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**ORDINANCE O2014-01**
**NELSON COUNTY BOARD OF SUPERVISORS**
**THE REPEAL OF SECTIONS 20-1 THROUGH 20-19 OF ARTICLE 20 OF APPENDIX A, ZONING, OF THE CODE OF NELSON COUNTY VIRGINIA, AND THE ENACTMENT OF REPLACEMENT SECTIONS 20-1 THROUGH 20-22 AS FOLLOWS:**

## ARTICLE 20. COMMUNICATION TOWER ORDINANCE

20-1 *Title.*

This section shall be known as the Communications Tower Ordinance of Nelson County, Virginia.

20-2 *Purpose.*

The purpose of this article is to establish a clear guideline for siting all types of communication towers in Nelson County so as to:

20-2-1 Protect the health, safety, and general welfare of residents and visitors in Nelson County.

20-2-2 Avoid potential damage to adjacent properties from Communication Tower failure including but not limited to excessive wind or ice, and falling ice or debris.

20-2-3 Minimize potential hazards from Communication Towers to private aircraft, low-flying law enforcement and medical aircraft, and helicopters.

20-2-4 Maximize the use of existing Communication Towers to reduce the collective number of towers required in Nelson County for all varieties, types, and forms of wireless service.

20-2-5 Regulate the placement, appearance, and construction of all varieties, forms, and types of Communications Towers.

20-2-6 Restrict the location of communication towers that adversely impact the natural beauty of the mountains in Nelson County.

20-2-7 Protect the view from the Blue Ridge Parkway, Appalachian National Scenic Trail, and along designated Virginia Scenic Byways.

20-2-8 Protect the University of Virginia's observatory on Fan Mountain from light pollution.

20-2-9 Promote and facilitate the availability of wireless telecommunication services to Nelson County citizens, businesses, and visitors, in support of advancing educational goals, attaining and maintaining a strong rural economy, and providing law enforcement and emergency services.

20-3 *Jurisdiction.*

This ordinance shall apply to all areas of unincorporated Nelson County.

20-4 *Definitions.*

For the purposes of this Article 20, the following definitions are provided:

*ANSI:* American National Standards Institute

*Antenna:* Any apparatus or device used for the purpose of collecting or transmitting electromagnetic waves, including, but not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas. Antennas for receiving broadcast signals only for non-commercial use and antennas for licensed amateur radio operators and citizens band operators are excluded from this definition.

*Antenna array:* An orderly arrangement of antennas mounted at the same height on a tower or other structure and intended to transmit a signal providing coverage over a specific area.

*Base station:* The wireless service provider's specific equipment used to transmit and receive radio signals within and including cabinets, shelters, pedestals or similar enclosures generally used to contain electronic equipment for said purpose.

*Class A Personal Wireless Services:* As defined in Section 20-6 of this Article.

*Class B Communication Tower:* A communication tower which is equal to or greater than forty (40) feet in tower height and which is less than or equal to one hundred (100) feet in tower height located in a Conservation District, C-1; Agricultural District, A-1; Service Enterprise District, SE-1; Business, B-1; Business, B-2; Industrial, M-1; or Industrial, M-2 zoning districts.

*Class C Communication Tower:* Any communication tower located in a Residential, R-1; Residential, R-2; or Residential Planned Community, (RPC) District; or any

communication tower in any district that is greater than one hundred (100) feet in tower height, to a maximum allowed height of 130 feet; or any communication tower within three hundred (300) feet of an occupied dwelling, provided however, if the owners of all such occupied dwellings affirm in writing to the applicant that they have no objection to the proposed tower, then this final clause shall not, standing alone, cause the proposed communication tower to proceed as a Class C communication tower application. A communication tower greater than one hundred (100) feet in tower height is a telecommunications facility for purposes of state law.

*Co-location:* The practice of installing and operating multiple wireless carriers, service providers, and/or radio common carrier licensees on the same antenna support structure or attached wireless communication facility using different and separate antennas, feed lines, and radio frequency generating equipment.

