

DAVID A. BALL

Please Reply To Bridgeport
E-Mail: dball@cohenandwolf.com

August 26, 2021

Via e-mail and hand-delivery

Attorney Melanie Bachman
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 500 - ARX Wireless Infrastructure, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1061-1063 Boston Post Road, Milford, Connecticut – ARX Post-Hearing Brief

Dear Attorney Bachman:

On behalf of the applicant, ARX Wireless Infrastructure, LLC, I've enclosed an original and fifteen (15) copies of the Applicant's Post-Hearing Brief.

Thank you.

Very truly yours,



David A. Ball

Enclosures

cc: Service List

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**



APPLICATION OF ARX WIRELESS INFRASTRUCTURE, LLC

**1061-1063 BOSTON POST ROAD
MILFORD, CT 06614**

Docket No. 500

APPLICANT'S POST-HEARING BRIEF

August 26, 2021

Submitted by:

David A. Ball, Esq.
Philip C. Pires, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
(203) 368-0211

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION/EXECUTIVE SUMMARY	1
II. PROCEDURAL BACKGROUND	5
III. FACTUAL BACKGROUND	6
A. Site Selection Process	6
B. Consultation with City of Milford Officials	7
C. The Proposed Facility	9
IV. ANALYSIS	12
A. There is a Demonstrated Public Need for the proposed Facility, As Recognized by Federal Law and Established by the Evidence Offered at the Hearing	12
1. Federal Law Seeks to Maximize Wireless Access	12
2. Wireless Usage Statistics Demonstrate a Public Need to Maximize Wireless Access	14
3. The Proposed Facility Will Remedy Imminent Coverage Deficiencies And Provide Enhanced Wireless Services in Milford.....	15
4. There Are No Viable Alternatives to the Proposed Facility.....	17
i. 1052 Boston Post Road Is Not a Viable Alternative.....	17
ii. ARX’s Exhaustive Site Search Established That There Are No Other Viable Alternatives to the Proposed Facility	20
B. The Proposed Facility Will Have No Significant Environmental Effects	21
1. The Facility Will Not Result in a Significant Adverse Visual Impact nor have a Substantial Effect on the Scenic Quality Of the Surrounding Area.....	22

2. The Facility Will Not Significantly Affect Public Health and Safety	23
3. The Facility Will Not Significantly Affect the Natural Environment In the Area	24
a. Historic Properties, Structures, and Buildings	24
b. Protected Land and Designated Environments	25
c. Wildlife and Wilderness	25
C. The Benefits of the Proposed Facility Far Exceed Any Potential Impact, Thereby Warranting Application Approval	26
V. CONCLUSION.....	27

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

ARX WIRELESS INFRASTRUCTURE, LLC
APPLICATION FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A WIRELESS
TELECOMMUNICATIONS FACILITY
LOCATED AT 1061-1063 BOSTON POST
ROAD, MILFORD, CONNECTICUT

DOCKET NO. 500

August 26, 2021

**ARX WIRELESS INFRASTRUCTURE, LLC'S
POST-HEARING BRIEF**

Applicant ARX Wireless Infrastructure, LLC ("ARX") respectfully submits this Post-Hearing Brief in support of the above-referenced Application.

I. INTRODUCTION / EXECUTIVE SUMMARY

On March 30, 2021, ARX filed an application (the "Application") with the Connecticut Siting Council (the "Council") for a Certificate of Environmental Compatibility and Public Need ("Certificate") for the construction, maintenance, and operation of a wireless telecommunications facility ("Facility") on an approximately 2.44 acre parcel of property located at 1061-1063 Boston Post Road, Milford, Connecticut (the "Property" or "Site"). The Site is situated on the east side of Boston Post Road with Interstate 95 to the northwest. The Site is commercially developed and presently occupied by a restaurant and a tire store.

Need for the Facility:

Cellco Partnership d/b/a Verizon Wireless (“Verizon”) and New Cingular Wireless PCS, LLC (“AT&T”) have identified an area of deficient services affecting a significant portion of Milford, including key traffic corridors through the residential and commercial areas of the City. The proposed Facility is essential to the carriers’ wireless services needs because of the decommissioning of the existing Howard Johnson site. The proposed Facility will service an area of 1.69 square miles, as well as 6.66 miles of main roads and 11.95 miles of secondary roads. The new Facility will replace the existing coverage provided at the Howard Johnson site, and through its modern design will provide enhanced services and capacity benefits. The new Facility will also allow AT&T to provide emergency services communications through FirstNet, a nationwide broadband public safety network dedicated to the needs of first responders, in this area of Milford.

The proposed Facility will bring needed services to significant portions of Interstate 95, Route 1 (Boston Post Road), New Haven Avenue, Cherry Street, and the residential neighborhoods in the vicinity of these roads, all of which will be impacted by the decommissioning of the existing Howard Johnson site. These wireless service needs must be resolved for carriers to continue to provide high-quality, uninterrupted, and reliable service.

