

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC
AND NEW CINGULAR WIRELESS PCS, LLC d/b/a
AT&T FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE, AND OPERATION OF A
TELECOMMUNICATIONS FACILITY AT
ONE OF TWO SITES: KENT TAX ASSESSOR ID
#M10, BLOCK 22, LOT 38 BALD HILL ROAD OR 93
RICHARDS ROAD, TOWN OF KENT,
CONNECTICUT

DOCKET NO. 488

November 25, 2020

TOWN OF KENT EXCEPTIONS TO DRAFT FINDINGS OF FACT

The Town of Kent, Connecticut (“Town” or “Kent”) respectfully submits these Exceptions to the Draft Findings of Fact (“FOF”) distributed by the Connecticut Siting Council (“Council”) on November 20, 2020. The Town submits these exceptions only as to certain proposed findings, which must be considered preliminary, and do not necessarily provide an exhaustive presentation of the Town’s comments or exceptions. The submission of these exceptions under the short response window allocated by the Council (roughly 3 ½ business days), and/or the Town’s failure to comment herein on any particular draft finding or findings should not be construed or otherwise interpreted as a waiver of the Town’s rights to contest any proposed findings of fact. The Town expressly reserves any and all rights under law to contest any and all finding or findings distributed by the Council.

EXCEPTION TO FOF 41. FOF #41 erroneously concludes that Homeland Towers, LLC (“Homeland Towers”) and New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T” and together with Homeland Towers, collectively, the “Applicants”) designed the tower with specific equipment to be installed for the Town’s highway and emergency services antennas. The site plans, as referenced by the Council, show generic whip (omni) antennas and a generic microwave antenna (and Applicants further testified *incorrectly* that the Town was installing a generator). The Applicants further testified there was a need for a microwave connection from the proposed tower to another tower located outside of the Town’s border; justifying the need for the microwave antenna and basis to maintain a height above 125-feet AGL. (Vergati Tr. 8/11/20, pp. 237-238) Contrary to FOF #41, the Town officials testified that the Town had no discussion with the Applicants or the Lichfield County Dispatch (LCD) as to the Town’s use of the tower or for placement of equipment on the tower. Neither the Town nor LCD are using any microwave link as testified by the Applicants. (The Town officials testified it had no plans to locate any equipment on the tower or any generator at either site location). (Speck Tr. 9/3/20, p. 485, 491; Maxon Tr. 8/11/20, pp. 290-291)

EXCEPTION TO FOF 42. The expert witness, David Maxson, of Isotrope, LLC (“Maxson”) testified that he spoke with representatives regarding the public safety coverage in the area and there were no plans for locating equipment on Site A or Site B. No one from LCD testified. (Maxon Tr. 8/11/20, pp. 290-291)

EXCEPTION TO FOF 56. AT&T’s coverage maps on its website are contrary to the claims asserted by the Applicants regarding its level of coverage in the eastern and central portions of the Town of Kent.

Mr. Edelson: "Much to my surprise, it [AT&T website] showed that there was full coverage by AT&T for all users in the Town of Kent. Can you help me reconcile the maps that were in our - - or your submission with regard to coverage gaps and what's on AT&T's web site with regard to what customers can expect in the Town of Kent?" Mr. Lavin: "Mainly there is a rather extensive legal disclaimer on those maps on the web site." Mr. Edelson: "Well, that is a little distressing because it does raise concerns about what AT&T is putting out there for its customers."

