To: Andrea Joy Campbell, Massachusetts Attorney General
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cc: Kelli E. Gunagan Assistant Attorney General Municipal Law Unit
cc: David J. Doneski, Esq. Town Counsel, Town of Great Barrington

Re: Reconsideration Request re: AG Disapproval of Great Barrington, MA Annual Town Meeting of May 1, 2023 - Case #10937 Warrant Articles #30, 31, 32, 33, 34, 35, 36, and 38 (Zoning) 1 Warrant Articles #24, 29, and 39 (General) and Town Meeting of May 1, 2023

November 20, 2023

Dear Attorney General Campbell,

This responds to your November 8, 2023 letter to Jennifer L. Messina, Town Clerk of Great Barrington, MA.

The Scientific Alliance for Education do present the opinions of the men and women of Great Barrington, who did petition Article 38 and who kindly request reconsideration of your conclusion.

To clarify, the remedy that was voted through is to "...adopt a Wireless Telecommunications Facilities (WTFs) application requirement for completeness: WTF applications, will be considered incomplete until the FCC completes the DC Circuit court-mandated Environmental Review of the entire 800,000 to 1 million WTF roll out to the conditions as stated in the NEPA Policy Act 1969 including studies from scientists independent from industry, who have fully investigated millimeter wave 5G small cell technology safety; and that the FCC regulations have been updated to include measures that comply with the results of this review; and, that the Town of Sheffield shall consider reasonable alternatives such as fiber optic.

The intent of what was passed is **NOT** to prohibit all local WTF permits, but to ensure that small cell millimeter wave (5G) Wireless Telecommunications Facilities (WTF) applications are considered incomplete until the FCC completes the D.C. Circuit court-mandated review from Case 20-1025 and the FCC regulations have been updated.

Furthermore in the October 1, 2019, the D.C. Circuit Court of Appeals in Case No, 18-1051, Mozilla et al. v. FCC, qualified the definition of Title I and Title II. Title I is classified as "unregulated Information Services"and Title II is classified as regulated "telecommunication services". This case stated that they need to be regulated differently and the two could not be batched under the term WTF. Our bylaw pertains to Title I.

The WTF application completeness requirement does **not** result in a **permanent effective prohibition** of personal wireless service facilities, it just shifts the burden to the proper governing body, the FCC:

1. The requirement **can be addressed** by evidence of completeness.

2. The town can reasonably wait for completion of this court-mandated FCC work **before** deeming small cell millimeter Wave (5G) applications complete.

3. The town can utilize alternative services currently available.

Please consider the evidence and analysis, below, that supports a reversal of your disapproval of Great Barrington's May 2023 vote on Article 38. Great Barrington's May 2023 vote to add a conditional application requirement for Wireless Telecommunications Facilities (WTFs) does **not** create an effective prohibition of "wireless [tele]communications **facilities**", as claimed in the Nov 8 letter, for the following reasons:

1. A careful reading of the the 1996-TCA's effective prohibition preemption provision (47 U.S.C. § 332(c)(7)(B)(i)(II): "shall not prohibit or have the effect of prohibiting the provision of personal wireless service") shows that this provision prevents the prohibition of personal wireless **service**, not the prohibition of the placement, construction or modification of wireless telecommunications **facilities**.

2. The proper test is whether or not personal wireless service exists in Great Barrington. (Note: personal wireless service = wireless telecommunications service = the ability to place outdoor wireless phone calls from any existing WTFs transmitting into the area). If personal wireless service exists (meaning there is no significant gap in personal wireless service), then **preemption does not apply**. (Note: there is no substantial written evidence in the record establishing a significant gap in personal wireless service in Great Barrington. Applicants are free to provide substantial written evidence to establish if such a significant gap exists).