For many years Verizon and AT&T have had telecommunications equipment situated at 1052 Boston Post Road, Milford, on the rooftop of the site of a former Howard Johnson hotel. The Howard Johnson hotel has been out of business for over a year. The building on that property will supposedly be demolished as part of a redevelopment

project. However, there have been construction delays for years, and the owner of that property has recently listed it for sale. And despite years of trying to find an acceptable permanent resolution with the owner of that property, Verizon and AT&T have been unable to do so, which now jeopardizes the coverage that they currently have. As shown at the hearing, the new Facility will not only replace the coverage provided at 1052 Boston Post Road but will enhance AT&T's wireless coverage that currently exists while also providing emergency communications services for first responders. The new Facility is needed by AT&T, in conjunction with its other existing and proposed facilities, to meet the network demands and provide reliable services, including emergency communications services, to the public in this part of Milford. Moreover, ARX's exhaustive search process demonstrated that the Property at 1061-1063 Boston Post Road is the *only* viable site to meet the carriers' RF needs.

Facility Description:

ARX proposes to construct a 115-foot monopole tower (maximum height not to exceed 116' with antennas) with Verizon and AT&T antennas, situated within a 60' x 60' fenced (chain link) equipment compound within a 75' x 75' leased area, to be located in the rear of the Property. The compound will be enclosed by an eight-foot-high chain-link security fence, and it will contain equipment operated by Verizon, AT&T, and future carriers. A 20'-wide utility easement originating off Home Acres Avenue will provide the Facility with underground utilities. Access to the Site is existing off of Boston Post Road via a 25' easement over an existing paved parking lot between the two buildings. The antennas affixed to the top of the monopole will consist of Verizon panel antennas, mounted in three sectors at a centerline height of 112' and AT&T panel antennas,

mounted in three sectors at a centerline height of 100'. The tower would also host the equipment of two additional wireless carriers as well as City emergency services, if needed.

Nature of Probable Impacts:

The Docket contains substantial evidence to support a finding by the Council that the Facility would not have a significant adverse impact on the environment as the location and development of the Site: (1) will neither affect historic nor archaeological resources in the area; (2) are not within the vicinity of national parks or forest; (3) are neither designated a wilderness area nor located in any areas identified as a wildlife area or preserve; (4) will neither affect public health nor safety; and (5) will not impact any wetlands. Moreover, ARX will take steps to mitigate the visual impacts of the tower.

Conclusion:

The evidence in the Docket clearly satisfies the criteria of Conn. Gen. Stat. § 16-50p(a)(3) because: (1) there is a need to maintain and improve upon wireless services in the area surrounding the proposed Facility; (2) the proposed Facility satisfies this need; (3) there are no other viable alternatives; and (4) the environmental impacts from the proposed Facility would be minimal when balanced against the well-established need.

II. PROCEDURAL BACKGROUND

ARX filed the Application with the Council on March 30, 2021, proposing to construct a 115-foot monopole tower (maximum height not to exceed 116' with antennas) with Verizon and AT&T antennas, and the equipment of two additional wireless carriers as well as City emergency services, if needed.

Notice of ARX's intent to file the Application was mailed to all abutting property owners on March 29, 2021, and the legal notice was published in the *New Haven Register* on March 24, 2021 and March 26, 2021. *Exhibits C and D to Application; Applicant's Exhibit 2.* On May 28, 2021, ARX engaged Graphix Edge to post a sign at the Site providing notice to the public of the application and hearing date and location. *Applicant's Exhibit 5.*

AT&T and Verizon intervened in support of the Application. The City of Milford filed for party status.

On June 15, 2021, the Council conducted an evidentiary hearing and an evening public hearing on the Application. The hearing was continued and completed on July 27, 2021 (collectively hereinafter the "Hearing").

Pursuant to Council direction and Section 16-50j-31 of the Regulations of the Connecticut State Agencies, ARX files this post-hearing brief analyzing the criteria set forth in Conn. Gen. Stat. § 16-50p(a)(3) and addressing issues raised during this proceeding.

III. FACTUAL BACKGROUND

A. Site Selection Process.

ARX is a wireless infrastructure provider that uses its knowledge of the wireless carriers' networks and/or specific information from the individual carriers to develop new wireless facilities where a need has been demonstrated. *Application at 2.* When it is clear that a new tower facility will be required to provide coverage and reliable service, ARX pursues a site search for a new tower. *Id., at p. 18.* In performing its site search, ARX consults with wireless carrier radiofrequency engineers to identify geographic areas where a new tower facility will be required for the provision of coverage and/or capacity in the carriers' networks. *Id.*

Through this collaborative process, ARX became aware of an imminent need for wireless coverage in this area of Milford, particularly in light of the pending decommissioning of the existing Howard Johnson site at 1052 Boston Post Road. ARX conducted a search for tower sites, which included the existing Howard Johnson site. *Exhibit F to Application.* As thoroughly explained in Exhibit F to the Application, ARX determined that of the nine (9) sites within its search area, all but the proposed Site were not feasible for a variety of reasons, including but not limited to radio frequency capabilities which caused the carriers to determine that the site would not meet their coverage objectives, and property owners' unwillingness to make their properties available for telecommunications development. *Exhibit F.*

B. Consultation with City of Milford Officials.

On August 26, 2020, ARX submitted a cover letter and technical report to the Mayor of Milford, the Honorable Benjamin G. Blake, proposing the Facility at the Site. *Exhibit M to Application.*