*Complete Application:* Is an application that has been filed in the correct form in the proper office accompanied by the appropriate fee and all information required by this Article.

*EIA:* Electronic Industries Association.

*Existing Vegetative Canopy:* The existing vegetative plants, trees, or shrubs at the site-specific location of the proposed communication tower site that will provide natural camouflage, concealment, or otherwise hide the communication tower after its construction.

*Existing structure*: A lawfully constructed or established structure, but excluding (i) existing Communication Towers and (ii) flagpoles.

*Feed lines:* Cables used as the interconnecting media between the transmission/receiving base station and the antenna.

*Final Approving Authority:* The Nelson County Planning and Zoning Director or the Board of Supervisors, as designated in this Article.

*Least Visually Obtrusive Profile:* The design of a wireless communication facility intended to present a visual profile that is the minimum necessary for the facility to function properly.

*Mountain Ridge*: A ridge with an elevation of one-thousand (1,000) feet or higher above mean sea level and an elevation three hundred (300) feet or more above the elevation of an adjacent valley floor.

*Personal Wireless Services*: Commercial mobile services, unlicensed wireless services, common wireless exchange access services, and unlicensed wireless broadband internet access.

*Structure: A*nything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground. Fences are excluded from this definition.

*Substantial increase in the size of a previously approved Communication Tower*:

(i) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(ii) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(iii) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(iv) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

*Telecommunication tower, communication tower:* Any tower or structure, natural or man-made, existing or erected, used to support one or more antennas, including self-supporting lattice towers, guyed towers, or monopoles. This term includes radio and television transmission towers, broadband towers, microwave towers, common carrier towers, wireless telephone towers, alternative tower structures and the like.

*Temporary Tower*: A telecommunication tower, not exceeding one hundred (100) feet in height, erected for a duration not to exceed thirty (30) days, located in a Conservation District, C-1; Agricultural District, A-1; Service Enterprise District, SE-1; Business, B-1; Business, B-2; Industrial, M-1; or Industrial, M-2 zoning district. The duration of a temporary tower may be extended by the Planning and Zoning Director for an additional thirty days if necessary to facilitate the intended use of the tower.

*Tower Height:* The vertical distance from the finished grade to the uppermost point of a communication tower including any antenna, beacon, light, lightning rod, or other fixtures attached to the communication tower. In the event an antenna is attached to a structure, the height of the structure shall be included in the tower height.

*Tower Site:* The real property, which an applicant(s) is required to have ownership of, leasehold of, interest in, easement over, or any combination of the aforementioned to locate a communication tower and any auxiliary buildings.

*Unlicensed Wireless Service*: The offering of telecommunication services using duly authorized devices which do not require individual licenses from the Federal Communications Commission, but does not mean the provision of direct-to-home satellite services. This service is sometimes referred to "License-Exempt". Users of the license-exempt bands do not have exclusive use of the spectrum and are subject to interference.

*Viewshed* (1) National Park System*:* An unobstructed sight or the range of one's sight while traveling, visiting, driving or otherwise, using the natural or man-made resources of the Blue Ridge Parkway (BRP) or Appalachian National Scenic Trail (AT). For the purposes of this ordinance, the viewshed distance is a minimum of one (1) air mile from the outermost boundary line of the National Park System unit.

*Viewshed* (2) Virginia Scenic Byway: An unobstructed sight or the range of one's sight while traveling, visiting, or driving along a highway that has been designated by the State of Virginia as a Scenic Byway.

20-5 *Telecommunication Facility Categories.*

A. Class A Personal Wireless Services must comply with Section 20-6.

B. A Class B Communication Tower requires approval by the Planning and Zoning Director and the issuance of a Class B Communication Tower Permit. For such applications, the Planning and Zoning Director shall be the Final Approving Authority.

