

 <b>Adirondack Park Agency</b>  P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov	<b>APA Project Permit 2015-0096</b>
	<b>Date Issued: June 16, 2016</b>
<b>In the Matter of the Application of</b>  <b>UPSTATE CELLULAR NETWORK (d/b/a VERIZON WIRELESS), NATIONAL GRID, and THE TOWN OF WEBB</b> <b>Permittees</b>  for a permit pursuant to §809 of the Adirondack Park Agency Act	<b>To the County Clerk: This permit must be recorded on or before August 15, 2016. Please index this permit in the grantor index under the following names:</b> <b>1. Upstate Cellular Network</b> <b>2. Verizon Wireless</b> <b>3. National Grid</b> <b>4. Town of Webb</b>

### **SUMMARY AND AUTHORIZATION**

This permit authorizes new structures over 40 feet in height and a major public utility use in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map in the Town of Webb, Herkimer County.

This permit shall expire unless recorded in the Herkimer County Clerk's Office on or before August 15, 2016, in the names of all persons listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the proposed new and replacement antennas have been installed on the tower.

The project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittees, successors, and assigns to civil penalties and other legal proceedings.

This permit does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project, nor does it authorize the impairment of any easement, right, title or interest in real or personal property. Nothing contained in this permit shall be construed to satisfy any legal obligations of the permittees to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

### **PROJECT SITE**

The project site is a 1,000±-acre parcel of land located east of Bisby Road on McCauley Mountain in the Town of Webb, Herkimer County, in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map. The site is identified on Town of Webb Tax Map Section 41, Block 1 as Parcel 59.1.

### **PROJECT DESCRIPTION**

The project as conditionally approved herein involves the replacement and addition of new antennas to an existing 90-foot-tall guyed lattice tower. Both the existing and proposed antennas are/will be located at a centerline height of 88 feet above ground level (AGL).

Antennas to be removed from 3-sided antenna array:

- Three 8-foot-tall 700 MHz (LTE) panel antennas
- Three 8-foot-tall 850 MHz (CDMA) panel antennas
- Three 4-foot-tall 1900 MHz (LTE) panel antennas (a/k/a PCS)

Transmitting from these antennas is one 700 MHz LTE wideband channel and up to eight 850 MHz CDMA channels per face.

Antennas to be installed (replacement and new) on 3-sided antenna array:

- Three 8-foot-tall 700 MHz (LTE) panel antennas
- Three 8-foot-tall 850/1900 MHz (CDMA/LTE) dual-band panel antennas (a/k/a CDMA/PCS)
- Three 4.5-foot-tall 2100 MHz (LTE) panel antennas (a/k/a AWS)
- Nine remote radio heads (RRH - range in size from 1.8 to 3 feet tall and 1 foot wide), one behind each panel antenna
- Two Raycap Units (junction boxes) mounted to the antenna boom

Transmitting from these antennas will be one 700 MHz LTE wideband channel, up to eight 850 MHz CDMA channels, one 1900 MHz LTE (PCS) wideband channel, and one 2100 MHz LTE (AWS) wideband channel.

The project is shown on 3 sheets of plans titled "Verizon Wireless, Site Name: Webb, Project No.: 20141175097, Location Code: 147076, 300 McCauley Road, Webb, NY," prepared by C&S Engineers, Inc. of Syracuse, NY, and last dated May 12, 2015 ("Project Plans"). The 3 sheets are titled as follows:

- C-500, PCS Project Property Plan;
- C-501, PCS Project Site Plan; and

- C-502, PCS Project Tower Elevation, Details & Notes.

A reduced-scale copy of Sheet C-502 of the Project Plans is attached as a part of this permit for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

### **AGENCY JURISDICTION**

The project requires an Agency permit pursuant to §§ 809(2)(a) and 810(1)(d)(5) and (18) of the Adirondack Park Agency Act [Executive Law, Article 27], because it consists of placing structures (i.e., antennas) in excess of 40 feet in height and a major public utility use in a Rural Use land use area. The project also requires an Agency permit as a material change to Condition 4 of Agency Permit 2005-0318 (which required the tower height to be reduced at the time of certain antenna upgrades) and pursuant to Condition 5 of Agency Permit 2005-0318 (which retained jurisdiction over the addition of any new antennas to the tower and any change to existing equipment on the tower).