(Edelson/Lavin Tr. 8/11/20, pp. 214-216)

Applicants' Application, as testified by AT&T's consultant, C Squared Systems, identified the deficient area of coverage or "targeted area" along Route 341, Richards Road and the neighboring roadways. (Application, Attachment 1, Sec. 3 for Site A and Site B)

EXCEPTION TO FOF 57. The Site Acquisition Request Form (SARF) is not AT&T's search ring showing deficient coverage necessary for a tower, small cell or other means to close the coverage gap, increase capacity or other specific and articulable facts that show AT&T's deficiency of coverage in the Town of Kent. The SARF identifies SAI-Comm as the Turfing Vendor Company that the SARF was assigned to and complete. SAI-Comm is not a party/intervenor to the Application. Applicants did not call any representative from SAI-Comm to testify or present any evidence during the proceeding. The purported one page printout with a series of AT&T internal accounting and financial allocation entries to a contractor identified as SAI-Comm falls very short of a "search ring" and is wholly unreliable and unsupported for any finding of fact related to the creation or reliance upon such information as AT&T's basis for need of coverage and justification for a tower, small cell or any other equipment deployed under the Telecommunications Act of 1996 or Public Utility Environmental Standards Act. (Applicants 5, response 1)

EXCEPTION TO FOF 58. The primary objective of the site is intended to

provide coverage to motor vehicle traffic, as indicated by AT&T's traffic statistics and initial coverage plots, traveling between Kent and the Town of Warren ("Warren") through Route 341, primarily, and peripheral coverage to the adjacent roadways such as Richards Road, Bald Hill Road and Spectacle Road. (Application, Attachment 1, Sec. 3 for Site A and Site B) There are no more than two small businesses, a summer camp and a selected amount of residences that would receive coverage. (Speck Tr. 9/3/20, p. 513)

EXCEPTION TO FOF 60. The site is designed to address the Route 341 vehicular traffic. Due to the topography and terrain of Route 341, one site alone will not cover Route 341 from Kent to Warren. (Lavin Tr. 7/23/20, pp. 68-69, 122) Seven small cells situated along Route 341 would provide the coverage along Route 341 from Kent to Warren. (Maxson, Isotrope Report 7-16-20 at pp. 9 – 10; Fig. 3; Maxson Tr. 8/11/20, pp. 370-377; PDA Late Filing Ex. D, E and F)

EXCEPTION TO FOF 61. Other sites in Kent will be necessary to provide uninterrupted wireless service by A&T. (Lavin Tr. 8/11/20, p. 264)

EXCEPTION TO FOF 66. FOF is incorrect in that there is no subset of AT&T users that only have 700 MHz coverage.

EXCEPTION TO FOF 68. The proposed 700 MHz wireless service is hypothetical coverage. No actual continuous wave or transmit/receive testing was performed by Applicants to confirm or verify any coverage from the site.

EXCEPTION TO FOF 69. The proposed 1.7 miles of new coverage from Site A is hypothetical. No actual continuous wave or transmit/receive testing was performed by Applicants to verify the coverage. The proposed 1.5 miles of new coverage from Site B is hypothetical. No actual continuous wave or transmit/receive testing was performed by Applicants

to verify the coverage.

EXCEPTION TO FOF 75. AT&T's equipment, whether on a tower or small cell, is designed to support FirstNet services. (Lavin Tr. 8/11/20, p. 226) The FirstNet spectrum is co-shared with AT&T so that AT&T can use it for providing services to its customers (members of the general public that use AT&T devices) and by FirstNet (first responders). In the event of network congestion during an emergency event, the network between AT&T and FirstNet will start prioritizing first responders over the general public. Prioritization will help alleviate, but not eliminate, network congestion. (Applicants' Administrative Notice, FirstNet for Connecticut/FirstNet.com) Small cells, as opposed to a tower, could continue operating with cell phones, wireless devices, FirstNet equipment and the network in the event of a loss of power or break of communication lines along the utility poles as shown by the small cells deployed in Chilmark. (Maxson Tr. 8/11/20, pp. 365, 294, PDA Late Filed Exhibits)

EXCEPTION TO FOF 76. AT&T has a contract to integrate the FirstNet equipment with AT&T's equipment at AT&T's sites and administer the FirstNet program. (Applicants' Administrative Notice, FirstNet for Connecticut/FirstNet.com; Chiocchio Tr. 8/11/20, p. 200) AT&T does not provide emergency services.

