

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC  
(AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR THE  
CONSTRUCTION, MAINTENANCE, AND OPERATION  
OF A TELECOMMUNICATIONS FACILITY AT 106  
SHARON ROAD, TOWN OF SALISBURY, CONNECTICUT

DOCKET NO. 501

July 28, 2021

NEW CINGULAR WIRELESS PCS, LLC (AT&T)  
POST-HEARING BRIEF

Respectfully Submitted,



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## **PRELIMINARY STATEMENT**

New Cingular Wireless PCS, LLC (“AT&T” or the “Applicant”), by its attorneys, Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of its application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 501. The Application addresses the demonstrated public need for a new tower facility in the central and southern portions of the Village of Lakeville within the Town of Salisbury so that FCC-licensed wireless carriers and FirstNet may provide reliable wireless and emergency communication services for the benefits of residents, visitors and businesses within the Village as well as the Hotchkiss School and key traffic corridors in the area.

As set forth in detail in the Application, AT&T secured a lease with Wake Robin, LLC, owner of the 11.52-acre parcel located at 106 Sharon Road, for a location for the proposed facility (the “Site”). Throughout the proceedings in this Docket, AT&T provided data, testimony and otherwise responded to questions from the Siting Council and Staff that address the public need for reliable wireless and emergency communications services and new tower infrastructure in this part of the state. The record also demonstrates that all potential environmental impacts were mitigated such that the Proposed Facility will not have any significant adverse impacts to any federal or state resources identified in the Council’s enabling legislation.

The Applicant respectfully submits that the Site is uniquely situated for a tower facility needed to serve the public, there are no known practical or feasible alternatives and that there are no significant adverse environmental impacts associated with the project which outweigh the public need for improved wireless services in central and southern Lakeville. As such, the Applicant submits that the project meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) for approval and is requesting a Certificate for the proposed tower facility to meet the public need for wireless services in this area of the state.

## **STATEMENT OF FACTS**

### **I. AT&T's Need & FirstNet Services**

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, there is a significant deficiency in the existing AT&T wireless communications network in the south-central part of the Town of Salisbury in the Village of Lakeville. Applicant's Ex.1, Attachment 1; Applicant's Ex. 4, A22-A23. AT&T's need for a new tower facility in this area of Salisbury to address the significant gap in service dates back to approximately 2014. Applicant's Ex.1. This site will also provide emergency services communications through FirstNet, a nationwide broadband public safety network dedicated to the needs of first responders. Applicant's Ex.1, pgs. 13-14; Exhibit 4, A3.

The Proposed Facility will provide reliable services in AT&T's network to an area that includes the Lakeville Business District, as well as the Hotchkiss School and numerous homes and principal arterial roads, including State Highways 41 and 112. Applicant's Ex.1, p. 11; Applicant's Ex. 1, Attachment 1. Indeed, the Town's Plan of Conservation and Development recognizes the unreliable cell phone coverage in the Town and need for improved cellular coverage and communications infrastructure in Salisbury. Applicant's Ex.1, Bulk Filing, Attachment 1. The Facility is needed by AT&T, in conjunction with its other existing and proposed facilities, to meet increased network demands and provide reliable services, including emergency communications services, to the public in this part of Salisbury.

### **II. Site Search**

AT&T has been investigating sites in this area of Lakeville since approximately 2014. In 2016, for business reasons only, AT&T deferred the proposed site and in March of 2018, the search ring was reactivated. Applicant's Ex. 4, A3. Several years after AT&T's initial investigation, and after the investigation of three (3) other sites in the surrounding area, the Site was identified as a candidate. Applicant's Ex. 1, Attachment 2. The elevation of the proposed Site, which has a willing landowner with whom commercially reasonable lease terms could be negotiated, is suited to address the

targeted areas for coverage along within the south-central part of the Town of Salisbury. Applicant's Ex. 1, Attachment 2. The surrounding area in this part of Salisbury consists of mainly residential and agricultural properties with challenging topography. Applicant's Ex. 1, Attachments 2, 4 & 6. No alternative sites or locations were offered by the Town during the municipal consultation.

### **III. Technical Consultation with the Town of Salisbury**

A Technical Report for the Proposed Facility at 106 Sharon Road was provided to the Town as part of the C.G.S. 16-50l consultation process. Applicant's Ex. 1, Bulk Filing, Attachment 5. The Town provided a copy of the Technical Report on its website and elected not to hold a public information meeting regarding the Proposed Facility. On January 4, 2021, AT&T submitted supplemental materials to the Town reflecting the amended design of the Proposed Facility which included the reduction in height from 104' to 94' ALG, addressing comments received during the State Historic Preservation Office ("SHPO") consultation. Applicant's Ex. 1, Bulk Filing, Attachment 6.

