8. In accordance with the Code, almost all of the local building departments have determined that the communication towers, which VZW and others in the industry seek to build or to co-locate, are classified as structures requiring a wind load importance factor of 1.00.

9. VZW and others in the wireless industry operate on a statewide basis. Due to the different and conflicting interpretations of applicable wind load importance factors, VZW is uncertain as to the required design criteria, both for attachments to existing owned or leased towers and for the construction of new towers.

PETITIONER'S SUBSTANTIAL INTEREST

10. As owner or lessee of present and future communication towers, VZW has a paramount interest in the integrity of its network. VZW also has an interest in delivering its customers superior network service effectively and efficiently through the costs of construction of such towers or for costs of attachment of antenna thereto. Further, VZW has a substantial interest in availability of space and costs of construction for the co-location of communications antenna on both its owned and leased towers.

11. The costs of construction of communications towers and antenna attachment will be directly impacted by the applicable provisions of the Code, which applies to such construction, particularly as to the determination and application of wind load factors.

STATUTES AND RULES REQUIRING AGENCY ACTION

12. The Code was initially adopted effective March 1, 2001, by Rule 9B-3.047, Florida Administrative Code, and has been subsequently amended. The

current version is known as the 2004 Florida Building Code, consisting of seven (7) volumes, including one entitled "Building," which is applicable to the types of structures described above.

13. Within the volume entitled "Building," communication towers are identified as structures requiring different wind loading review than typical buildings. Specifically, Section 3108.4 provides that "[t]owers shall be designed to resist wind loads in accordance with TIA/EIA 222," and Section 1609.1.1.7 clarifies that the general requirements of Section 6 of ASCE 7 shall be focused for communication towers by the ANSI/TIA/EIA 222 provisions.¹ Therefore, the Building Code directs the specific wind loading review of communication towers to the referenced literature source – EIA/TIA 222.

14. ANSI/TIA/EIA 222, currently in "G" version and effective January 1, 2006, is part of the Code and is specifically applicable to communication towers. This standard provides for three (3) Classes of such structures, and also provides "importance factors" to each, ranging from .87 for Structure Class I, 1.00 for Structure Class II, and 1.15 for Structure Class III.

15. Annex A to ANSI/TIA/EIA 222 G, specifically identifies Structure Class II as including commercial wireless communications towers:

Class II: Structures used for services that may be provided by other means such as: commercial wireless communications; television and radio broadcasting; cellular, PCS, CATV, and microwave communications

¹ "7. ANSI/TIA/EIA 222 shall be permitted for communication tower and steel antenna support structures and shall meet the wind loads of ASCE 7 and shall be designed by a qualifier engineer."

Therefore, commercial wireless communication towers are subject to a 1.0 importance factor, which is consistent with most local building officials' interpretation.

16. Despite the seemingly clear provisions of the Building Code, VZW has encountered difficulty obtaining construction permits in two local jurisdictions in Florida, based on conflicting interpretations of the Code, that have required an importance factor of 1.15 for commercial wireless communication towers.

17. Section 553.74(1), Florida Statutes, created the Florida Building Commission as an arm of the Department of Community Affairs.

18. Section 553.775(3), Florida Statutes, provides that:

The following procedures may be invoked [by the Florida Building Commission] regarding interpretations of the Florida Building Code:

(a) Upon written application by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue declaratory statements pursuant to s. 120.565 relating to the enforcement or administration by local governments of the Florida Building Code.

19. A declaration regarding the interpretation, enforcement, and administration of the Florida Building Code is needed to confirm that the commercial wireless communication towers and antenna attachments are deemed to be Class II with an importance factor of 1.00 for wind load design in accordance with ANSI/TIA/EIA 222.

20. This Declaration is needed to ensure consistent and uniform application of wireless communication tower construction standards across the state of Florida. Further, the Commission should not permit divergent interpretations of the same type of structure depending on the locality in which the facility is located. To do so would create

significant differences in the ability of wireless carriers to deploy services throughout Florida and state-wide systems.

21. VZW has retained the undersigned attorneys, and has agreed to pay them reasonable attorney fees incurred as a result of this Petition and any judicial review that may result.

DEMAND FOR RELIEF

WHEREFORE, VZW hereby requests the department to issue a Declaratory Statement confirming that the commercial wireless communication towers and antenna attachments it owns, or for which it serves as either lessee or lessor, are deemed to be Class II with an importance factor of 1.00 for wind load design in accordance with ANSI/TIA/EIA 222.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and complete copy of the foregoing Amended Petition for Declaratory Statement was serviced by HAND DELIVERY to Paula Ford, Agency Clerk, Florida Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100, on this 4th day of March, 2008.

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