EXCEPTION TO FOF 77. AT&T has commercially available multi-band antennas that it can use for FirstNet frequencies, whether on a tower or on a small cell or distributed antenna system. (Lavin Tr. 8/11/20, p. 226)

EXCEPTION TO FOF 78. Homeland Towers secured a lease with the owner of Site A in 2012. (Vergati Tr. 8/11/20, pp. 272) No witness testified on behalf of the Applicants as to the origin or requirements of the AT&T search ring. (Vergati Tr. 8/11/20, pp. 271-272; Rosemark motion to strike, joined by Ainsworth and DiPentima and ruling by Silvesteri Tr.

9/22/20, pp. 673-682) Homeland Towers claims that it developed a search ring for the central portion of the Town of Kent to address AT&T's coverage gap. (Application IV.A)

EXCEPTION TO FOF 79. The predominant coverage objective, as submitted by the Applicants, is Route 341 and adjacent roadways. There are utility poles along Route 341 and the adjacent roadways that can accommodate AT&T (and FirstNet) equipment via small cells. Route 341 is a state highway. Public Act 19-163 mandates that the Department of Transportation make highways and Department of Transportation public rights-of-way available for the placement, construction, maintenance and operation of small wireless facilities. (Administrative Notice Public Act 19-163) Small cells minimize the substantial adverse impacts caused by a tower to the scenic ridgeline, residential neighborhood along Route 341, numerous bucolic trails, ponds and lakes, the adjacent Town of Warren and its viewshed from Lake Waramaug. (Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11) In its filings, AT&T acknowledges that small cells cause substantially less impact to the environment (*Petition for Declaratory Ruling: Installation Having No Substantial Adverse Environmental Effect* wherein AT&T identified a need for additional coverage and/or capacity relief in its network and proposed a small cell facility within an area characterized by above-ground utility poles which support utility infrastructure. In that petition AT&T contends that (i) its installation will not require tree removal and involves minimal disturbance, and (ii) the proposed pole and AT&T's small cell facility would not result in significant visual impact to the area. (Petition No. 1409; see also Petition No. 1413 and Petition No. 1432)

EXCEPTION TO FOF 80. Homeland Towers testified it secured the rights to Site A in 2012, long before the date AT&T claimed it released its search ring in 2018. (Vergati

Tr., 8/11/20 pp. 271-272) The Applicants did not provide any witness capable to answer cross-examination on AT&T's search ring. (Vergati Tr. 8/11/20, pp. 271-272; Rosemark motion to strike, joined by Ainsworth and DiPentima and ruling by Silvesteri Tr. 9/22/20, pp. 673-682)

EXCEPTION TO FOF 83. The Applicants did not perform any of their own analysis on small cells to cover Route 341 and adjacent roadways as an alternative to a tower on Site A or Site B. (Lavin Tr., 8/11/20 p. 266) Small cell infrastructure is not inconsistent with CGS 16-50p(b)(2). The small cells deployed by AT&T fall within the definition of "Small Wireless Facilities" and would be subject to expedited review mandated by law. (Applicants' Administrative Notice PURA Docket No. 18-06-13; Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11; CSC Petition No. 1409, No. 1413 and No. 1432; Maxson Tr. 8/11/20, pp. 293-294)

EXCEPTION TO FOF 84. The Applicants did not provide any of their own radio frequency analysis or conduct any studies to determine the practicability or feasibility of small cells or distributed antenna systems to address the primary coverage objective of Route 341 and the adjacent roadways. (Lavin Tr., 8/11/20 p. 266)

The Council acknowledged its lack of knowledge of small cells and did not retain an expert, even though a consultant was available to the Council under CGS 16-50n(e).