### **IV. Certificate Application & Pre-Hearing Filings**

On April 1, 2021, the Applicant submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 106 Sharon Road. The Proposed Facility consists of a new self-supporting monopole that is approximately 94' in height with a lightning rod extending an additional 6' above the top of the pole, bringing the total height to approximately 100' Applicant's Ex. 1, Attachments 3 & 4. The monopole tower will be located within a 2,500 square-foot (s.f.) fenced equipment compound located within the 10,000 s.f. lease area in the south-central portion of the Site. AT&T's antennas would be installed at an antenna centerline height of approximately 90' on the monopole tower, with a walk-in equipment cabinet and emergency back-up generator located within the fenced equipment compound. Applicant's Ex. 1, Attachments 3 & 4. The equipment compound will be enclosed with an 8' tall chain-link fence. Applicant's Ex. 1, Attachments 3 & 4. The monopole tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed wireless carriers. Vehicle access to the Facility

would be provided from Sharon Road using an existing paved driveway and an existing gravel access way, which will connect to a proposed 12-foot wide, approximately 231-foot long gravel driveway on the western portion of the Site to the proposed compound. Applicant's Ex. 1, Attachments 3 & 4. Utility connections would be routed from Sharon Road underground along the proposed access road and existing driveway. Applicant's Ex. 1, Attachments 3 & 4.

On June 15, 2021 the Applicant submitted responses to Siting Council interrogatories. On June 21, 2021 a supplemental submission was filed. The Applicant conducted a locally-noticed balloon float on May 7, 2021 to accommodate the Town. Applicant's Ex. 7, Attachment 2.

#### **V. Public Hearing**

Due to the pandemic, a remote public hearing via Zoom Conferencing was scheduled by the Siting Council for June 29, 2021, in accordance with Governor Lamont's March 14, 2020 Executive Order No. 7B. At the June 29, 2021 public evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicant's panel of witnesses on the need for the Facility, the investigation of sites and any environmental effects associated with construction of the Facility. The hearing was closed on June 29, 2021 after all participants were given a full and fair opportunity to present evidence and cross-examine witnesses.

### **POINT I**

#### **A PUBLIC NEED CLEARLY EXISTS**

#### **FOR A NEW TOWER FACILITY IN SOUTH-CENTRAL SALISBURY**

Pursuant to C.G.S. Section 16-50p, the Siting Council is required to find and determine as part of any Certificate application, "a public need for the proposed facility and the basis for that need." C.G.S. §16-50p(a)(1). In this Docket, AT&T provided coverage analyses, data and expert testimony that clearly demonstrate the need for a new tower facility to provide reliable wireless services in south-central Salisbury to emergency responders, the Lakeville Business District, Hotchkiss School, homes and the traveling public. Applicant's Ex. 1, Attachment 1; Applicant's Ex. 4, A31-A34; 6/29/21 Tr., 2pm, pp. 62-64. Indeed, the Application materials and AT&T's expert witness testimony demonstrate that a new tower facility at a minimum height of 94' AGL is required

to provide reliable telecommunications services to the public as well as a broadband public safety network dedicated to first responders through FirstNet services. When the State of Connecticut opted into FirstNet and AT&T's services in late 2017, various areas of the state were identified where gaps in network service would require new infrastructure in the northwestern corner of the state. Applicant's Ex. 1, Attachment 1; Applicant's Ex. 4, A31-A34 ; 6/29/21 Tr., 2pm, pp. 63-64.

In fact, the comments from the Town pursuant to Section 16-50l consultation note that the lack of wireless service along State Highways 41 and 112 pose a particularly high level of risk to motorists and that unreliable wireless service in the Lakeville commercial district has a significant impact on local businesses and their customers. Applicant's Ex. 1, Attachment 11.

The record in Docket 501 also demonstrates that this Site is uniquely situated at an elevation and location that would provide reliable wireless service to remedy this identified need for fill-in coverage. Applicant's Ex. 1, Attachment 1; 6/29/21 Tr., 2pm, P. 15. In addition to expert testimony, AT&T's analyses included sophisticated modeling, drive data and statistical analyses to show that a new tower facility is needed to provide wireless services to an area of the state that has gone without such services for nearly 7 years. Applicant's Ex. 1, Attachment 1; Applicant's Ex. 4, A14-A27. AT&T also confirmed through expert testimony that small cell installations are not a technical alternative to the Proposed Facility and that there is a need for a new macro-cellular facility to provide new reliable wireless coverage to the targeted area of Salisbury. 6/29/21 Tr., 2pm, p 45.

