

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	Civil Action No. 3:22-cv-10718-MGM
)	
Pittsfield Cellular Telephone)	
Company d/b/a Verizon Wireless)	
)	
Plaintiff)	
)	
v)	
)	
Board of Health of the)	
City of Pittsfield, Massachusetts)	
)	
Defendants)	
_____)	

MOTION TO INTERVENE

Courtney Gilardi, Charlie Herzig, Judy Herzig, Mark Markham, Angelika Markham, and Elaine Ireland (collectively "Intervenors"), with the support of additional Centerville residents, move pursuant Fed. R. Civ. P. 24 to intervene. As the basis, therefore, the Intervenors state:

1. On May 10, 2022, Pittsfield Cellular Telephone Company d/b/a Verizon Wireless ("Verizon Wireless") filed this action challenging an Emergency Show Cause Order issued on April 11, 2022 ("Order"), by defendant Pittsfield Board of Health ("Board") which: (i) declared that the operation of a personal wireless services facility located at 877 South Street, Pittsfield, Massachusetts (the "Facility") by Verizon Wireless is a public nuisance and violates various Massachusetts state and local health codes and laws; (ii) required that Verizon Wireless show cause why the Board should not issue an order requiring that the Facility cease operations; (iii) required that Verizon Wireless request a hearing on the Order within seven days of its issuance (i.e., by April 18, 2022); and (iv) if Verizon Wireless failed to request a hearing, declared that the

order would become a notice of discontinuance requiring that Verizon Wireless abate and eliminate the nuisance and violations of the state sanitary code within seven days of the expiration of the period to request a hearing (i.e., by April 25, 2022).

2. Verizon Wireless alleges in its Complaint that the Order is preempted by Section 332(c)(7)(b)(iv) of the Telecommunications Act of 1996 (“Communications Act”), 47 U.S.C. § 332(c)(7)(B)(iv),¹ as the Order purportedly regulates “the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”

3. The Intervenors are: (i) individuals who live in the immediate vicinity of the Facility which is subject to the Order; (ii) among the group of residents that were harmed by the Facility, and (iii) each expressly named in the Order.

4. The Intervenors participated in proceedings before the Board and presented testimony and evidence to the Board, which the Board found to be credible and persuasive.

6. The Intervenors have the right to intervene as a matter of right, given that the disposition of this case will impair or impede the Intervenors’ ability to protect their interests unless they are adequately represented in connection with the instant matter. Fed. R. Civ. P. 24(a).

¹ Intervenors contend that 47 U.S.C. § 332(c)(7)(B)(iv) does not apply to the Board action. This will be one of the topics to be addressed in the motion to dismiss the Intervenors intend to file in the near future. Assuming without conceding that 47 U.S.C. § 332(c)(7)(B)(iv) does have some application here, as shown below Intervenors meet the test for both “as a matter of right” and “permissive” intervention under prevailing circuit precedent addressing that section.

7. Even if the Intervenors may not intervene as a matter of right, they have a significant interest in the outcome of the instant litigation and “a claim or defense that shares with the main action a common question of law or fact.”

8. Assuming without conceding that 47 U.S.C. § 332(c)(7)(B)(iv) does have some application here, as shown below Intervenors meet the test for both “as a matter of right” and “permissive” intervention under prevailing circuit precedent addressing that section.

9. The Intervenors have submitted a memorandum in support of their motion.

WHEREFORE, the Intervenors respectfully request that this Court:

A. Allow the Intervenors to intervene and grant them full party status in the instant litigation; and,

B. Order such further relief as is just and equitable.

Respectfully Submitted,

/s/ Paul Revere, III

Paul Revere, III

(BBO #636200)

Attorney for Courtney Gilardi, Charlie Herzig, Judy Herzig, Mark Markham, Angelika Markham, and Elaine Ireland,
Law Offices of Paul Revere, III

226 River View Lane

Centerville, Massachusetts 02632

(508) 237-1620

revererii@aol.com

/s/ W. Scott McCollough

W. Scott McCollough (pending *pro hac vice*)

Attorney for Courtney Gilardi, Charlie

Herzig, Judy Herzig, Mark Markham,

Angelika Markham, and Elaine Ireland,

MCCOLLOUGH LAW FIRM PC

2290 Gatlin Creek Rd.

Dripping Springs, Texas 78620

V 512.633.3498

F 512.692.2522

Email wsmc@dotLAW.biz

Dated: May 25, 2022

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/Paul Revere, III

Paul Revere, III