C. A Class C Communication Tower requires approval by the Board of Supervisors and the issuance of a Class C Communication Tower Permit. For such applications, the Board of Supervisors shall be the Final Approving Authority.

D. Qualifying Permit Amendments and Temporary Tower permits require approval by the Planning and Zoning Director.

E. Any antenna used exclusively for non-profit, non-broadcast, and non-commercial applications including, but not limited to, residential broadcast reception, amateur radio, citizens band radio, and public safety, local government, fire, rescue,

police, and non-profit medical radio services is exempt from the requirements of this Article.

*20-6 Class A Personal Wireless Service Facilities.*

A. Class A personal wireless service facilities ("Class A Facility") erected in accordance with this Section 20-6 are permitted as a by-right use in all zoning districts except as provided below.

B. A Class A Personal Wireless Service Facility is a facility that:

(i) is located within an existing structure but which may include a self-contained ground equipment shelter not exceeding one hundred fifty (150) square feet that is not within the building, or, a whip antenna that satisfies the design standards below; or

(ii) consists of one or more antennas, other than a microwave dish, attached to an existing structure and are flush mounted to the structure, together with associated personal wireless service equipment; or

(iii) consists of a single attachment pole attached to an existing structure the total height of which, together with a grounding rod, shall not exceed twenty (20) feet above the top of the structure. An attachment pole may be guyed to increase its stability; or

(iv) is located within or camouflaged by an addition to an existing structure; or,

(v) is the placement of a freestanding monopole forty (40) feet or less in height in the following zoning districts: Conservation C-1, Agricultural A-1, Service Enterprise SE-1, Business B-1, Business B-2, Limited Industrial M-1, and Industrial M-2.

20-6-1 *Design Standards.*

1. *General Design.* The Class A Facility shall be designed, installed, and maintained as follows: (i) guy wires shall not be permitted except with attachment poles; (ii) outdoor lighting for the Facility shall be permitted only during maintenance periods; (iii) any cabinet or shelter not located within the existing structure shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation; (iv) in connection with an existing structure or monopole, a grounding rod, whose height shall not exceed two feet and whose width shall not exceed one inch in diameter at the base and tapering to a point, may be installed at the top of the structure and (v) a whip antenna less than six (6) inches in diameter may exceed the height of the existing structure or monopole.

2. *Antennas and associated equipment, existing structure exterior*. Equipment shall be attached to the exterior of an existing structure only as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), (ii) each antenna shall not exceed one thousand one hundred fifty two (1152) square inches; (iii) each array shall contain no more than three (3) antennas, and (iv) no antenna shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) inches from the existing structure. These standards shall not apply to antennas and associated equipment that are located entirely within an existing structure.

3. *Antennas and associated equipment, attachment pole*. An attachment pole (i) shall not exceed three inches in diameter; and (ii) the total number of antennas shall not exceed three (3), and each antenna shall not exceed one thousand one hundred fifty two (1152) square inches.

4. *A freestanding monopole forty less than (40) feet in height.*

    a) shall be constructed of either wood, metal, or concrete;

    b) shall not exceed a maximum base diameter of thirty (30) inches and a maximum diameter at the top of eighteen (18) inches; and,

    c) the total number of arrays of antennas attached to the monopole shall not exceed three (3), each antenna shall not exceed one thousand one hundred fifty two (1152) square inches, and each array shall contain no more than three (3) antennas.

20-6-2 *Compliance.*

Any existing Class A Facility, not otherwise in compliance with the other provisions of the tower ordinance, shall be brought into compliance with the applicable provisions of this Article 20.

20-7 *Insurance.*

In connection with any application required in this Article, an applicant shall provide at the beginning of the permit application process a current Certificate of Insurance for general liability insurance for a minimum amount of one million dollars ($1,000,000) per occurrence. Annually, subsequent to approval of an application, evidence that such insurance remains in force shall be provided to the Planning and Zoning Director. Failure to maintain the required minimum insurance shall result in the automatic termination of the permit.