3. The FCC's inaction in response to the D.C. Cir.'s 2021 ruling and mandate in Case 20-1025 Envtl. Health Tr. v. Fed. Communications Comm'n, 9 F.4th 893 (D.C. Cir. 2021) "to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radio-frequency [microwave] radiation" is the sole reason for delaying consideration of new WTF applications specifically

concerning small cell millimeter wave installations in Great Barrington. Once the FCC completes its court-mandated work, and the applicant provides substantial written evidence of this completed FCC work, then the application requirement will be satisfied and the applications can be considered. This means there **are** conditions under which the applications can be considered and therefore Great Barrington's application requirement is **not** "a complete prohibition of wireless telecommunications facilities"**.**

A. Analysis of First Cir. Case Law Cited in the Nov 8 Letter

The ruling in Town of Amherst v. Omnipoint Communications, 173 F.3d 9 (1st Cir. 1999) shows that Amherst's decision to deny WTFs did not result in an effective prohibition of wireless telephone service. Instead the ruling **upheld denial of the WTFs**. The ruling states:

> *" . . . The district court's judgment is vacated and the matter remanded for further proceedings consistent with this opinion. Each side shall bear its own costs on this appeal."*
>
> *". . . it is in the common interest of the Board and Omnipoint to find ways to permit the siting of towers in a way most congenial to local zoning. The statute's balance of local autonomy subject to federal limitations does not offer a single "cookie cutter" solution for diverse local situations, and it imposes an unusual burden on the courts. But Congress conceived that this course would produce (albeit at some cost and delay for the carriers) individual solutions best adapted to the needs and desires of particular communities."*
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> *". . . The statutory provision before us, 47 U.S.C. § 332(c)(7), is a deliberate compromise between two competing aims — to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers."*

B. Analysis of D.C. Cir. Case Law Cited in the Nov 8 Letter

We are neither construing nor misconstruing the judges' rulings in Case 20-1025 Envtl. Health Tr. v. Fed. Communications Comm'n, 9 F.4th 893 (D.C. Cir. 2021) or in Case 18-1129 United Keetoowah Band of Cherokee Indians in Oklahoma v. Federal Communications Commission, 933 F.3d 728 (D.C. Cir. 2019). We are merely citing the evidence in the cases and the actual text of the judges' rulings.

We find immaterial the allegation in the Nov. 8 letter that Great Barrington's Article 38, does not "…authorize a town to withhold or deny a [Wireless Telecommunications Facility] WTF while the FCC engages in a study and updates its regulations based on a future study". As we have already clarified, 47 U.S.C. § 332(c)(7)(B)(i)(II) concerns preemption of personal wireless **service**, not preemption of wireless telecommunications **facilities**. If personal wireless service exists, as it does, then **preemption does not apply**.

The DC Circuit judges ruled in Case 20-1025:

> *". . . we grant the petitions in part and remand to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radio-frequency [microwave] radiation. It must, in particular,*
>
> *(i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines,*
> *(ii) address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, and*
> *(iii) address the impacts of RF radiation on the environment."*

The ruling was based on the following 27 volumes (11,000+ pages) of peer-reviewed, scientific evidence, cited by reference and links below:

> Vol-1, Vol-2, Vol-3, Vol-4, Vol-5, Vol-6, Vol-7, Vol-8, Vol-9, Vol-10,
> Vol-11, Vol-12, Vol-13, Vol-14, Vol-15, Vol-16, Vol-17, Vol-18, Vol-19, Vol-20,
> Vol-21, Vol-22, Vol-23, Vol-24, Vol-25, Vol-26 and Vol-27.

This evidence was accepted by the judges in Case 20-1025 and was placed in the public records of the FCC, the D.C. Cir. and the Town of Great Barrington. The ruling is required (not optional) and the FCC's completion of the work was mandated by this ruling. Great Barrington requiring evidence of completion of this mandated work as a WTF application requirement is not an "… effective prohibition" of personal wireless service for the the reasons stated above and below.

Furthermore, FCC completion of the court-mandated work is reasonable and the applications can be deemed complete and a decision rendered, once substantial written evidence of completion of this work has been submitted by the WTF applicant. Finally, no new studies are required, just reasoned decision making based on the 27 volumes of evidence, cited above.

In Case 20-1025, the D.C. Cir. judges remanded FCC Order 19-126/19-226 back to the FCC, ending any trust that the current FCC RF microwave radiation exposure guidelines "… adequately protect against harmful effects of exposure to radio-frequency [microwave] radiation." The Aug 2021 ruling and remand also invalidated the the FCC's attempt to extend their current RF microwave radiation exposure guidelines to frequencies above 6,000 MHz for wireless devices.