On October 1, 2020 representatives of ARX met with the City's attorneys, John Knuff and Jon Berchem, to engage in a municipal consultation meeting. *Pre-Filed Testimony of Keith Coppins dated June 7, 2021 at p. 3.* In that meeting, Mr. Knuff asked numerous questions as to whether there were other viable locations for the Facility, including the Connecticut Post Mall. *Id.* Mr. Knuff indicated that the owner of the Mall was his client and may be interested in the Facility. *Id.* Subsequently, Mr. Knuff sent a letter to ARX's counsel dated October 27, 2020 in which he inquired about four specific potential alternative locations – 1052 Boston Post Road, 1212 Boston Post Road, 1201 Boston Post Road (Connecticut Post Mall), and 10 Leighton Road. *Id.*

For the next five (5) months, ARX performed an exhaustive search process to address all of the issues raised by the City. ARX sent certified letters to all property owners who had not previously responded to ARX's earlier outreach. *Id. at p. 4.* ARX again made efforts to contact each of the owners of the four (4) properties identified by the City. *Id. at p. 4.* In some instances – such as the owners of 1212 Boston Post Road (Old Navy site), and 1201 Boston Post Road (Connecticut Post Mall) – the property owners continued to ignore ARX's outreach. *6/15/21 Transcript at pp. 71-72; 7/27/21 Transcript at pp. 248-249.* The owner of 10 Leighton Road (the site of Schick Manufacturing) did respond, and after ongoing communication in October 2020, Schick ultimately decided that it was not interested in having a tower on its site. After the first

hearing day, ARX again reached out to Schick to propose a potential billboard facility on the Schick site. Schick declined to move forward. *7/27/21 Transcript at p. 236.*

Al Subbloie, the owner of 354 North Street, also responded to ARX's outreach, but AT&T deemed his site unusable because it was too close to an existing AT&T site at 434 Boston Post Road and therefore did not meet its objectives. *Pre-Filed Testimony of Keith Coppins dated June 7, 2021 at pp. 4-5.*

Following the search process, counsel for ARX sent a letter to the City's attorneys dated March 26, 2021 explaining in detail the efforts ARX undertook to evaluate each of the alternative sites that the City had inquired about. *See Exhibit M to Application.*

- ARX explained that the proposed new hotel building at the "Howard Johnson site" located at 1052 Boston Post Road would not satisfy the coverage needs of Verizon.
- ARX explained that the property owners of 1052 Boston Post Road were not interested in a new "stub tower" on the roof of the proposed new hotel building, and that Verizon's project engineers questioned whether the new hotel building would be structurally capable of supporting such a large structure on the roof of the proposed new building.
- ARX also explained that the proposed new hotel building at 1052 Boston Post Road did not satisfy the coverage and capacity needs of AT&T.
- ARX advised the City that the owner of 1212 Boston Post Road (Old Navy site) did not respond to ARX's certified letter, even though it was received by the owner on October 22, 2020.

- With respect to the Connecticut Post Mall at 1201 Boston Post Road, ARX advised the City that Verizon concluded that locating antennas on the roof of the Mall would not satisfy its service objective for the area. ARX also notified the City that the owner of the Mall did not respond to any of ARX's multiple communications.
- ARX advised the City that Schick Manufacturing, at 10 Leighton Road, was not interested in having a cell tower on its property.

Once ARX completed this search process – more than five (5) months after it met with the City in October 2020 – ARX concluded that the proposed Site at 1061-1063 Boston Post Road was not only the best site but the *only* available site that could meet the carriers' coverage objectives, and that was available to be leased. *Pre-Filed Testimony of Keith Coppins dated June 7, 2021 at p. 6; 6/15/21 Transcript at p. 21.*

C. The Proposed Facility.

Only after completing an exhaustive site search during the municipal consultation phase did ARX file its Application for the proposed Facility at the Site. ARX proposes to construct a 115-foot monopole tower (maximum height not to exceed 116' with antennas) with Verizon and AT&T antennas, situated within a 60' x 60' fenced (chain link) equipment compound within a 75' x 75' leased area, to be located in the rear of the Property. The compound will be enclosed by an eight-foot-high chain-link fence, and it will contain equipment operated by AT&T, Verizon, and future carriers. A 20'-wide utility easement originating off Home Acres Avenue would provide the Facility with underground utilities. Access to the Site is existing off of Boston Post Road via a 25' easement over an existing paved parking lot between the two buildings. The antennas affixed to the top of the

monopole will consist of Verizon panel antennas, mounted in three sectors at a centerline height of 112' and AT&T panel antennas, mounted in three sectors at a centerline height of 100'. The tower would also host the equipment of two additional wireless carriers as well as City emergency services, if needed.