20-8 *Building Permits.*

All plans for communication tower structures and auxiliary structures shall be approved by the Nelson County Building and Inspections Department. The proper building and inspection permit(s) shall be issued before construction begins. No building permit(s) will be issued until a communication tower permit from the Nelson County Planning Department has been issued to the applicant(s).

20-9 *Standards for Location.*

A. National Park System Notification.

No application for a communication tower permit to be located within the viewshed of the Blue Ridge Parkway (BRP) or the Appalachian National Scenic Trail (AT) shall be considered a Complete Application without first notifying the Virginia Department of Historic Resources (DHR), the BRP Superintendent, and/or the AT Superintendent in writing. Such notice shall:

1. be sent by certified mail, return receipt requested;

2. provide the location of the proposed communication tower;

3. describe the proposed communication tower, proposed antennas, and proposed ground equipment, including a copy of the engineered drawings detailing the proposed tower project; and

4. request the Superintendent(s) comment on the proposed communications tower in writing.

Comments received from DHR and/or the Superintendent(s) shall be submitted with the application. In the event DHR and/or the Superintendent(s) do not provide written comments within 60 days of receiving the applicant's notification, a communication tower permit application for review and comment may be submitted with evidence that the notice was sent.

B. Required Minimum Setbacks – Viewsheds (1) and (2).

1. No communication tower shall be located within one hundred-twenty (120) feet of any Virginia Scenic Byway.

2. No communication tower shall be located within one thousand three hundred twenty (1,320) feet of the nearest boundary of the Blue Ridge Parkway or the Appalachian National Scenic Trail.

20-10 *Reserved.*

20-11 *Co-location.*

Applicants for new communication tower permits must agree to allow additional permitted uses of the tower by future applicants, provided: (a) that these future uses do not interfere with use(s) of the tower by its owner(s) or other lessee(s); (b) space is available on the tower for co-location; and (c) tower owner and co-locator agree to lease terms. Design plans of a metal communication tower shall contain provisions to allow additional sections to be added for possible co-location of other providers.

20-12 *Application and Procedure for Approval of a Class B Communication Tower Permit.*

A. Application Form: A Complete Application form, signed by the property owner(s), the property owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.

B. Property Description: A recorded plat or recorded boundary survey of the parcel on which the facility will be located, provided that, if neither a recorded plat nor boundary survey exists, a copy of the legal description of the parcel and the Nelson County Circuit Court deed book and page number.

C. Plans and Drawings: A scaled plan and a scaled elevation view and other supporting drawings, calculations, and other documentation required by the Planning and Zoning Director, signed and sealed by an appropriate licensed professional. The plans and supporting drawings, calculations and documentation shall show:

1. A design plan showing the communication tower, base, and the foundations for all support structures, all proposed auxiliary buildings and other proposed improvements, and the methods by which antennas shall be located on the proposed communication tower. Metal communication towers shall meet all requirements of federal, state, and local government regulations and EIA and ANSI standards. The Nelson County Building Official may request, at the applicant's expense, an independent engineer to confirm the safety of the tower.

2. The utility connections within and to the proposed site.

3. The location and dimensions of all existing and proposed improvements on the parcel, including access roads and structures, that are within one thousand (1,000) feet of the proposed tower site, and the maximum height above ground level of the facility (also identified in height above sea level).

4. The benchmarks and datum used for elevations. The datum shall coincide with the Virginia State Plane Coordinate System, South Zone, North American Datum of 1983 (NAD83), United States Survey Feet North American Vertical

Datum of 1988 (NAVD88), and the benchmarks shall be acceptable to the Planning and Zoning Director.

5. Except where the facility would be attached to an existing structure, the topography within three hundred (300) feet of the proposed facility, in contour intervals not to exceed ten (10) feet for all lands within Nelson County and, in contour intervals shown on United States Geological Survey topographic survey maps or the best topographic data available, for lands not within Nelson County.