Based on the evidence, the Applicant submits that the public need for a new tower facility in the south-central area of Salisbury to provide reliable wireless services is not a disputed issue in this Docket.

## POINT II

### **THERE ARE NO EXISTING STRUCTURES OR BETTER ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY**

The Applicant submitted evidence that there are no existing structures that are viable for providing reliable wireless service to this area of Salisbury. Applicant's Ex. 1, Attachment 2. The Applicant identified and investigated four (4) sites in the surrounding area for feasibility of a new facility, including the Site. Applicant's Ex. 1, Attachment 2. Upon review of these sites by AT&T's radio frequency engineer, three (3) of these sites were determined to be inadequate and did not provide the appropriate coverage to satisfy AT&T's network requirements in this area. Applicant's Ex. 1, Attachment 2.

The Applicant identified seven (7) existing communication towers within a 4-mile radius of the Proposed Facility, several of which AT&T is currently located on. Applicant's Ex. 1, Attachment 2. None of these existing facility sites are feasible alternatives given their distance to the targeted coverage area. Applicant's Ex. 1, Attachment 2. There are no tall, non-tower structures above the tree line in this area of Salisbury, including the St. Mary's church steeple, which is eligible to be listed on the National Register of Historic Places, that meet the coverage objectives. Applicant's Ex. 1, Attachment 2 & 9. As such, any existing structures were not evaluated as a possible siting alternative to a new tower. The Proposed Facility is needed in conjunction with other sites, including AT&T's proposed facility at the Salisbury School, approximately 4 miles north of the Site, which would serve the northern area of Salisbury and not provide sufficient coverage for this south-central area of the Town. Applicant's Ex. 1, Attachments 1 & 2; 6/29/21 Tr., 2pm, p. 59.

No other viable alternative tower sites were identified by anyone. This includes the technical consultation with the Town and its various officials, one of the purposes for which is an opportunity for a municipality to explore and offer any alternatives. As such, neither the Town or members of the public suggested any alternative Sites during both the municipal consultation process and the

Siting Council's review of this Application. The Applicant submits that the evidence shows there is no better-known site for a tower to serve this area of Salisbury.

### **POINT III**

#### **THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Pursuant to C.G.S. Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impacts of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity, fish and wildlife, distance to schools and commercial child daycare centers<sup>1</sup> and facility design. The Applicant respectfully submits that the minimal impacts associated with the proposed Facility will have no significant environmental effects on the resources listed in C.G.S. Section 16-50p and clearly do not outweigh the public need for the Facility as proposed in this Docket.

#### **I. Potential Visual Effects**

The Applicant respectfully submits that the evidence and testimony in this proceeding, as summarized below, demonstrates that the visibility of the Proposed Facility will not result in any significant adverse visual impact to scenic or other natural resources. Indeed, the Proposed Facility as proposed reflects a reduction in tower height and design modifications requested by the Connecticut State Historic Preservation Office ("SHPO") during consultation. Applicant's Ex. 1, Attachments 2 & 9. Upon subsequent review, SHPO indicated that none of the identified historic resources, including the St. Mary's Catholic Church, which is eligible for listing on the National Register and Lakeville Manor and the Lakeville Historic District, which are listed on the National Register, will be impacted by the Proposed Facility due to varying topography, distance and intervening foliage. Applicant's Ex. 1, Attachments 5 & 9.

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<sup>1</sup> Distance to schools and commercial day care facilities are evaluated in the context of significant visual impacts.

The Applicant's comprehensive Visibility Analyses demonstrates that areas from where the Facility would be visible are comprised of 248.1+/- acres of visibility during leaf-on conditions and 275.3+/- acres of visibility during leaf-off conditions. Together, this represents approximately 13.70% of the 1-mile radius study area. Applicant's Ex. 1, pp. 16, Attachment 8; Applicant's Ex. 7, Attachment 2.

