EXHIBIT C

APPLICABLE LEGAL STANDARDS

In Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993), the New York Court of Appeals determined that cellular telephone companies are public utilities. The Court held that proposed cellular telephone installations are to be reviewed by zoning boards pursuant to the traditional standard afforded to public utilities, rather than the standards generally required for the necessary approvals.

> 'It has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities.' There can be no question of Cell One's need to erect the cell site to eliminate service gaps in its cellular telephone service area. The proposed cell site will also improve the transmission and reception of existing service. Application of our holding in Matter of Consolidated Edison to sitings of cellular telephone companies, such as Cellular One, permits those companies to construct structures necessary for their operation which are prohibited because of existing zoning laws and to provide the desired services to the surrounding community. . . . Moreover, the record supports the conclusion that Cellular One sustained its burden of proving the requisite public necessity. Cellular One established that the erection of the cell site would enable it to remedy gaps in its service area that currently prevent it from providing adequate service to its customers in the Dobbs Ferry area.

Rosenberg, 82 N.Y.2d at 372-74 (citing Consolidated Edison Co. v. Hoffman, 43 N.Y.2d 598 (1978)).

This special treatment of a public utility stems from the essential nature of its service, and because a public utility transmitting facility must be located in a particular area in order to provide service. For instance, water towers, electric switching stations, water pumping stations and telephone poles must be in particular locations (including within residential districts) in order to provide the utility to a specific area:

> [Public] utility services are needed in all districts; the service can be provided only if certain facilities (for example, substations) can be located in commercial and even in residential districts. To exclude such use would result in an impairment of an essential service.

Anderson, New York Zoning Law Practice, 4th ed., § 7:12 (2013). See also, Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993); Payne v. Taylor, 178 A.D.2d 979 (4th Dep't 1991).

Accordingly, the law in New York is that a municipality may not prohibit facilities, including towers, necessary for the transmission of a public utility. In Rosenberg, 82 N.Y.2d at 371, the court found that "the construction of an antenna tower . . . to facilitate the supply of cellular telephone service is a 'public utility building' within the meaning of a zoning ordinance." See also Long Island Lighting Co. v. Griffin, 272 A.D. 551 (2d Dep't 1947) (a municipal corporation may not prohibit the expansion of a public utility where such expansion is necessary to the maintenance of essential services).

State and federal courts have applied the standard set forth in Consolidated Edison and Rosenberg to a wide range of telecommunications land use decisions, including use variances,[1] area variances,[2] special permits,[3] and site plans.[4]

In the present case, Verizon does not have reliable wireless telecommunication coverage in and around its Wilmington Town cell, located in the Town of Wilmington. The Project is needed to remedy this service problem and to provide adequate and reliable wireless telecommunications service coverage to this area. Therefore, Verizon satisfies the requisite showing of need for the facility under applicable New York law.

---

[1] Nextel Partners, Inc. v. Town of Fort Ann, 1 A.D.3d 89, 93 (3rd Dept., 2003) ("There is no question that petitioners are public utilities whose entitlement to a use variance is governed by the 'public utility' exception articulated by the Court of Appeals.")

[2] Lloyd v. Town of Greece Zoning Board of Appeals, 292 A.D.2d 818 (4th Dept., 2002), lv. dismissed, lv. denied 98 N.Y.2d 691 (2002) ("As a public utility, AT&T qualifies for the diminished standard of review for its area variance application.")

[3] ExteNet Sys., LLC v. Vill. of Kings Point, 2022 WL 1749200 (E.D.N.Y. 2022) (applying the public utilities standard to a wireless telecommunications provider's application for a special use permit); Cellco P'ship v. Town of Clifton Park, New York, 365 F. Supp. 3d 248 (N.D.N.Y. 2019) (applying the public utilities standard to a wireless telecommunications provider's application for a special use permit); Orange County-Poughkeepsie Ltd. Partnership v. Town of E. Fishkill, 84 F. Supp. 3d 274 (S.D.N.Y. 2015), aff'd 632 F. App'x 1 (2d Cir. 2015) (applying the public utilities standard to a wireless telecommunications provider's application for a special use permit and area variance).

[4] Cellular Tel. Co. v. Meyer, 200 A.D.2d 743, 744 (2nd Dept., 1994) ("The Planning Board's contention that the petitioner is not a public utility entitled to favored status when considering its site plan application is without merit. The Court of Appeals recently held in [Rosenberg], that a cellular telephone company falls within the definition of a public utility.").