In FCC Order 19-126/19-226, the FCC would not have attempted to extend the RF microwave radiation exposure guidelines to frequencies above 6,000 MHz, if it was not needed. Note, it takes valid FCC RF microwave radiation exposure guidelines for both the sending and receiving ends of a wireless transmission.

Without RF microwave radiation exposure guidelines to frequencies above 6,000 MHz for wireless devices in place, then all alleged FCC RF microwave radiation exposure guidelines above 6,000 MHz are invalid, until the FCC completes its court-mandated work in Case 20-1025 (see citation and quote above and additional substantial written evidence in Appendix A, below).

The ruling in Case 18-1129 United Keetoowah Band of Cherokee Indians v. Fed. Commc'ns Comm'n, 933 F.3d 728 (D.C. Cir. 2019), FCC Order 18-30 vacated portions of FCC Order 18-30, an order that sought NHPA and NEPA review exemptions for so-called "small" Wireless Telecommunications Facilities (sWTFs) applications. The exemptions were vacated, which means that every WTF must undergo NEPA and NHPA review. The DC Circuit judges ruled in Case 18-1129:

> *". . . The Commission failed to justify its determination that it is not in the public interest to require review of small cell deployments. We therefore grant the petitions in part because the Order 's deregulation of small cells is arbitrary and capricious . . . the FCC's characterization of the Order as consistent with its longstanding policy was not "logical and rational."*
>
> *". . . the scale of the deployment the FCC seeks to facilitate. . . makes it impossible on this record to credit the claim that small cell deregulation will "leave little to no environmental footprint."*
>
> *". . . The Commission also failed to assess the harms that can attend deployments that do not require new construction, particularly the cumulative harms from densification."*
>
> *". . . [The FCC] fails to justify its conclusion that small cells "as a class" and by their "nature" are "inherently unlikely" to trigger concerns."*
>
> *". . . We grant the petitions to vacate the Order 's removal of small cells from its limited approval authority and remand to the FCC."*

In 1968, Congress passed an act to protect public health and safety, to wit:
Public Law 90-602–Oct. 18, 1968 Amendments to Public Health Service Act "Subpart 3–Electronic Product Radiation Control" Declaration of Purpose, Sec. 354.
"The Congress hereby declares that the public health and safety must be protected from the dangers of electronic product radiation. Thus, it is the purpose of this subpart to provide for the establishment by the Secretary of an electronic product radiation control program which shall include the development and administration of performance standards to control the emission of electronic product radiation from electronic products and the undertaking by public and private organizations of research and investigation into the effects and control of such radiation emissions."

This supports our request that the FCC does its due diligence.

Not only do insurers recognize the harm from cellular radiation as outlined below, but there is no recourse for men and women incurring harm from this technology:

The United States Securities and Exchange Commission (SEC) requires that all public corporations that issue securities must disclose all known risks to their investors through annual reports and/or prospectuses. Utility and telecom companies, including, but not limited to, Vodafone, Verizon, AT&T, T-Mobile, American Tower, Crown Castle, Nokia, Microsoft, and BlackBerry, have disclosed in their annual reports the imminent risks of adverse health effects from wireless radiation and resultant possible lawsuits, to wit:

"We are subject to a substantial amount of litigation, including, from time to time, shareholder derivative suits, patent infringement lawsuits, antitrust class actions, wage and hour class actions, personal injury claims and lawsuits relating to our advertising, sales, billing and collection practices. In addition, our wireless business also faces personal injury and consumer class action lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters, and class action lawsuits that challenge marketing practices and disclosures relating to alleged adverse health effects of handheld wireless phones. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements." Source: February 21, 2017, Verizon Communication Inc. SEC Form 10-K annual report.

CFC Underwriting LTD, an agent of Lloyd's of London, the world's leading insurance market, states that, "The Electromagnetic Fields Exclusion (Exclusion 32) is a General Insurance Exclusion and is applied across the market as standard. The purpose of the exclusion is to exclude cover for illnesses caused by continuous long-term non-ionising radiation exposure i.e. through mobile phone usage."