Although the City's tax assessment records and data in the City's GIS mapping database identified that the Site was located solely in the City's Interchange Commercial District ("ICD") for local zoning purposes, *after* the completion of the municipal consultation process and *after* ARX filed its Application with the Siting Council, the City attorneys revealed for the first time that in fact a portion of the Site was located in the ICD zone and a portion of the Site was located in the City's residential zone R-12.5. Accordingly, despite the erroneous information contained in the City's tax assessment records and data in the City's GIS mapping database, ARX concluded that the location of the proposed tower would be in the R-12.5 Zone. *See ARX Reply to City Memorandum dated May 4, 2021, and Supplement to Section VII(C) of Application Narrative dated May 4, 2021.*

In an effort to address the City's concerns as to the location of the tower in the R-12.5 Zone, ARX submitted alternative plans that would move the tower on the Site approximately 105 feet further away from Home Acres Avenue, with the tower being located solely within the ICD Zone. *Supplemental Pre-Filed Testimony of Keith Coppins, Douglas Roberts, and Brian Gaudet dated July 20, 2021 at pp. 1-2.* While this would lead to increased construction costs, ARX made clear that it would build the tower in this location if the Council so orders. *Id. at pp. 3-4.* Significantly, however: 1) the City refused to express any support for moving the tower to this location rather than the location

proposed in the Application, and simply continued to object to the siting of the tower anywhere on the Property (7/27/21 Transcript at p. 256); 2) none of the residents on Home Acres Avenue expressed any reaction or support for moving the tower to this location (*Id.*, at p. 254); and 3) as ARX identified during the hearings, construction of the tower in the alternative location would require the elimination of five (5) parking spaces for the businesses currently operating on the Site. 6/15/21 Transcript at p. 59; 7/27/21 Transcript at pp. 243-246, 250-251. Originally, ARX had avoided any proposed location for the Facility that would impact parking because the two tenants on the Site need the parking. 6/15/21 Transcript at p. 17. The elimination of these parking spaces could result in impacts to the needs and parking requirements of the existing tenants. 6/15/21 Transcript at p. 59. While the Council has exclusive jurisdiction over the siting of the Facility and can supersede local zoning requirements, if it orders the construction of the Facility in this alternate location, it is respectfully submitted that the Council must make clear that it is ordering the siting of the Facility in this area notwithstanding the local zoning requirements for parking and that it is exercising its exclusive jurisdiction to override any local zoning requirements for parking for the existing tenants at the Property.

IV. ANALYSIS

To issue a certificate of environmental compatibility and public need (a “Certificate”), the Council must determine that: (1) there is a demonstrated need for the proposed facility; and (2) any probable environmental impacts are insufficient to preclude granting the application for the proposed facility. Conn. Gen. Stat. § 16-50p(a)(3). The testimony offered by ARX, Verizon and AT&T, both pre-filed and at the Hearing, as well as ARX’s submissions filed in support of this Application, unequivocally satisfy these criteria, thereby warranting the issuance of a Certificate.

A. There is a Demonstrated Public Need for the proposed Facility, as Recognized by Federal Law and Established by the Evidence Offered at the Hearing.

1. Federal Law Seeks to Maximize Wireless Access.

Federal law and policy seeks to maximize nationwide wireless access and foster wireless network growth, as promulgated in six (6) federal acts and orders.

First, the Telecommunications Act of 1996 (the “Telecommunications Act”) substantially increased public access to wireless services by removing barriers to provider-competition, promoting universal service at affordable rates and in all areas of the United States, and enhancing the interconnectivity of users and vendors in light of the Telecommunications Act’s proposed changes.

Second, the Wireless Communications and Public Safety Act of 1999 (the “Public Safety Act”), which designated 9-1-1 as the universal emergency assistance number for both landline and wireless telephone service, emphasized the importance of wireless communication access to improve public safety and generally reflected the federal government’s ongoing commitment to maximizing the vast potential of wireless services.

Third, the New and Emerging Technologies 911 Improvement Act of 2008 (the “NET 911 Act”), which sought to accelerate a country-wide transition to a national IP-enabled emergency network and improve existing emergency services for individuals with disabilities, demonstrated the economic and safety benefits that the federal government anticipated from broadened wireless communications.

Fourth, the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) recognized the importance of maximizing access to wireless services by: (1) providing \$7.2 billion to increase broadband access throughout the United States; (2) establishing the Broadband Technology Opportunities Program, awarding grants for the purposes of enhancing community broadband infrastructure, upgrading or constructing public computer centers, and increasing broadband access in areas that traditionally underutilized broadband services; and (3) developing a National Broadband Plan outlining strategic initiatives for the purpose of maximizing broadband access for every American.

Fifth, in June 2012, President Obama signed an executive order recognizing the need for improved broadband access across the United States, as well as seeking to accelerate the deployment of broadband on federal lands and reiterating the importance of uniform access to broadband and other wireless services.

Sixth, Section 6409 of the Middle Class Tax Relief Act, issued in February 2012, recognized the importance of promoting enhanced wireless services by requiring any state or local government to approve replacement or collation of equipment on an existing tower, so long as the physical dimensions of that existing tower were not substantially changed. By report issued on October 17, 2014 to clarify Section 6409, the FCC took

“important steps...to promote the deployment of wireless infrastructure” by substantially reforming its rules to “make thousands of additional towers available for collocation, resulting in an enormous expansion in deployment opportunities for public safety operations and commercial wireless offerings.” FCC Wireless Infrastructure Report and Order issued October 17, 2014 at 2.

