



445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

To: Connecticut Siting Council

From: Christopher B. Fisher, Esq.
Kristen Motel, Esq.
On behalf of New Cingular Wireless PCS, LLC (“AT&T”)

Date: December 13, 2021

Re: Docket No. 506
499 Mile Lane, Middletown, Connecticut (“Facility Site”)
Supplemental Filing – Tower Sharing and Statutory Considerations
Notice of Feasibility Proceeding Pursuant to 16-50aa(c)(2) Added to Docket 506

We are writing this memorandum on behalf of AT&T to provide: 1) an overview of the State of Connecticut statutory considerations raised in Docket 506; and 2) invoke Section 16-50aa(c)(2) of the Public Utility Environmental Standards Act (“PUESA”) on behalf of the AT&T procedurally and in collaboration with the City of Middletown as the owner of the existing Facility Site in this Docket.

Former Military Training Site, City Acquisition and Existing Tower Background

The Facility Site is part of a large property that the City of Middletown acquired from the United States and which was historically used as a military training center since 1955. A copy of the City’s Field Card for the property notes it was acquired in 2012. The Facility Site was built in 2018 as part of a major investment by the City with Motorola to upgrade the City’s public safety network. Testimony of Director Bartolotta documents further background on the City’s property, the tower, the City’s public safety network and the significant amount of planning and coordination with AT&T on this project.

Collocations are Federal EFR’s and Subject to Ministerial State and Local Permit Reviews

In this instance, had AT&T been able to essentially rebuild the City’s 180’ light duty lattice tower at the existing Facility Site for collocation and when this FirstNet project was conceptualized in 2017, this proceeding would not have to have been initiated at all. For that project, the City’s agencies would have approved a lease for AT&T, approved the structural modification plan and the company would have filed an EFR with the Siting Council which would have been subject to mandatory approval under federal regulations. *See 47 C.F.R. § 1.6100 and related FCC rulings in Council Administrative Notice # 23-28.* Notably, under federal regulations, a tower extension of an additional 20 feet and expansion of the existing compound 30 feet are also EFRs. *See FCC Ruling in Council Administrative Notice # 28.* This is important context and background for Docket 506 which explains why AT&T and the City have proceeded as part of thoughtful discussions between

them and why collocation on the existing tower at the City's Facility Site was never considered feasible. Ms. Kelly Wade Bettuchi, AT&T Regional Director for External and Legislative Affairs, will testify further about collaboration with the City at the continued evidentiary hearing as well.

Procedural Background and AT&T's Prior Petition

The Council has always enjoyed broad statutory authority delegated to it by the State Legislature to: 1) exempt by regulation certain telecommunications tower facilities or site modifications from the requirement to obtain a certificate, or 2) adopt site specific declaratory rulings pursuant to petitions, where the agency finds any such new telecommunications tower facility, even a greenfield tower site, would not "have a substantial adverse environmental effect". C.G.S. § 16-50i(a)(6), § 16-50k. Here, AT&T filed Petition No. 1465 pursuant to Section 16-50i(a)(6) and Section 16-50aa of PUSEA and requested a Council ruling and order: 1) permitting it to share the City's existing Facility Site through construction of a second shorter monopole tower immediately adjacent to the existing light duty City lattice tower; and 2) a determination that the second monopole tower at the existing Facility Site did not implicate any significant environmental effects requiring review in a certificate proceeding, matters well within the Council's jurisdiction.¹

After Petition 1465 was filed with the Council, residents in the area of the City's existing Facility Site expressed an interest in the proceeding and AT&T voluntarily converted the Petition into a Certificate Application. AT&T's conversion was procedurally accomplished with the consent of the City in order to give the public a full opportunity to participate in what is procedurally now Docket 506. Additionally, as requested by AT&T, the Council granted waivers from the typical form of the Certificate application materials and submission of certain information, deemed the application complete and proceeded with the standard process of interrogatories and hearings. There are no other parties or intervenors to Docket 506 and the initial hearings were held in November, 2021.