Maxum Indemnity Company, part of The Hartford Financial Services Group, states in their policy under "Exclusion-Electromagnetic Radiation" that, "This insurance does not apply to: ...injury or damage [that] results from or is contributed by the pathological properties of electromagnetic radiation."

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WHEREAS it appears that the implementation and/or deployment of 5G does in fact cause harm of various kinds; and

WHEREAS it appears that some or all of the various forms of harm caused by the implementation and/or deployment of 5G can be considered a tort and are compensable by law; and

WHEREAS it appears that there is no bond of record in existence nor any source of indemnification regarding 5G and its various effects that may be considered as causing harm of various kinds; and

WHEREAS a man, woman, or person with full knowledge of a potential harm, whether caused directly by the man, woman, or person or not, and that man, woman, or person is endowed with the ability and/or duty to act upon the said knowledge in a way to avoid or otherwise mitigate the potential harm and fails to do said actions, is liable for the inevitable harm caused and/or may be found negligent where there is a duty of care; and

WHEREAS it is a fundamental principle of law that no one is above the law, including, but not limited to, all government actors. Any government immunity clause only applies to government actors performing actions of their office in good faith. There are rulings regarding public officials being held liable for actions done or failure to perform required actions, as in the cases of *Millbrook v United States* (2013), *Scheuer v. Rhodes* (1974), and *Ex Parte Young* (1908);

In summary, the Great Barrington vote to add a conditional application requirement for small cell millimeter wave (5G) WTFs does not create an effective prohibition of all "wireless communications facilities", as claimed in the Nov 8 letter from the MA Attorney General's office. The Town of Great Barrington "Wireless Telecommunications Overlay District"s proposed new Section 9.3.16.5 is substantially related to public health, safety or general welfare, and is not in violation of the 1996-TCA.

There is no evidence that Section 9.3.16.5 prohibits or has the effect of prohibiting the provision of personal wireless service. In fact, the evidence shows residents can make outdoor wireless phone calls on all major wireless carriers throughout the town and there is no evidence proving a need for any small cell millimeter wave (5G) WTFs in this community.

Any and all so-called laws passed that could be used to harm the American People are void ab initio and their making is treasonous.

Thank you for considering the evidence and analysis provided; and for reconsidering the conclusions in the Nov 8 letter: "Because Article 38 results in a **complete prohibition of wireless telecommunications facilities (WTFs)** in the Town, it conflicts with the [1996 Telecommunications Act] (1996-TCA) and must be disapproved."

We hope this letter will assist your reconsideration of Great Barrington's Article 38.

Kind regards,

Nina Anderson, President

Kathryn Levin, Vice President

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Appendix A: Consequences of Ruling in Case 20-1025 that Remanded FCC Order 19-126/19-226 Back to the FCC

From FCC Order 19-126/19-226: Targeted Changes to the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Radiation

Footnote 4 on Page 3 of above Order:

> *"The standards for localized specific absorption rate (SAR) that are normally applied for testing compliance of consumer devices operating below 6,000 MHz were derived from the Maximum Permissible Exposure (MPE) whole body limits that extend up to 100 GHz. The Commission currently employs a similar derivation to apply localized limits where appropriate for testing consumer devices operating above 6 GHz, and we propose in this item to formalize that approach."*

Footnote 4 on page 3 is inaccurate because SAR was not derived from the MPE. Based on NCRP (National Council on Radiation Protection and Measurements) Report 86, MPE was actually derived from SAR, which, in turn, was based on the following behavioral change observed in just five monkeys and eight rats (see data table, below). The FCC's attempt in FCC Order 19-126/19-226 to "formalize the approach" to extend the SAR to frequencies above 6,000 MHz was invalidated by the US Courts of Appeals, D.C. Cir. and was remanded back to the FCC in August 2021.