### **CONDITIONS**

#### **THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall not be undertaken until this permit has been recorded in the Herkimer County Clerk's Office.
2. This permit is binding on the permittees, all present and future owners or lessees of the project site, and all persons undertaking all or a portion of the project. Copies of this permit and the Project Plans shall be furnished by the permittees to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittees and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].

### **Deeds**

#### **Recordation**

4. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2015-0096, issued June 16, 2016 , the

conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees.”

### **Proposed Development**

5. This condition supersedes and replaces Condition 4 of Agency Permit 2005-0318. Upstate Cellular Network (d/b/a Verizon Wireless) is no longer required to lower the height of the existing 90-foot-tall guyed lattice tower.
6. The proposed project shall be undertaken as shown on the Project Plans. The new and replacement antennas and ancillary equipment shall be located on the tower as shown on the Project Plans, with the top of the antennas at an elevation not to exceed 92 feet above ground level (centerline elevation of 88 feet above ground level).

### **Review of Future Development**

7. The construction of any new communications tower on the 1,000±- acre project site or the addition of any new antennas, parabolic dishes or other equipment to the authorized tower, shall require prior Agency review and approval in the form of a new or amended permit. Maintenance and/or "in kind" replacement of the tower, antennas, equipment building and other appurtenant facilities authorized herein is allowed without a new or amended permit.
8. No principal building shall be constructed on the portion of the project site containing the tower and subject to the 1990 Easement Agreement between the Town of Webb and the Niagara Mohawk Power Corporation (now National Grid), absent an Agency permit that ensures conformance with Executive Law § 809(10), including but not limited to conformance with the overall intensity guidelines. Any lease agreement or deed conveying the easement area that includes the tower shall contain the preceding sentence pertaining to the prohibition of principal buildings on the tower parcel.

### **Visual/Open Space Impacts**

9. The authorized antennas and support poles shall be painted a shade of grey which matches the existing tower, with a non-reflective flat or matte finish.
10. There shall be no lights placed on or directed at the tower without prior Agency review and approval in the form of a new or amended Agency permit.

### **Documentation of Construction**

11. The Agency shall be provided with color photographs (both in print and digital form) showing the replacement antennas within 30 days of project completion. These photographs shall be taken at the project site and from Photostation #6a

(Route 28 and Outlook Terrace Parking Lot), and shall show the entire completed project. From both locations, digital equivalent 55 mm and 85 mm lenses shall be employed. All photographs must clearly identify the date the picture was taken, the location of the photograph, and the lens size employed. These photographs shall be taken on a clear day with little cloud cover.

### **Discontinuance of Use**

12. If use of the tower for all antennas and communications is discontinued for more than one year, National Grid, its successors and assigns, shall remove the tower from the site within the following year. If the use of the herein authorized antennas for cellular telephone, voice, data or other forms of wireless communications is discontinued for more than six months, then Upstate Cellular Network (d/b/a Verizon Wireless), their successors and assigns, shall remove their respective antennas from the tower within the following six months. The landowners, their successors and assigns shall allow timely removal of the tower or antenna array pursuant to this condition.

### **FINDINGS OF FACT**

#### **Landowner/Applicants**

1. National Grid (f/k/a Niagara Mohawk Power Corporation) is the owner of the tower and the Town of Webb is the owner of the property on which the tower is located. The project site is described in a deed dated February 29, 1960 from Douglas N. Rice, Sr., Douglas N. Rice, Jr., Fred Williams, and A. Richard Cohen as Trustee for Sarah Cohen and Linda Cohen to the Town of Webb and recorded at the Herkimer County Clerk's Office on March 11, 1960 in Liber 539 of Deeds at page 430.
2. The tower site is subject to a Lease and Tower Construction Agreement made October 15, 1990 between the Niagara Mohawk Power Corporation and Utica Telephone Company and an Easement Agreement made August 10, 1990 between the Town of Webb and the Niagara Mohawk Power Corporation.
3. Upstate Cellular Network is a public utility and wireless telecommunications company licensed by the Federal Communications Commission (FCC) and authorized to do business in Herkimer County, New York.
4. A letter dated May 13, 2015 and signed by a Telecom Coordinator from National Grid indicates that National Grid has "reviewed and hereby acknowledge, consent to and join with the Application and corresponding site plan" for the project authorized herein.

