

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6729

**ISSUING FINAL ORDER IN THE VERIZON WIRELESS, LLC
RELOCATION BENEFITS APPEAL PROVIDING A
RELOCATION PAYMENT IN THE AMOUNT OF \$118,839.23**

WHEREAS, in 2005 the Portland Development Commission (“PDC”) acquired property located at 3508 SW Moody Avenue (the “Property”) in the North Macadam Urban Renewal Area through condemnation;

WHEREAS, Verizon Wireless, LLC (“Verizon”) leased a small portion of the Property on which it maintained a wireless cell phone transmission facility;

WHEREAS, PDC’s acquisition of the Property required Verizon to remove its transmission tower and equipment from the Property in December 2005, and by law PDC was obligated to provide relocation benefits to Verizon;

WHEREAS, Verizon submitted a relocation claim to PDC in the amount of \$1,811,514.54 requesting reimbursement for expenses involved in selecting and developing three new wireless telecommunication tower sites;

WHEREAS, PDC determined that Verizon was eligible for a relocation payment in the amount of \$118,839.23;

WHEREAS, pursuant to the PDC Relocation Policies and Procedures (the “PDC Relocation Policy”), as adopted by the PDC Board of Commissioners (the “Board”) on October 26, 2005 (Resolution No. 6302), Verizon requested review by the PDC Executive Director, who affirmed the staff’s determination of the amount of the relocation payment;

WHEREAS, pursuant to the PDC Relocation Policy, Verizon requested a contested case hearing, which was held before a hearing officer appointed by the Board;

WHEREAS, the hearing officer heard arguments and evidence from PDC and Verizon Wireless and issued findings of fact and conclusions of law in a Report and Recommendation;

WHEREAS, PDC provided Verizon with an opportunity to file written exceptions and present written argument to the Board before it issues a final order, and Verizon did not present any written exceptions or written argument to the Board;

WHEREAS, the PDC Relocation Policy is consistent with Oregon State Law, ORS 35.500 to 35.530, governing relocation payment and assistance to persons displaced by public entities;

WHEREAS, the PDC Relocation Policy provides the same benefits conferred by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601, et seq.);

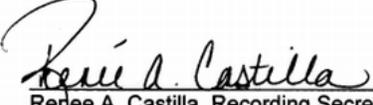
WHEREAS, because no federal funds were used in the acquisition of the Property that necessitated the relocation of Verizon's wireless telecommunications facility, and there is no substantial conflict between the PDC Relocation Policy and federal law and regulations, the question of whether PDC is required to apply federal law and regulations or Oregon law does not have to be decided in this case; and

WHEREAS, the PDC Relocation Policy requires the Board to issue a final order in contested case hearings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby issues the Final Order attached hereto as Exhibit A, establishing a relocation payment to Verizon of \$118,839.23; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately.

Adopted by the Portland Development Commission on August 26, 2009.



Renee A. Castilla, Recording Secretary

**FINAL ORDER OF THE
PORTLAND DEVELOPMENT COMMISSION BOARD OF COMMISSIONERS
ON VERIZON WIRELESS, LLC'S RELOCATION AND BENEFITS APPEAL**

Verizon Wireless, LLC ("Verizon") requested a contested case hearing to review the decision of the Executive Director in the matter pertaining to the relocation of Verizon's personal property from real property owned by the Portland Development Commission ("PDC") located at 3508 SW Moody Avenue, Portland, Oregon. The PDC Board of Commissioners (the "Board") appointed Anne Corcoran Briggs, a member of the Oregon State Bar, as the Hearing Officer to preside over the contested case hearing and to provide the Board, as the PDC contested case hearing panel, with a report and recommendation. Ms. Briggs held an evidentiary hearing on January 12, 2009. After the parties submitted stipulated facts and post-hearing written briefs, Ms. Briggs issued her report and recommendation titled "Before the PDC Hearing Officer/ Verizon Wireless LLC Relocation Benefits Appeal" (hereinafter "Report and Recommendation"). A copy of the Report and Recommendation is attached to this Final Order with an agreed upon correction by interlineation at Page 3.

After the Report and Recommendation was delivered to Verizon, the Board provided Verizon with an opportunity to file written exceptions and present written argument to the Board before it rendered this Final Order. Verizon did not present any written exceptions or written argument to the Board.

Having reviewed the Hearing Officer's Report and Recommendation, the Board makes the following rulings and issues the following order:

A. Ruling on Admissibility of Offered Evidence

The Board adopts the Hearing Officer's ruling on offered evidence set forth in Section C.3 of the Report and Recommendation.

B. Findings of Fact

The Board adopts the Hearing Officer's Finding of Facts set forth in Section B of the Report and Recommendation.

C. Conclusions of Law

The Board adopts the Hearing Officer's Analysis and Conclusions of Law set forth in Section C of the Report and Recommendation, except as follows:

1. For clarification, the Board understands the Hearing Officer to use the term "Federal Act" as that term is defined in ORS 35.500(2).
2. For clarification, the Board notes that Section 202 of the Federal Act governs relocation benefits for various types of moves. The move at issue in Verizon's claim is a "personal property only" move. Under both federal and PDC regulations, benefits available for a personal property only move do not include reimbursement for expenses incurred while searching for a replacement location. 49 CFR 24.301(e) and PDC Policy 3.2.8.

3. The Board notes a clerical error in the quoted section of ORS 35.510 at page 4 of the Report and Recommendation. The Board corrects this clerical error by interlineations by replacing “in” with “under” and “for in” with “under.”
4. The Report and Recommendation concludes that the Federal Act and federal regulations promulgated thereunder should be applied directly to Verizon’s claim. PDC’s Relocation Policies and Procedures were adopted based on PDC’s understanding that the sections of the Federal Act referenced in ORS 35.510 were adopted by the Oregon legislature as state law. PDC Relocation Policies and Procedures implement and apply Oregon’s statutes rather than directly applying federal statutes and regulations. However, as the Hearing Officer correctly notes, the applicable PDC and federal regulations are consistent with each other. Therefore, applying either set of regulations to Verizon’s claim, the conclusion is the same. Because the question of whether PDC should apply federal law directly or apply the Federal Act as adopted as state law does not change the conclusion in this contested case but may have unanticipated consequences in future unrelated matters, the Board does not adopt the Hearing Officer’s recommendation on that issue.

ORDER

Based on the above evidentiary rulings, findings of fact and conclusions of law, it is **ORDERED** that the Executive Director’s decision is affirmed.

It is so **ORDERED** this _____ day of August, 2009.

PDC

PORTLAND DEVELOPMENT COMMISSION

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Title:

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RELOCATION BENEFITS APPEAL PROVIDING A
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Adopted by the Portland Development Commission on August 26, 2009.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Charles Wilhoite	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: August 31, 2009