Collectively, this federal law and policy reflects a demonstrated need to maximize national wireless access and foster network growth – objectives furthered by the proposed Facility.

2. Wireless Usage Statistics Demonstrate a Public Need to Maximize Wireless Access.

As wireless subscribers have exponentially increased, wireless data traffic has similarly expanded, thereby heightening the public need for optimal wireless access.¹

For example, as of December 2012, an estimated 326.5 million individuals in the United States subscribed to a wireless provider, up from 315.9 million subscribers as of December of 2011.² Teenage and elderly populations alike are drastically increasing wireless demands, as 69% of adults ages 65 and older own mobile phones (up from 57% in May 2010) and 78% of individuals ages 12-17 years own cell phones.³ As a result of this widespread subscription increase, wireless data traffic increased 69% from 2011 to 2012.⁴

¹ These statistics are summarized herein and discussed in detail in the Application at pp.14-16.

² CTIA, *CTIA's Semi-Annual Wireless Industry Survey Results, December 1985-December 2012*, http://www.ctia.org/media/industry_info/index.cfm/AID/10316 (last visited July 30, 2013).

³ Kathryn Zickuhr and Mary Madden, *Report: Seniors, Social Networking, Broadband: Older Adults and Internet Use* (June 6, 2012), <http://www.pewinternet.org/Reports/2012/Older-adults-and-internet-use.aspx> (last visited Aug. 6, 2013); Mary Madden et al., *Teens and Technology 2013 2* (Pew Research Center Internet & American Life Project) (2013).

⁴ Id.

Wireless services and data traffic have also drastically expanded in the public safety arena. For example, over 400,000 subscribers make E-911 or distress calls from their wireless device per day, up from 260,000 similar calls in 2007.⁵ Indeed, in a 30-day June 2013 Pew Study, 19% of individuals used their mobile device to get help in an emergency situation.⁶ Therefore, nationwide statistics reveal a demonstrated need to maximize wireless access for personal and public safety purposes – objectives furthered by the proposed Facility.

3. The Proposed Facility Will Remedy Imminent Coverage Deficiencies and Provide Enhanced Wireless Services in Milford.

The Docket contains extensive written evidence and testimony regarding the imminent need for improved wireless services in this area of Milford, particularly in light of the pending decommissioning of the existing Howard Johnson site at 1052 Boston Post Road. As detailed below (see section 4 *infra*), the carriers have been unable to reach any sort of agreement for the construction of a new facility at 1052 Boston Post Road. The property owner has been non-responsive and recently has listed the property for sale. Accordingly, unless a new Facility is approved, Verizon and AT&T will lose the existing wireless services that they have.

Moreover, as the carriers explained at the Hearing and as detailed below, the new Facility will provide enhanced services by utilizing all five (5) potential frequencies, rather than the two existing frequencies on the existing site at 1052 Boston Post Road and will also provide emergency communications services to first responders.

⁵ Id.

⁶ Joanna Brenner, *Pew Internet: Mobile*, Pew Internet & American Life Project (June 6, 2013), <http://pewinternet.org/Commentary/2012/February/Pew-Internet-Mobile.aspx> (last visited Aug. 6, 2013).

ARX and the carriers have demonstrated that the new Facility at 1061-1063 Boston Post Road will resolve this risk of imminent lost services and, in fact, will improve upon existing service deficiencies. In the RF Report commissioned by AT&T, the analysis of propagation modeling and drive testing in Milford concluded that the AT&T network will become unreliable once the facility at the Howard Johnson site is decommissioned, due to a significant gap in coverage. See *Exhibit E to Application at p. 3*. As shown in the RF Report, the new Facility at 1061-1063 Boston Post Road will bring the enhanced coverage to significant portions of Route 1, New Haven Avenue, Cherry Street, and the residential neighborhoods in the vicinity of the Site. See *Exhibit E to Application at p. 7*. AT&T confirmed in its responses to the Council's Interrogatories that the Facility would also result in capacity relief for the AT&T network. *AT&T's Exhibit 2, Responses of New Cingular Wireless PCS, LLC to Connecticut Siting Council Pre-Hearing Interrogatories, Set One, dated June 7, 2021, A14*. In the Hearing, AT&T's witnesses confirmed that AT&T would experience improved coverage from the new Facility, as compared to the existing Howard Johnson site. *7/27/21 Transcript at p. 191*. AT&T also testified that the new Site at 1061-1063 Boston Post Road "works well for our needs." *7/27/21 Transcript at p. 199*.

Verizon's propagation plots show the exact same benefits to the new Facility. See *Exhibit E to Application*. In addition, Verizon's witnesses testified that Verizon would "realize a significant increase in the services that [Verizon] would be able to provide" because Verizon "would be able to add three additional frequencies" on the proposed ARX tower. *6/15/21 Transcript at p. 110-112*. The Facility would also allow Verizon to

use its latest 5G technologies. *6/15/21 Transcript at p. 112.* As a result, the new Facility would allow Verizon to bring this site “into the 21st Century.” *6/15/21 Transcript at p. 112.*

There is no dispute as to the benefits of the proposed Facility to meet the carriers’ wireless service objectives. The record as to the need for the Facility and the fact that it will allow the carriers to provide enhanced wireless services is uncontroverted.