The majority of the views during both leaf-on and leaf-off conditions are within the Wononskupomuc Lake Waterway that is located approximately 0.18 mile to the west of the Site. Applicant's Ex. 1, pp. 16, Attachment 8. The supplemental Visibility Analysis investigated visibility of the Proposed Facility from the Wononskupomuc Lake Waterway and demonstrates that visibility is minimal and limited to the uppermost portions of the Proposed Facility. Applicant's Exhibit 7, Attachment 2. The visual assessment concludes that the majority of the views outside of the Wononskupomuc Lake Waterway will be limited to nearby properties along Wells Hill Road to the east-northeast of the Site and the Hotchkiss School property. 6/29/21 Tr., 2pm, pp. 18-19. Topography, vegetation and the relative height of the tower will obscure, partially or totally, views from most locations in the study area during leaf on conditions. Applicant's Ex. 1, pp. 16, Attachment 8; Applicant's Ex. 7. Attachment 2.

During leaf-off conditions, outside of the Wononskupomuc Lake Waterway, obstructed visibility is predicted in the area to the north/southwest and east of the Site that are more than 0.5 miles from the site. 6/29/21 Tr., 2pm, pp. 18-19. These views are predicted to be intermittent, distant and partially obscured by existing vegetation. Applicant's Ex. 1, Attachment 8; Applicant's Ex. 7, Attachment 2; 6/29/21 Tr., 2pm, pp. 18-19. The presence of mature trees, both in the immediate area of the Site and throughout much of the study area minimize the extent of visibility. Applicant's Ex.1, pp. 16, Attachment 8.

The proposed at-grade equipment associated with the Facility will be located within an area surrounded by mature vegetation which will screen the equipment compound from views of neighboring properties. Applicant's Ex. 1, Attachments 3 & 4. The evidence demonstrates that the

Proposed Facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood or community.

## **II. Potential Impacts to the Natural Environment**

As clearly established in this Docket, impacts to the natural environment from the proposed Facility are not significant.

### **a. Wetlands, Watercourses and Floodplains**

As set forth in the Wetland Investigation Report in the Application, the Proposed Facility is located approximately 100' to the west of the nearest wetland resource and no new disturbance is proposed within 100' of that wetland. Applicant's Ex. 1, Attachments 5 & 6. A second wetland resource is located to the west of an existing gravel and paved parking lot, within 100' of where the construction staging area is proposed for the Facility. No new grading is proposed in this already-disturbed area and erosion controls will be implemented. Applicant's Ex. 1, Attachment 4, 5 & 6. As such, the Proposed Facility is not anticipated to result in an adverse impact to wetlands due to the distance separating the proposed work activities from the nearest wetland or watercourse. Applicant's Ex. 1, pp. 18, Attachment 6. Further, all appropriate sediment and erosion control measures will be designed and employed in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Connecticut Council of Soil and Water Conservation and DEP (2002). While the Applicant is proposing less than 1 acre of new impervious area, the Site is intended to comply with the 2004 Connecticut Stormwater Quality Manual, to the extent that it is required. Soil erosion control measures and other best management practices will be established and maintained throughout the construction of the Proposed Facility. Applicant's Ex.1, p. 20, Attachments 5 & 6; Exhibit 4, A35.

### **b. Habitat Assessment and Wildlife**

As demonstrated in the record, the Applicant's consultants conducted thorough evaluations of the Site. While the facility site is located within 0.25 mile of any locations identified on the DEEP Natural Diversity Data Base ("NDDB") maps as areas that represent approximate locations of endangered, threatened and special concern species and significant natural communities in

Connecticut, onsite investigation conducted by the Applicant's environmental scientists and consultants determined that no required habitat for threatened or endangered species were found on the Site. Applicant's Ex.1, p. 19, Attachment 9; 6/29/21 Tr., 2pm, p. 49. Based on the Applicant's onsite investigation, consultation with the DEEP concluded that the Proposed Facility is not anticipated to have negative impacts to State-listed species. Applicant's Ex. 1, p. 19; Attachment 9; Applicant's Ex. 4, A37 & A41. As the evidence in the record demonstrates, no migratory bird species are anticipated to be impacted by the proposed development. Applicant's Ex. 4, A36 & A37. The Site is not near an Important Bird Area and the Proposed Facility would comply with the U.S. Fish & Wildlife Service guidelines for minimizing the potential impacts to bird species. Applicant's Ex. 4, A36 & A37, Applicant's Ex.1, Attachment 6; Applicant's Ex. 4, Attachment 5. Therefore, the Proposed Facility will not have any adverse impacts on wildlife or critical habitat.

### **c. Clearing & Grading Assessment**

Access to the Proposed Facility will be from Sharon Road utilizing the existing paved driveway and gravel accessway, which will connect to a proposed 12-foot wide, approximately 231-foot-long gravel driveway on the western portion of the property to the proposed compound. Applicant's Ex. 1, p. 16; Attachment 3. The total area of clearing and grading disturbance for the Proposed Facility is approximately 22,765 s.f. Installation of the proposed compound area and accessway will require the removal of approximately 29 trees, ten (10) of which are 14" or greater dbh. Applicant's Ex. 1, p. 16, Attachment 3. Site improvements will require net excavation of approximately 269 cubic yards of material. Applicant's Ex.1, p. 16, Attachment 3.