There was no testimony or other evidence provided by the Applicants to show that small cells are less practicable or less feasible than a tower at Site A or Site B to provide the equivalent coverage objective. (Lavin Tr., 8/11/20 p. 266) Small cells and/or distributed antenna systems have been and are currently being deployed by AT&T across the United States. (Applicants' Administrative Notice PURA Docket No. 18-06-13; Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11; CSC

Petition No. 1409, No. 1413 and No. 1432; Maxson Tr. 8/11/20, pp. 293-294)

The area outside of the general footprint of Route 341 and adjacent roadways is surrounded by single family homes, ponds and treescape, well beyond the coverage objective of the vehicular traffic of Route 341 as proposed by the Applicants, which is the “target” area subject to the Applicants’ Application. (Speck Tr. 9/3/20, p. 513)

EXCEPTION TO FOF 85. AT&T deploys small cells for coverage and capacity throughout the State of Connecticut and other states within the United States and across the world. (*Petition for Declaratory Ruling: Installation Having No Substantial Adverse Environmental Effect* wherein AT&T identified a need for additional coverage and/or capacity relief in its network and proposed a small cell facility within an area characterized by above-ground utility poles which support utility infrastructure. In that petition AT&T contends that (i) its installation will not require tree removal and involves minimal disturbance, and (ii) the proposed pole and AT&T’s small cell facility would not result in significant visual impact to the area. (Petition No. 1409; see also Petition No. 1413 and Petition No. 1432) (Applicants’ Administrative Notice PURA Docket No. 18-06-13; Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11) AT&T has deployed small cells in urban and suburban settings. (Maxson Tr. 8/11/20, p. 357; PDA Late Filed Exhibit at Ex. G, Isotrope, III B 9; Kent Administrative Notice No. 4, ThinkSmallCell: AT&T case studies of outdoor small cells in the suburbs; PDA Late Filed Exhibits; Isotrope Report 7-16-20 Ex. G on Chilmark)

EXCEPTION TO FOF 86. The seven small cells design provided by Isotrope, LLC is a high level design intended to show that small cells could be deployed along Route 341 and adjacent roadways to meet or exceed the primary coverage as proposed by AT&T. The installation of small cells along Route 341 and the related roadways would have little to no impact

on residences in Kent. (Speck Tr. 9/3/20, pp. 512-513; Kent Administrative Notice No. 1, CSC Docket No. 467; Kent Administrative Notice No. 6, PURA Docket No. 20-01-06; Kent Administrative Notice No. 7, PURA Docket No. 20-02-11)

EXCEPTION TO FOF 90. The majority of towers, small cell systems or distributed antenna systems, whether in whole or certain aspects such as development, installation, operation or maintenance, are outsourced by the carriers to third parties that service the wireless industry. Such third parties design, build, operate and maintain such towers, small cells or distributed antenna systems to accommodate multiple carriers.

EXCEPTION TO FOF 91. Maxson testified that AT&T's change of output variables, when AT&T modeled Isotrope's small cell modeling, was inaccurate and that the coverage would be greater had AT&T used the same calculations for power and 700 MHz frequencies. (Lavin Tr. 7/23/20, p. 120; Stebbins Tr. 8/11/20, p. 255; Maxson Tr. 8/11/20, pp. 367-368; PDA Exhibit Isotrope Report 7-16-20; Maxson Tr. 8/22/20, pp. 371-376)

EXCEPTION TO FOF 107. Utilities would be brought above ground along the utility poles along Route 341 owned by Eversource. Utilities would then be installed underground from Bald Hill Road. (Application V.A, Attachment 4; Application V.B, Attachment 6)

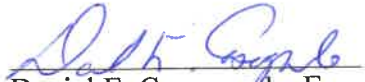
EXCEPTION TO FOF 125. Utilities would be brought above ground along the utility poles along Route 341 owned by Eversource. Utilities would then be installed underground from Richards Road. (Application V.A, Attachment 4; Application V.B, Attachment 6)

EXCEPTION TO FOF 133. AT&T's small cells or distributed antenna systems deployed in lieu of a tower can support Enhanced 911 services.

EXCEPTION TO FOF 135. AT&T's small cells or distributed antenna systems deployed in lieu of a tower can support text-to-911 service.

EXCEPTION TO FOF 136. AT&T's small cells or distributed antenna systems deployed in lieu of a tower can support the WARN alert system.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that, on the 25th day of November, 2020, a copy of the foregoing was sent electronically and via first-class United States mail, postage prepaid, to the following counsel and pro se parties of record:

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