4. There Are No Viable Alternatives to the Proposed Facility.

There are no viable alternatives to the proposed Facility. The Docket contains extensive written evidence and testimony demonstrating that the existing Howard Johnson site at 1052 Boston Post Road is not an option for the carriers after years of construction delay by the owner of that property. Further, ARX and the carriers analyzed all other potential options in the area, and none are viable either because the sites do not meet the carriers’ coverage objectives or because of lack of interest by the property owners.

a. 1052 Bost Post Road Is Not a Viable Alternative.

First and foremost, the Howard Johnson site at 1052 Boston Post Road is not a viable location for the carriers. As ARX, AT&T and Verizon witnesses explained, for more than three years the existing hotel has been the subject of demolition plans and yet the owner of that site continually delays construction activity; at this point, there is no indication that the Howard Johnson hotel will ever be demolished or that a new hotel will ever be built. *6/15/21 Transcript at p. 34; 7/27/21 Transcript at pp. 198-199.* Compounding this delay is the recent evidence that the owner of 1052 Boston Post Road has now listed that property for sale, which clearly calls into question whether that owner’s construction plans will ever move forward. *Id., and see ARX Response to City of Milford*

Interrogatories, No. 12 and Photo dated May 28, 2021 attached as Exhibit 12. Consistent with the owner's disinterest in moving forward with his own construction plans, the carriers have been unable to reach any short or long-term agreement with the property owner on a new facility that will meet their respective service needs. Verizon witnesses testified that Verizon was never able to reach an agreement with the owner of 1052 Boston Post Road, and described the owner as being "less than responsive." *6/15/21 Transcript at p. 105.* As Mr. Befera testified about the proposed Site at 1061-1063 Boston Post Road: "...from an RF perspective this proposal works for us, and it works very well, and that's why we joined this application because we weren't getting anywhere with the Turnpike Lodge folks." *Id., at pp. 105-106.*

Mr. Befera further highlighted the sense of urgency for the carriers to find a new location when describing the unacceptable physical condition of the property at 1052 Boston Post Road:

...The property has been partially gutted. We don't have any place to go that's secure right now. Discussions about even the temp[orary] structure that Mr. Silvestri brought up earlier that we brought to the Council when we were trying to get an agreement together with the Turnpike Lodge folks, that never came to fruition. And, you know, sometimes our cell technicians, our field personnel have to access these sites at nighttime. And inside this building where it's been partially gutted already there's wires hanging from the ceiling, there's debris piles along the alleyways. It's not necessarily the kind of place we want to send our personnel at nighttime...

Id., at pp. 108-109.

By direct contrast, Verizon fully supports the new Site at 1061-1063 Boston Post Road:

And this is further along than anything, anywhere we've been able to get with Turnpike Lodge on our own because we have no problem building a tower ourself, if we can get that, but this came along. It's ahead of us in the process. This is a great location for us. This would work at the 115 feet proposed, you know.

Id., at p. 109.

AT&T suffered the same obstacles due to the failure of the development plans at 1052 Boston Post Road to come to fruition. *7/27/21 Transcript at p. 199*. Similarly, AT&T testified that the new Site at 1061-1063 Boston Post Road "works well for our needs." *Id.* The bottom line is that the telecommunications infrastructure in this part of Milford cannot be held up any longer by a property owner with whom the carriers are unable to reach an agreement, and who has now listed his own property for sale. And critically, this evidence in the record is uncontroverted.

Moreover, as Verizon's witnesses explained, the current telecommunications equipment on the Howard Johnson site provides limited service since only two of Verizon's five licensed frequencies can be used. *6/15/21 Transcript at p. 111*. In addition to replacing the current coverage at 1052 Boston Post Road, the new Facility at 1061-1063 Boston Post Road will be designed with platform mounted antennas which will allow Verizon to use three additional frequencies that are not currently available at 1052 Boston Post Road. *Id.* At the new Site on 1061-1063 Boston Post Road, wireless service will be dramatically enhanced by utilizing all available frequencies. Mr. Befera testified that this would result in "a significant increase in the services that we would be able to provide...this new location is going to allow us to use all five [frequencies], including the latest in 5G, the fastest you've ever seen." *Id.*, at pp. 111-112. The modern design of

the new Site at 1061-1063 Boston Post Road would “bring this site into the 21st Century.” *Id.*, at p. 112.

Similarly, AT&T testified that by constructing the new Facility at 1061-1063 Boston Post Road, AT&T coverage would actually improve compared to the existing site, while also providing FirstNet emergency services to first responders. *7/27/21 Transcript at pp. 191, 193.*

b. ARX’s Exhaustive Site Search Established That There Are No Other Viable Alternatives to the Proposed Facility.

ARX conducted an exhaustive search for viable alternative sites, and the Site at 1061-1063 Boston Post Road was the only viable option where a property owner would agree to a new tower and the Site would meet the carriers’ service needs. *See Exhibit F to Application, and Pre-Filed Testimony of Keith Coppins dated June 7, 2021 at pp. 4-6.* None of the other eight (8) sites evaluated by ARX and the carriers were feasible for a variety of reasons, including but not limited to radio frequency capabilities and property owners’ unwillingness to make their properties available for telecommunications development. *See Exhibit F to Application.* ARX testified at the Hearing that it pursued every possible alternative site, and in the five (5) months after submitting its Technical Report, it attempted to speak with every owner and pursued every possible site suggested to it. *6/15/21 Transcript at p. 30.* Each potential site was deemed impracticable, as delineated in detail in Exhibit F.