6. The location of any stream, wetland, as identified by Army Corps of Engineers and/or the Virginia Department of Environmental Quality, and floodplain area within one thousand (1,000) feet of the proposed tower.

7. The height, caliper and species of all trees where the drip line is located within two hundred (120) feet of the facility that are relied upon to establish the existing vegetative canopy and screening of the tower and all trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted.

8. Fall Area: The minimum distance from the tower's base to the property line shall be: (i) wood poles – 100% of tower height; (ii) metal monopole - 110% of tower height; and (iii) lattice tower - 125% of tower height.

9. All existing and proposed setbacks, parking, fencing, and landscaping.

10. The proposed safety measure(s) at the base of the communication tower for the safety and general welfare of the public.

11. Federal Aviation Administration (FAA) hazard determination report and documentation that the request presents no hazard to any airport.

D. Design Standards:

1. The Final Approving Authority shall approve the color of each metal, wood, or concrete monopole. The antennas, supporting brackets, and all other equipment attached to the tower shall be a color that closely matches that of the tower. The ground equipment, the ground equipment cabinet, and the concrete pad shall be a color that is consistent with the character of the area.

2. Each wood or concrete tower shall be constructed so that all feed lines, wiring, and similar attachments are located within the tower structure or facing the interior of the property away from public view as reasonably determined by the Planning and Zoning Director.

3. The facility shall be designed, constructed and maintained as follows: (a) guy wired towers shall not be permitted, and (b) lightning rod, whose width shall

not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of facility or the structure.

4. Unless waived or modified by the Final Approving Authority, equipment shall be attached to the tower as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), (ii) each antenna shall not exceed one thousand one hundred fifty two (1152) square inches; (iii) each array shall contain no more than three (3) antennas, and (iv) no antenna shall project from the structure beyond the minimum required by the mounting equipment.

5. No slopes associated with the installation of the facility and accessory uses shall be created that are steeper than 2:1 unless proposed retaining walls, revetments, or other stabilization measures are acceptable to the Final Approving Authority.

6. The site shall provide adequate opportunities for screening and the tower shall be sited to have the Least Visually Obtrusive Profile from adjacent parcels and streets, regardless of their distance from the tower. If the tower would be visible from a state designated Scenic River, Scenic Byway, or a National Park or National Forest, regardless of whether the site is adjacent thereto, the facility also shall be sited to minimize its visibility from such River, Scenic Byway, Park, or Forest. If the tower would be located on lands subject to or adjacent to a conservation easement or an open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.

7. Identification sign. A sign measuring six (6) square feet or less, clearly visible, identifying the owner(s) and operator(s) of the communication tower site and a local or toll free emergency phone number for each. The sign shall be posted at the entrance to the proposed communication tower site.

8. Security Fencing. Towers shall be enclosed by security fencing no less than eight (8) feet in height and shall also be equipped with an appropriate anti-climbing device, however, the Final Approving Authority may modify or waive such requirements.

9. Landscaping. The following requirements shall govern the landscaping surrounding the communication tower; however, the Final Approving Authority may modify or waive such requirements.

    a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the support buildings at any time of year from adjacent property. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the facilities.

b) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, the Final Approving Authority may determine that the natural growth around the property perimeter is sufficient buffer.

c) Existing trees within one hundred-twenty (120) feet of the tower shall not be removed except as may be authorized to permit construction of the tower and installation of access for vehicles and utilities.

10. Lighting.

a) The communication tower shall be unlit unless required by a federal agency.

b) A light installed on the outside of the building shall be a manually turned on/off switch for use only when service representatives are present on the site.

c) A light installed on an equipment cabinet shall be no more than one (1) foot above the top of the cabinet.

E. The Final Approving Authority reserves the right to refer this documentation to a telecommunication consultant for verification that the site selected is an appropriate site to provide reasonable communication service to Nelson County and to locate other alternative sites for consideration. The applicant will be responsible for the cost of this review.