### **Background/Prior History**

5. Agency Permit 2005-0318, issued August 17, 2006, authorized the extension of an existing 70-foot-tall tower (itself a replacement of a pre-existing tower) to the current height of 90 feet and the installation of Verizon Wireless antennas (a 9-panel array at a centerline height of 90 feet above ground level) on the tower, as well as other antenna changes/additions for other permittees and two equipment shelters.
6. Agency Permit 2012-0082, issued August 1, 2012, authorized removal of AT&T's existing omni antennas and their replacement with 9 panel antennas (each 4 feet tall) at a centerline height of 70 feet above ground level (AGL). Condition 7 of Agency Permit 2012-0082 reserves the space between 73 feet and 85 feet AGL for Verizon Wireless to lower their antennas pursuant to the terms and conditions of Agency Permit 2005-0318. While this permit does not require the tower to be lowered, the Verizon Wireless antennas authorized in this permit will use the upper portion of the reserved space.
7. There are whip, yagi, panel, and dish antennas already on the existing tower, which are owned by National Grid (f/k/a Niagara Mohawk Power Corporation), Upstate Cellular Network (d/b/a Verizon Wireless), Nextel Partners, New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility), Herkimer County, and the Town of Webb. The antennas are shown on Sheet C-502 "PCS Project Tower Elevation, Details & Notes" of the Project Plans prepared by C&S Engineers, Inc. and on the elevation drawing titled "90' Rohn 80G Tower Reinforcement" prepared by Armor Tower, Inc and dated March 13, 2015.

### **Project Site**

8. The project site is a 1,000±-acre parcel which contains the McCauley Mountain Ski Center, including ski slopes, a chair lift, ski lodge, barn, garage, and shed. The parcel contains the summits of both McCauley Mountain (2,300± feet above mean sea level) and Little Moose Mountain (2,413± feet above mean sea level). The tower site is 1± mile from the Hamlet of Old Forge.
9. Soils on the site are designated by the Herkimer County Meso Soils map as in the Colton, Potsdam-Crary, Pillsbury-Lyme and Rock Outcrop-Lyman Associations.
10. There are several freshwater wetland areas and streams on the site, but none within 200 feet of the tower or equipment shelters.
11. The site is mostly forested with a variety of deciduous and coniferous trees except for the cleared areas along lift lines and ski trails and an open area around the former Town landfill.

12. Access to the leased area containing the tower is by dirt roads and a chairlift.

### **Public Notice and Comment**

13. The Agency notified all adjoining landowners and other parties and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, as required by the Adirondack Park Agency Act. No comments have been received.

### **Other Regulatory Permits and Approvals**

14. As indicated in a Local Government Notice Form signed June 2, 2015 by the Supervisor for the Town of Webb, the use is allowed in this zoning district, the project is not prohibited by any local law or ordinance, but the project does require a Town Board Resolution, since it occurs on property owned by the Town of Webb. On June 9, 2015, the Town Board passed a Resolution "acknowledging the Town's approval of the Project."
15. The new and replacement antennas authorized herein will require licensing from the Federal Communications Commission (FCC).