In addition, Verizon and AT&T made clear that there are no viable alternative rooftop options in the area. *7/27/21 Transcript at pp. 151 and 193-194, and see AT&T Responses to Council Interrogatories, Set One (6/7/21); AT&T Responses to City of Milford Interrogatories, Set II (7/19/21).* Similarly, multiple small cells in lieu of a tower

are not a practical alternative because they would be prohibitively expensive and time-consuming to construct. *7/27/21 Transcript at pp. 148-150.* AT&T witnesses made the point that small cells also have the disadvantage of losing all coverage during weather emergencies because there is no power backup. *7/27/21 Transcript at pp. 192-193.* Both carriers testified that a combination of a shorter tower or rooftop with small cells was not a possible alternative. *7/27/21 Transcript at pp. 151 and 193-194.* Finally, there is no property owned by the City that could have served as a suitable site for Verizon's needs. *7/27/21 Transcript at p. 158.*

Notably, despite inquiring about endless hypothetical locations for the tower – even though no other property owners agreed to lease their properties for purposes of a telecommunications facility – the City failed to identify a single viable, available location for a wireless facility. Moreover, the City failed to introduce *any* evidence to contradict the enormous evidentiary record demonstrating that the property at 1061-1063 Boston Post Road is the only viable option to meet the carriers' wireless service objectives. Indeed, the City failed to put forward any witnesses at all. Accordingly, the record contains uncontroverted evidence that the proposed Facility is the only viable option.

B. The Proposed Facility Will Have No Significant Environmental Effects.

To issue a Certificate, the Council must determine that probable environmental impacts– including the natural environment, ecological balance, public health and safety, forests and parks, air and water purity, historic and recreational values, and fish, aquaculture, and wildlife– will have no significant environmental effects. Conn. Gen. Stat.

§ 16-50p(a)(3). The testimony offered by ARX unequivocally satisfies these statutory criteria, thereby warranting a Certificate.

1. The Facility Will Not Result in a Significant Adverse Visual Impact nor have a Substantial Effect on the Scenic Quality of the Surrounding Area.

ARX's visibility analyses, pre-filed testimony, and extensive expert testimony demonstrate that the visibility of the proposed Facility will neither result in a significant adverse visual impact nor have a substantial adverse effect on the aesthetics or scenic quality of the area surrounding the proposed Facility.

The Facility would be located in a "fairly heavily commercially developed area." *6/15/21 Transcript at p. 19*. The visibility of the Facility would be limited primarily to the areas immediately surrounding the Site within ± 0.5 miles or less. *Application at p. 21; Exhibit H to the Application, Visual Assessment & Photo Simulations ("Exhibit H"), p. 7*. The nearest year-round views of the Facility would be north and west along Home Acres Avenue and west and northwest along Boston Post Road. *Id.* Seasonally, when the leaves are off the deciduous trees in the area, additional areas of visibility are predicted in the area surrounding the Facility and extending up to about 0.68 miles from the Site. *Id.* Both year-round and seasonal visibility is primarily surrounding the Facility up to about 0.54 miles with additional intermittent points of visibility extending to ± 1.03 miles from the Facility. *Id.* The predicted year-round visibility of the Facility is estimated to include about 74 acres. *Id.* Predicted seasonal visibility is estimated to include an additional ± 90 acres. *Id.* Thus, the total acreage of visibility represents just $\pm 2\%$ of the Study Area. *Id.* The visibility for the alternate location would be "roughly the same." *7/27/21 Transcript at pp. 242-243*.

No schools or commercial daycare centers are located within 250 feet of the Facility. Orange Avenue Elementary School is located about 0.59 miles northwest of the Facility at 260 Orange Avenue in Milford. *Application at p. 21; Exhibit H at p. 7.* No visibility is predicted from the school grounds. *Id.* The nearest commercial childcare center is Sedona Daycare & Learning Center about 0.82 miles to the southwest of the Facility at 21 Plymouth Place in Milford. *Id.* No visibility is predicted from or in the vicinity of the daycare center. *Id.*

Notably, the City failed to offer any expert report or testimony as to visibility. ARX's extensive testimony and expert analysis establishes that the proposed Facility will not significantly affect the scenic quality of the surrounding area or have a significant adverse environmental impact.

2. The Facility Will Not Significantly Affect Public Health and Safety.

The Docket contains uncontested evidence that the proposed Facility will not significantly affect public health and safety. The worst-case potential exposure would be well below the established FCC standards – 20.81% of the applicable Maximum Permissible Exposure (MPE). *Exhibit J to the Application, Calculated Radio Frequency Exposure Report dated August 24, 2020 at p. 3.*

Moreover, the proposed Facility would be monitored and secure. An eight (8) foot high chain link fence would secure the equipment housed within the compound area. *Exhibit 10, ARX's Responses to Council's Interrogatories, Set One, dated June 8, 2021, Response No. 8.* The site would be monitored 24 hours a day, 7 days per week from a

remote location. *Application at p. 24.* These security measures unequivocally satisfy the public health and safety considerations established by Conn. Gen. Stat. § 16-50p(a)(3).