Comparison of Power Flux Density (PFD) and Specific Absorption Rate (SAR) Thresholds that Caused Behavioral Disruption (Source: NCRP Report 86)

Species		CW 225 MHz	Pulsed 1,300 MHz	CW 2,450 MHz	Pulsed 5,800 MHz
Norwegian Rats	PFD	n/a	100,000,000 µW/m²	280,000,000 µW/m²	200,000,000 µW/m²
Norwegian Rats	SAR	n/a	2.5 W/kg	5.0 W/kg	4.9 W/kg
Squirrel Monkeys	PFD	n/a	n/a	450,000,000 µW/m²	400,000,000 µW/m²
Squirrel Monkeys	SAR	n/a	n/a	4.5 W/kg	7.2 W/kg
Rhesus Monkeys	PFD	80,000,000 µW/m²	570,000,000 µW/m²	670,000,000 µW/m²	1,400,000,000 µW/m²
Rhesus Monkeys	SAR	3.2 W/kg	4.5 W/kg	4.7 W/kg	8.4 W/kg

Conclusion: since Aug 13, 2019, there has been no valid FCC RF microwave radiation guideline for frequencies above 6,000 MHz for wireless devices. If the FCC believed their guideline already extended to frequencies above 6,000 MHz, there would have been no need for the FCC attempt to "formalize the approach" in FCC Orders 19-126/19-226.

Behavioral Disruption: the rats and monkeys were irradiated with RF microwave radiation exposures at higher and higher doses, until . . . the lab animals became unresponsive, meaning they could no longer seek and eat their food. Once the animals were this significantly maimed, the scientists then measured the animals' core body temperature and made a series of "best guess" mathematical derivations from there to establish both SAR and MPE.

The current FCC RF microwave radiation exposure guidelines are based only on one observed behavioral change (unresponsiveness) and only on one biological effect: the heating of tissue.

Current scientific evidence through 2023 establishes that many adverse biological effects occur at RF microwave radiation exposures that are far lower, and occur on the way to heating: cell membranes leak, proteins vibrate/distort, DNA/RNA transcription errors occur — leading to tinnitus, headaches, sleep disruption and significant damages to blood, blood-brain barrier, hormones, the immune system and eventually cancer (see links, above, to the 27 volumes of evidence accepted by the DC Circuit in 2021).

Part II Architectural and Transportation Barriers Compliance Board, 36 CFR Part 1191 [Docket No. 98-5] RIN 3014-AA16, Americans With Disabilities Act ("ADA") Accessibility Guidelines for Buildings and Facilities; Recreation Facilities, Federal Register/Vol. 67, No. 170/Tuesday, September 3, 2002/Rules and Regulations, Multiple Chemical Sensitivities and Electromagnetic Sensitivities.

"The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities. The Board plans to develop technical assistance materials on best practices for accommodating....and develop an action plan that can be used to reduce the level of chemicals and electromagnetic fields in the built environment."

Paragraph 120:

> *"¶ **120**. In this Notice of Proposed Rulemaking (NPRM), we seek comment on expanding the range of frequencies for which the RF exposure limits apply; (noting that exposure limits are already in effect from 100 kHz to 100 GHz) on incorporating into our rules localized exposure limits above 6 GHz in parallel to the localized exposure limits already established below 6,000 MHz† on specifying the conditions under which and the methods by which the limits are averaged, in both time and area, during evaluation for compliance with the rules; and on addressing new issues raised by WPT devices. Although we terminated the Inquiry noticed in ET Docket No. 13-84‡ above, there are some proposals on which we seek comment in this NPRM that stem from matters discussed in that proceeding, some of which overlap with the issues identified immediately above."*

† **Foundational problem:** the claim that "exposure limits are already in effect from 100 kHz to 100 GHz" is inaccurate because the MPE limits were actually mathematically derived from the

"localized exposure limits established below 6 GHz"; therefore, is no basis for any RF microwave radiation exposure limits above 6 GHz, until the FCC completes the court-mandated work. In the ruling in Case N0. 20-1025: Environmental Health Trust v FCC. The judges mandated that the FCC must evaluate 27 volumes of scientific evidence (11,000+ pages) showing biological harms from RF microwave radiation and then explain how the FCC RF microwave radiation guideline adequately protects against harmful effects of exposure to RF microwave radiation before it can expand RF microwave radiation exposure guidelines above 6GHz.

‡ The FCC's attempt to terminate the Inquiry in ET Docket No. 13-84 failed because FCC Order 19-126 was vacated and remanded to the FCC in the ruling in Case N0. 20-1025: Environmental Health Trust v FCC; the Inquiry in ET Docket No. 13-84 is still active and not yet addressed in over two years.