F. The Planning and Zoning Director shall review a Complete Application for compliance with the foregoing requirements, the other provisions of this Article 20, and other applicable law, and upon finding the application to be in compliance, shall issue a Class B Communication Tower permit.

20-13 *Application and Procedure for Approval of a Class C Communication Tower Permit.*

A. A Class C Communication Tower may be established upon approval of a Class C Communication Tower Permit by the Nelson County Board of Supervisors initiated upon a Complete Application which satisfies the requirements for a Class B Communication Tower Permit and the additional requirements in this subsection.

B. Upon receipt by the Planning and Zoning Director of a Complete Application, the Planning Commission shall conduct a review of the application to determine whether the proposed communication tower is substantially in accord with the Comprehensive Plan and communicate its determination together with any additional recommendations to the Board of Supervisors. In connection with any such determination, the Planning Commission may, and at the direction of the Board of Supervisors shall, hold a public hearing, after notice as required by Section 15.2-2204 of the Code of Virginia. The Planning and Zoning Director shall mail by first class

mail a copy of the public hearing notice to landowners adjacent to the proposed site and may rely upon the tax map and land books for purposes of determining such landowners and their mailing addresses. The Planning Commission's actions shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the Planning Commission to act on any such application within 90 days of such submission shall be deemed approval of the application by the Planning Commission unless the Board of Supervisors has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The Board of Supervisors may extend the time required for action by the Planning Commission by no more than 60 additional days. If the Planning Commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the Planning Commission.

C. The Board of Supervisors shall hold at least one (1) public hearing on the application after notice as required by Section 15.2-2204 of the Code of Virginia, and make its decision on the application within one hundred fifty (150) days from the date the Complete Application was submitted to the Planning and Zoning Director. This time period may be extended by the Board of Supervisors provided the applicant consents to the extension.

D. Balloon Test. For any proposed tower requiring a Class C Communication Tower Permit, a balloon test shall be conducted as follows:

1. The applicant shall contact the Planning and Zoning Director within ten (10) days after the date the Complete Application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the Complete Application was submitted, and the applicant shall provide the Planning and Zoning Director with at least seven (7) days prior notice, provided that this deadline may be extended due to inclement weather or by the agreement of the applicant and the agent. The applicant shall cause to be published in a newspaper having general circulation in the county notice of the time and place of the balloon test at least seven days prior to such test.

2. Prior to the balloon test, the location of the access road, the lease area, and the tower site of the proposed tower shall be surveyed and staked or flagged in the field.

3. The test shall consist of raising one or more balloons from the site to a height equal to the proposed tower.

4. Photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and other properties and locations as directed by the Planning and Zoning Director and shall be superimposed to

scale onto the photographs. The photographs must be filed with the Planning and Zoning Director before the application can be reviewed by the Planning Commission.

E. Alternative Site(s): No new Class C Communication Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Supervisors that:

1. No commercially reasonable co-location alternatives fulfill the applicant's desired coverage, or

2. The applicant's proposed antenna would cause electromagnetic interference with the antenna on existing towers or structures, or the antenna on the existing tower or structure would cause interference with the applicant's proposed antenna, or

3. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

F. Factors considered in granting a Class C Communication Tower permit: The following factors shall be used in determining whether to issue a Class C Communication Tower Permit:

1. Height of the proposed tower or pole and proximity of the tower or pole to residential structures and residential district boundaries;

2. Nature of the uses on adjacent and nearby properties, surrounding topography, surrounding tree coverage and foliage, design of the tower or pole, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

3. Proposed ingress and egress;

4. Applicant's co-location policy;

5. Consistency with the Comprehensive Plan and the purposes set forth in Section 20-2;

6. Proximity to commercial or private airports and heliports; and,

7. The results of the balloon test and subsequent photo simulations for compliance with the purposes as set forth in Section 20-2.

G. The Board of Supervisors may impose as conditions for approval such requirements and conditions as are necessary to satisfy or remedy the foregoing factors.