### **Economic/Fiscal Factors**

16. Upstate Cellular Network (d/b/a Verizon Wireless) has indicated that the purpose of this project is to ensure continued reliable wireless telecommunications coverage/capacity. The new panel antennas will provide Verizon Wireless's 4G network, known as Long Term Evolution ("LTE"), which is a broadband technology designed to support mobile Internet access via cell phones and handheld devices. The project is expected to benefit Town residents, emergency responders, businesses, and visitors with enhanced coverage, better reception, faster connectivity, and access to additional applications on their wireless devices.
17. The Hamlet of Old Forge and the broader Town of Webb has a significant, year-round visitor economy with over 40 percent of its residents employed in a tourism related industry. Improved wireless communications will support the local economy due to the growing expectation by the traveling public that these services will be available at tourism destinations.

## **PROJECT IMPACTS**

### **Visual Analysis**

18. A visual analysis of the proposed new and replacement antennas was submitted with the application. Six photo simulations representing six locations were prepared by C&S Engineers, Inc. and received by the Agency on June 22, 2015. A separate photo simulation from one of those six locations (selected by Agency

staff), received May 9, 2016, shows how the tower would look if the new and replacement antennas were mounted 10 feet lower than proposed and authorized by this permit.

19. A site visit by Agency staff and review of the visual analysis indicate that the new and replacement antennas will be visible from portions of First Lake, NY State Route 28, County Route 216, North Street, Bisby Road, McCauley Road, and portions of the playing fields at the Town of Webb Recreation Center. However, the existing tower is already visible from all of these locations, and is viewed in the context of the existing ski trails, which are also located on McCauley Mountain, some directly below the tower. A majority of the locations with potential visibility, including the locations closest to the tower, are located in a Hamlet land use area and/or from areas with foreground development (i.e., utility poles, signs, and buildings). The replacement antennas will not be visible from the public beach or tennis courts by the Old Forge Visitor's Center. Provided the new and replacement antennas and supporting infrastructure are installed as authorized herein, they will not result in any undue adverse impacts on the Park's visual and open space resources.
20. The options for minimizing or mitigating antenna visibility on this tower are limited, given that the tower already exists near the summit of McCauley Mountain where the top 40± feet of the tower are not back-dropped or obscured by trees or other structures. Verizon Wireless already has antennas at the 88-foot centerline height; the proposed antenna changes will not be discernable from off-site locations.
21. Eliminating the height reduction of 10 plus feet required by Condition 4 of Agency Permit 2005-0318 will not increase the visibility of the existing tower from off-site locations. The small reduction in visibility that could have been achieved with a 10-foot reduction in height does not warrant the significant impacts of achieving such a reduction: a structurally unstable tower, a loss of coverage due to the reduced heights and fixed antenna azimuths, and an interruption in service for all providers on the tower.

### **Towers Policy**

22. On February 15, 2002, the Agency adopted a policy titled "Policy on Agency Review of Proposals for New Telecommunications Towers and Other Tall Structures in the Adirondack Park" (Towers Policy). This policy is intended to protect aesthetic, open space and other resources, while providing for telecommunications systems consistent with federal law.
23. The Towers Policy requires that new telecommunications towers and antennas be substantially invisible. Under the policy, the substantial invisibility finding must be made in the context of the land use areas involved, in light of the differing statutory purposes and policies for the individual land use areas set forth in the



Land Use and Development Plan. The existing tower is located within an existing ski center and in close proximity to the Hamlet land use area of Old Forge.

24. The Towers Policy states that "consolidation of visual intrusions occurs when equipment is co-located on a single existing tower." The proposed replacement antennas will be located on an existing tower, where existing access, telephone service, and electric power is already available.
25. Pursuant to the visual and other analyses undertaken as part of the review of this application, the Agency finds that the project as proposed and conditioned complies with the requirements of the Towers Policy.

### **Historic Preservation**

26. Pursuant to a Nationwide Programmatic Agreement for the Co-location of Wireless Antennas (NPA), executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation, an antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such co-location being reviewed under the relevant historic preservation laws and regulations, unless the antenna will result in a substantial increase in the size of the tower. There will be no substantial increase in the size of this tower; therefore, the project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

### **CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act, and 9 NYCRR Part 574. The Agency hereby finds that the subdivision authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Rural Use land use area;
- c. will be consistent with the overall intensity guidelines for the Rural Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project.