As noted in Section II(a) above, the Proposed Facility design will incorporate all appropriate sediment and erosion control measures. The Applicant respectfully submits that the proposed improvements at the Site will not result in any significant adverse environmental impact on the surrounding area and will allow for safe access to and development of the Facility.

## **III. Other Environmental & Neighborhood Considerations**

A tower facility at the location proposed will comply with all public health and safety requirements. Applicant's Ex.1, Attachment 9, Applicant's Ex. 4, A31 – A34. Additionally, since the Proposed Facility will be unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste or material impact on air emissions.

In addition, no adverse impacts to Connecticut Prime Farmland and/or Important Agricultural Soils or Core Forests are anticipated. Applicant's Ex. 4, A18; Applicant's Exhibit 7, Attachment 1.

As the Applicant's expert testimony clearly established, the location of the Proposed Facility at the Site minimizes visibility and maximizes existing mature vegetation for screening. Applicant's Ex. 1, Attachments 2; 4 & 6.

During the evidentiary hearing, the Applicant agreed to replace the proposed diesel generator with a propane generator. 6/29/21 Tr., 2pm, p. 47. Expert testimony from the Applicant's engineers concluded that the noise associated with the operation of the Proposed Facility, including operation of the emergency generator, will remain well below the DEEP standards. Applicant's Ex. 1, Attachment 5, Attachment 10; Applicant's Exhibit 4, A16; Tr. 5/11/21, 2pm, pp. 17-18. Propane generators generally emit 2-3 dB lower sound level than diesel generators, based on a similar kW capacity and sound mitigation configuration. In this case, the propane generator that will be installed will be located close to the ground and can be expected to operate with 3-4 dBA lower sound levels across the study area as shown in the Sound Study Table 5 or graphically on Figure 5 of Applicant's Ex. 1, Attachment 10.

As requested at the hearing, the Applicant's noise expert evaluated sound at the Wake Robin Inn on the Site and determined that rooms at the Inn are expected to be exposed to approximately 42 dBA, which is well-below the standard, under the worst-case daytime sound levels as described in the Sound Study. 6/29/21 Tr., 2pm, pp. 27-28.

Given the foregoing facts, the Applicant submits that the tower will not result in any adverse impacts to the adjacent property.

#### **IV. Avoiding Proliferation of Towers**

The Proposed Facility is designed to accommodate AT&T and one additional wireless carrier and will be constructed to accommodate a 20' future extension in tower height, should a third carrier be interested in collocating on the site. Applicant's Exhibit 4, A8; 6/29/21 Tr., 2pm, pp. 30-32. Such an extension would constitute an exempt modification pursuant to the Regulations of Connecticut State Agencies § 16-50j-72(b)(2) and Section 6409(a) of the Spectrum Act of 2012 ("Section 6409"). Given that a 20' height extension falls within the administrative approval mandate of Section 6409 and the minimal visual impact of the Proposed Facility, it is likely that the SHPO considered a potential future extension in its decision requiring a lower tower height now to accommodate a future extension.

### CONCLUSION

The Applicant demonstrated a public need for the proposed tower Facility presented in this Docket and such public need is confirmed by the Town's March 23, 2021 letter and POCD. The record in this proceeding reveals that there are no known practical or feasible alternatives to a tower at the Site in question. The Applicant's evidence demonstrates the importance of this proposed tower Facility needed to serve the public which has experienced significant gaps in reliable services as well as emergency communication services.

While there are some very limited visual effects associated with the Proposed Facility, principally on immediately adjacent properties, the Applicant respectfully submits that such effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services. Moreover, the Applicant has designed the tower facility on the Site to avoid to the greatest extent practicable any visual impacts and impacts on the natural environment.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the Proposed Facility as required by statute, the Applicant respectfully submits the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project the Council might deem significant pursuant to the statutory criteria governing its review of certificate applications for new tower facilities. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicant

submits that the standards and criteria set forth in C.G.S. Section 16-50p for approval of tower facilities by the Council have been met and fully warrant issuance of a Certificate for the facility as proposed in Docket 501.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, an original and fifteen (15) copies of the foregoing was sent electronically and delivered to the Connecticut Siting Council via overnight mail.

Dated: July 28, 2021



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