20-14 *Completion Requirement.*

Unless a longer period of time is authorized in the permit by the Final Approving Authority, construction of Class B and C tower structures shall be completed within one year of the date of issuance of the permit. The completion deadline may be extended for one additional year by the Planning and Zoning Director upon a showing by the applicant of unforeseen circumstances. In the event that the tower structure is not completed within the time specified, then the permit shall be void and any construction completed shall be removed within ninety (90) days.

20-15 *Removal and Reporting.*

A. The facility shall be disassembled and removed from the site within ninety (90) days of the date its use for wireless communication purposes is discontinued.

B. The applicant shall a report within thirty (30) days any change in the ownership of the facility. Information to be provided is the new owner(s) name, address, telephone number, e-mail address, and a 24 hour emergency telephone number and contact person to the Planning and Zoning Director.

20-16 *Access to Site.*

Nelson County shall be provided reasonable access to a Communication Tower and other permitted sites for the purpose of ensuring compliance with this ordinance.

20-17 *Tower Permit Amendments, Temporary Towers.*

A. Tower Permit Amendments

1. *Policy.* The Planning and Zoning Director may administratively review and approve eligible applications for amendments or alterations to an approved Communication Tower Permit, if the proposed amendment or alteration would not, in the Director's opinion, substantially affect or deviate from the terms or conditions of the original approved permit. The following types of amendments or alterations are eligible:

(a) the replacement or co-location of equipment that does not result in a substantial increase in the size of an existing Communication Tower, as defined; or

(ii) the replacement of a wooden monopole with a metal monopole of the same height that does not exceed a maximum base diameter of thirty (30) inches and a maximum diameter at the top of eighteen (18) inches; or

(iii) other amendments or alterations to an approved Communication Tower Permit that do not, in the Planning & Zoning Director's opinion,

substantially affect the terms or conditions of the original permit, including but not limited to the replacement or alteration of equipment and related ground equipment or other facilities within the lease area.

2. *Procedures*. If an applicant's proposal for a Tower Permit Amendment meets the terms set forth in the Policy, the proposal requires a Complete Application containing the following information:

   (i) A Complete Application signed by the facility's owner.

   (ii) Specific information identifying the existing approved tower facility, including:
      a. Tower name, number, and/or location; and
      b. Approved Tower Permit number.

   (iii) The design of the facility, including the specific type of support structure and the design, type, location, size, height, and configuration of all existing and proposed antennas and other equipment. The method(s) by which the antennas will be attached to the mounting structure shall be depicted.

   (iv) A scaled plan depicting fall area: The minimum distance from the tower's base to the property line shall be: (i) wood poles – 100% of tower height; (ii) metal monopole – 110% of tower height; and (iii) lattice tower – 125% of tower height.

   (v) Any alterations to the facility's setbacks, parking, fencing, and landscaping, as applicable.

   (vi) The requirements in items (iii) through (v) above may be waived by the Planning and Zoning Director if an appropriate approved plan is already on file with the County.

B. Temporary Tower Permit Applications

1. *Policy*. The Planning and Zoning Director may administratively review and approve eligible permit applications for a Temporary Tower, as defined. The Planning and Zoning Director may require a performance bond in an amount determined by the Planning and Zoning Director as sufficient to effect removal. The applicant shall comply with the applicable provisions of Section 20-8, Building Permits and Section 20-9, Standards for Location.

2. *Procedures*. If an applicant's proposal for a Temporary Tower Permit meets the terms set forth in the Policy, the proposal requires a Complete Application containing the following information:

(i) An application, signed by the parcel owner, the parcel owner's agent or the contract purchaser, and the proposed facility's owner. If the owner's agent signs the application, he shall also submit written evidence of the existence and scope of the agency. If the contract purchaser signs the application, he shall also submit the owner's written consent to the application.

(ii) The proposed duration for the Temporary Tower to be in place, including specific dates for placement and removal, not to exceed a maximum total duration of 30 days.