Siting Council Statutory Considerations in the Docket and "Tower Sharing"

In a Certificate proceeding, Section 16-50p(b)(1)(A) of PUESA specifically requires the Council to examine whether or not shared use of an existing "facility" as defined in Section 16-50aa is technically, legally, environmentally and economically feasible, meets public safety concerns and avoids the unnecessary proliferation of towers in the overall public interest. Notably, Section 16-50aa(b) of PUESA captures a broad range of facilities so long as they include "a tower owned or operated for a commercial or public purpose by a person, firm, corporation or a public agency which uses such tower for transmitting or receiving signals in the electromagnetic spectrum pursuant to a Federal Communications Commission license." Given the statute, the Council has preferred tower sharing before it seriously considers new towers on entirely new properties.

In our opinion, Section 16-50aa cannot be narrowly construed to apply only to standard "collocations". That interpretation of the statute would merely serve to limit the options available to both the Council and applicants like AT&T in a manner wholly inconsistent with State policy set

¹ While not precedential to the Siting Council, we note that the New York State Adirondack Park Agency calls second tower site sharing "horizontal collocation" and has a policy preference for same and streamlines permitting for such construction in the Adirondack Park.

See <https://www.apa.ny.gov/Press/pressrelease.cfm?PressReleaseID=439&offset=181>

forth in Section 16-50aa(a). Indeed, such an interpretation could have the unintended consequence of leading to the unnecessary “proliferation” of towers beyond existing tower sites. That would be inconsistent with and not achieve the overall legislative purpose set forth in Section 16-50g of PUESA or serve to minimize impacts on the quality of the environment and ecological, scenic, historic and recreational values of the state from tower infrastructure needed to serve the public.

As such, we respectfully submit that Section 16-50aa promotes tower site sharing and, read in conjunction with Section 16-50p(b)(1)(A) of PUESA, the focus of the statute is on existing tower sites and the various options that might be available to share such a “facility” site and avoid construction of a tower on other “greenfield” properties. Thus, in our opinion the Council rightfully focused its examination of AT&T during the initial evidentiary hearing on November 21, 2021 on what on-site options might be available to AT&T and the City and ones which would meet the overall public interest as set forth in PUESA permitting AT&T to technically, legally, environmentally and economically share the existing Facility Site and still meet the City’s legitimate public safety concerns for its municipal communications network. Notably, the public need for new AT&T and other wireless carrier infrastructure in this part of Middletown is not a matter of dispute by any party or member of the public and the evidence on file with the Council overwhelmingly demonstrates the public need for commercial carrier facilities at the City’s existing Facility Site so that AT&T and others can provide wireless service to the community.²

As such, the remainder of our memorandum focuses on the procedural and substantive aspects of the two alternatives to the AT&T proposed modifications to the existing Facility Site which the Council inquired further about at the November 21, 2021 evidentiary hearing.

Alternative 1: Reinforcing the Existing Light Duty Municipal Public Safety Tower

AT&T studied this alternative dating back to 2017 as noted in its testimony to the Siting Council. For purposes of this tower sharing alternative, there were three major issues and why it was rejected: 1) City public safety network concerns, 2) economic costs to AT&T for major structural modifications and 3) the lack of future collocation opportunities and the state’s interest in avoiding the proliferation of towers.

To facilitate the Council’s review of this alternative further on December 21, 2021, AT&T commissioned various materials from its consultants including a tower reinforcement plan and foundation assessment by its professional engineers. The intention was to develop an actual plan for reinforcement for a collocation option, notwithstanding the structural condition of the tower as noted in the 2019 report and the City’s public safety concerns. As noted in the reports and testimony included in AT&T’s supplemental filing, the physical work needed to accommodate AT&T would require so many modifications to the tower and tower bolts, much of which would not meet the Building Code and require custom welds, this option is not recommended at all by AT&T’s

² We respectfully submit that the gap in coverage in Middletown is “significant” for AT&T and FirstNet given the number of residents and businesses in the intended service area, the density of daily attendance at the City’s high school and other educational facilities, and the roadway miles of service such that denial in Docket 506 of any feasible alternatives at the City’s Existing Site would be an effective prohibition of service for purposes of 47 U.S.C. § 332(c)(7).

professional engineers. It is their professional opinion that modifications to the existing tower site are simply not structurally feasible to accommodate AT&T.

