

TOLLING AGREEMENT

This Tolling Agreement (“Agreement”) is made and entered into pursuant to K.S.A. 66-2019(h)(2)(B) and the Ruling (defined below) at ¶ 49, this 10th day of January, 2018 (“Effective Date”) by and between Verizon Wireless (“VAW”) LLC d/b/a Verizon Wireless (“VZW”), with its principal place of businesses located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920. (Attn: Network Real Estate), 180 Washington Valley Road, Bedminster, NJ 07921 and Sedgwick County, Kansas, a political subdivision of the State of Kansas (“County”) with its principal place of businesses located at 525 North Main Street, 3rd Floor, Wichita, KS 67023.

RECITALS

A. On August 25, 2017, VZW filed an application with the County for a Conditional Use Permit to authorize VZW to construct a Wireless Communications Facility generally located on property on the east side of S. 127th Street E., approximately 1,200 feet north of East 63rd Street S., Application No.: CON2017-00033 (“Application”). The Application was deemed complete on September 24, 2017. The period of review under Federal and Kansas law, as discussed below, ends on January 22, 2018.

B. On November 18, 2009, the Federal Communications Commission (the “FCC”) released a Declaratory Ruling clarifying Section 332(c)(7) of the Communications Act. *See In Re: Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Etc.* FCC 09-99 (FCC November 18, 2009) (the “Ruling”). The Ruling permits a wireless service provider whose application has been pending for a period of ninety (90) days for collocation applications, and one hundred fifty (150) days for all other applications (so-called, “Shot Clock”) to seek judicial review within thirty (30) days on the basis that a state or local permitting authority failed to act on the application within “a reasonable time.” Ruling, ¶ 45. The Ruling further permits the period for review of an application to be extended by mutual consent. Ruling, ¶ 49. Kansas law is similar to the federal Ruling relating to the Shot Clock and the right of appeal. *See* K.S.A. 66-2019 (h)(1) (effective October 1, 2016). However, K.S.A. 66-2019(h)(3)(A) also states that “[a]n application shall be deemed approved if an authority fails to act on the application within the 150-calendar day review period.”

C. In order to allow the County to hear the Application in an orderly manner, without either party risking the loss of important rights, the parties wish to enter into this Tolling Agreement pursuant to K.S.A. 66-2019(h)(2)(B), which specifically allows the applicant (VAW) and the authority (County) to reach an agreement to toll the time period for final consideration of an application.

NOW, THEREFORE, the parties agree as follows:

1. The parties agree that the time period within which the County may act on

the Application, under Federal and Kansas law, shall be extended through May 3, 2018 (the "Extension Date"), and that no limitations period under Federal or Kansas law for any claim by VZW of unreasonable or unlawful delay in processing the Application shall commence to run before the Extension Date.

2. If the County has not acted on the Application by the Extension Date, this Agreement shall not be construed to waive or otherwise impair the rights of VZW or the County with respect to any such claims, including VZW's right to file an "unreasonable delay" or other claims under 47 U.S.C. 332(c)(7)(B) or K.S.A. 66-2019 (h)(1) within thirty (30) days following the Extension Date.

3. This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original. The individuals whose signatures appear below on behalf of each party are authorized to execute this Agreement on behalf of the respective parties, and to bind them to the terms thereof.

IN WITNESS WHEREOF, the Parties hereto have set their hands and caused this Agreement to be effective as of the Effective Date first written above.

VERIZON WIRELESS ("VAW") LLC D/B/A VERIZON WIRELESS

Signed: Nia Mathis

Print Name: Nia Mathis, Esq.

Its: Assistant Secretary

SEDGWICK COUNTY, KANSAS

David M. Unruh, Chairman
Commissioner, First District

APPROVED AS TO FORM ONLY:

Justin M. Waggoner
Justin M. Waggoner
Assistant County Counselor

ATTESTED TO:

Kelly B. Arnold
County Clerk