(iii) A sketch plan identifying the design of the Temporary Tower facility, including the location of the lease area within the property, the location of the Temporary Tower and other associated temporary equipment within the lease area, and the specific type of support structure, guy wires, and anchor.

(iv) A scaled, detailed drawing identifying the height of the Temporary Tower and the design, type, location, size, height, configuration, and method of mounting of all antennas and other equipment to be installed on the Temporary Tower.

(v) A scaled plan depicting fall area. The minimum distance from the base of a Temporary Tower to the property line(s) shall be a minimum of 150% of the Temporary Tower height.

(vi) All existing and proposed setbacks, parking, fencing, and landscaping.

(vii) The requirements in items (iii) through (vi) above may be waived by the Planning and Zoning Director if an appropriate approved plan is already on file with the County.

20-18 *Application Fee Schedule.*

Class B Communication Towers:
An application fee of $1,000.00.

Class C Communication Towers:
An application fee of $2,000.00.

Tower permit amendment:
An application fee of $100.00.

Temporary tower:
An application fee of $500.00.

20-19 *Exemption from Regulations Otherwise Applicable.*

Except as otherwise exempted in this paragraph, each facility shall be subject to all applicable regulations in this chapter.

A. The Final Approving Authority may authorize a metal communication tower to be located closer in distance than the required fall zone of the tower or other mounting structure to any lot line if the applicant obtains an easement or other recordable document showing agreement between the lot owners, acceptable to the County Attorney, addressing development on the part of the abutting parcel sharing the common lot line that is within the facility's fall zone. If the right-of-way for a public street is within the fall zone, the Virginia Department of Transportation shall be included in the staff review, in lieu of recording an easement or other document. The fall area for a metal monopole and lattice tower may be waived or modified by the Final Approving Authority upon certification by a licensed professional engineer that the tower is designed to collapse within the property lines of the subject property.

B. Except for towers subject to the location standards for View Shed (1) or View Shed (2) the area and bulk regulations or minimum yard requirements of the zoning district in which the facility will be located shall not apply.

C. Notwithstanding Zoning Ordinance Article 2, Definitions – Yard, a facility may be located in a required yard.

20-20 *Modification of Certain Regulations.*

A. The Board of Supervisors may modify the location or height restrictions, or both, upon a determination that (i) the strict application of the ordinance would produce undue hardship or severely limit the provision of telecommunication services; (ii) there are no commercially reasonable alternatives; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.

B. In authorizing a modification, the Board of Supervisors may impose such conditions regarding the location, character, and features of the communication tower as it may find necessary for compliance with the purposes set forth in Section 20-2.

C. No such modification shall be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia.

20-21 *Authority of Planning and Zoning Director.*

A. In addition to the foregoing provisions, the Planning and Zoning Director shall have all necessary authority on behalf of the governing body to administer and enforce this Communication Tower Ordinance, including written orders to remedy any condition found in violation of this ordinance and the initiation of legal action to insure

compliance with the ordinance, including injunction, abatement, or other appropriate action or proceedings.

B. If it should become necessary for an approved Communication Tower Permit to be changed, the Planning and Zoning Director shall upon an applicant's request either administratively approve an amendment to the permit in accordance with this Article, or, if the proposed change will substantially affect the terms of the original permit, require that a new application be submitted for review and action in accordance with this Article.

20-22 *Appeals.*

A. A decision of the Planning and Zoning Director may be appealed to the Nelson County Board of Supervisors. An appeal shall be submitted in writing to the office of the Planning and Zoning Director within thirty (30) calendar days after the date of the denial.

B. A decision of the Board of Supervisors may be appealed to the Nelson County Circuit Court by filing a petition specifying the grounds for the appeal within thirty (30) days after the Board's final decision.

C. The denial of a permit shall be in writing and supported by substantial evidence contained in a written record.

Adopted: March 11, 2014

Attest: _____, Clerk
Nelson County Board of Supervisors