Given the foregoing, it is AT&T's position that Alternative 1 is not a tower sharing solution in this instance for the reasons noted in the statute itself and the Applicant will present this additional testimony pursuant to Section 16-50p(B)(1)(A) of PUESA at the December 21, 2021 continued hearing.

Alternative 2: Construct a New Replacement Lattice Tower In A Modified Location at the Existing Site for Use by AT&T, the City of Middletown and Future Wireless Carriers

AT&T evaluated this alternative previously and it was rejected based on the City's various public safety and proprietary interests along with its cost. For purposes of this tower sharing alternative, there are major issues pursuant to all aspects of PUESA. To overcome the City's public safety network concerns, it would require a new massive lattice tower with all new City equipment installed and operational before the existing tower was decommissioned. These major economic costs are beyond AT&T's scope and can't easily be recovered by customer use or through agreement with the City, even if 100% of future collocation rents were collected by AT&T. Moreover, there is no physical space in close proximity to the existing tower and compound and as such this alternative would require a complete relocation of the Existing Site on the property with added costs. To further facilitate the Council's review of this alternative on December 21, 2021, AT&T commissioned various materials and testimony from its consultants including support for its position a large lattice tower is not more environmentally feasible, given visibility of the new structure, than AT&T's proposed second shorter monopole adjacent to the existing tower. Those materials are included in AT&T's supplemental submission and will be the subject of further examination by the Council.

Notice of 16-50aa(c)(2) Feasibility Proceeding

AT&T has discussed with the City a collaborative invocation of Section 16-50aa(c)(2) in this Docket so that:

- The Council has jurisdiction in Docket 506 procedurally to make a feasibility determination on any on-site alternative consistent with Sections 16-50p(b)(1)(A) and 16-50aa of PUESA;
- The Council may consider the testimony of Director Bartolotta independent of the Applicant's witness panel as part of Docket 506 if it procedurally prefers that option and hearing his testimony;
- AT&T can ensure a final and binding decision in Docket 506 that achieves a tower sharing solution at the Existing Site given the time and cost involved to date in pursuing service for FirstNet and AT&T customers in this part of Middletown; and
- In the event the Council ruled against AT&T and the City's positions and ordered an alternative approved form of tower sharing at the Existing Site as part of Docket 506, AT&T could invoke Section 16-50aa(d)(1) with the City for purposes of at a minimum: 1) negotiating rent lower given the capital costs of the alternative; 2)

allocating the risks of tower failure during construction in the lease agreement; and
3) so that AT&T can require in the agreement with the City a right to a return on its capital expenditure should any future City improvements or wireless carrier tower sharing occur at the Existing Site.

Please accept this notice that AT&T, for procedural purposes, is invoking the Council's authority to conduct a feasibility proceeding as part of Docket 506 to provide the Council with jurisdiction to provide a final determination and for the reasons noted above. The City through Attorney Forte is aware that AT&T is invoking the statute in collaboration with the City, and not in an adversarial manner.

In this context, we do wish to point out that AT&T does not believe this alternative is particularly feasible in comparison to the proposal to add a second shorter monopole at the Existing Site. Further, it remains AT&T's position in Docket 506 that a second monopole at the existing Facility Site best meets all the statutory considerations for a technically, legally, environmentally, and economically feasible tower site sharing solution, protects the City's legitimate public safety concerns and meets the state's interest in avoiding the proliferation of towers to other properties in this part of Middletown. We respectfully request that the Council consider AT&T's Application on December 21, 2021 and we will follow up with Executive Director Bachman in advance to facilitate Director Bartolotta's testimony given its relevance to Section 16-50p(B)(1)(A) on either AT&T's witness panel or standalone in response to feasibility pursuant to Section 16-50aa(c)(2) of PUESA.