3. The Facility Will Not Significantly Affect the Natural Environment in the Area.

ARX has offered extensive evidence demonstrating that the proposed Facility will not significantly affect the natural environment factors described in Conn. Gen. Stat. § 16-50p(a)(3).

a. Historic Properties, Structures, and Buildings.

The proposed Facility will not impact historic properties, structures, buildings, or objects. *Application at 22-23; Exhibit I to the Application, NEPA Compliance Review dated October 8, 2020 at p. 6 (“Exhibit I”).* On August 18, 2020, the State Historic Preservation Office (“SHPO”) issued a letter confirming that additional archaeological investigations are not warranted and that the proposed Facility will have “no adverse effects” to sites listed or eligible for listing on the National Register of Historic Places, with the following conditions: 1) The antennae, wires, mounts, and associated equipment will be designed, painted to match adjacent materials, and installed to be as non-visible as possible; and 2) if not in use for six consecutive months, the antennae, mounts, and equipment shall be removed by the telecommunications facility owner. This removal shall occur within 90 days of the end of such six-month period. *Application at p. 22; Exhibit I, Letter SHPO.* ARX is prepared to fully comply with these conditions. *Application at p. 22.*

ARX also consulted with nine Native American Indian tribes, all of whom confirmed that they do not have any interests that would be impacted by the Facility. *Application at*

27. Those nine (9) tribes include: the Bad River Band of Lake Superior Tribe of Chippewa Indians, the Delaware Tribe of Indians of Oklahoma, the Keweenaw Bay Indian Community, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Mashantucket Pequot Tribe, the Mohegan Indian Tribe, the Narragansett Indian Tribe, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin. The Tribal Consult is included in Exhibit I.

b. Protected Land and Designated Environments.

The proposed Facility will not affect protected land or designated environments. There are no national parks or forests within the vicinity of the proposed Facility. *Application at p. 25; Exhibit I at p. 1.*

Furthermore, the proposed Facility will neither be located within a floodplain nor within wetland limits. *Application at p. 26; Exhibit I at pp. 1, 7; ARX's Exhibit 9, Pre-Filed Testimony of Michael Libertine, LEP, and Brian Gaudet dated June 8, 2021 at A9 ("Exhibit 9").* No wetlands will be impacted. *Application at p. 30; Wetland Inspection contained in Exhibit I; Exhibit 9 at A9.*

c. Wildlife and Wilderness.

The Site is not designated as a wilderness area nor located in any area identified as a wildlife area, wildlife preserve, or in a USFW National Wildlife Refuge. *Application at 24; Exhibit I; Exhibit 9 at A9.* The proposed Facility will not affect threatened or endangered species or designated critical habitats. *Id.* Specifically, the Facility will not impact migratory bird species, as: (1) the Site is not proximate to an Important Bird Area; (2) the Sites complies with USFWS Guidelines for minimizing impacts on birds; and (3)

the Facility height would not be above 200 feet, would not include guy wires, and would not require lighting. *Application at p. 25; Avian Resources Evaluation attached as Exhibit K to Application; Exhibit 9 at A9.* ARX will implement protection strategies and protocols during construction activities to protect State Special Concern species eastern box turtle and wood turtle. *Application at p. 23; Exhibit 1; Exhibit 9 at A9.*

Notably, the City failed to offer *any* expert testimony or analysis as to any of the above-referenced natural environment considerations.

C. The Benefits of the Proposed Facility Far Exceed Any Potential Impact, Thereby Warranting Application Approval.

Pursuant to Conn. Gen. Stat. § 16-50p(a)(3), the evidence in the Docket clearly establishes that any probable environmental impacts resulting from the proposed Facility are insufficient to deny ARX's Application. Any limited impacts associated with the Application are outweighed by its substantial public benefits, thereby warranting Council approval.

As demonstrated above, occasional and limited views in the immediate area are the primary potential adverse impacts resulting from the proposed Facility. See supra at pages 22 - 23. There are also limited distant views. These limited aesthetic impacts are unquestionably outweighed by the public benefit derived from the Facility – specifically the coverage and capacity benefits. See supra at pages 15 – 17. These views can be ameliorated by the design of the Facility, should the Council determine that this is an appropriate docket in which to order visual mitigation.

Accordingly, the potential benefits of the proposed Facility far exceed any potential aesthetic impact, thereby justifying the issuance of a Certificate.

V. CONCLUSION

Based on the overwhelming uncontroverted evidence in the record, ARX has established that there is a demonstrated need for the Facility and that the limited environmental impacts associated with the Application are outweighed by the public benefits. ARX therefore respectfully requests that a Certificate issue for the proposed Facility.

RESPECTFULLY SUBMITTED,

ARX WIRELESS INFRASTRUCTURE, LLC

By: 

David A. Ball, Esq.
Philip C. Pires, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel. No. (203) 368-0211
E-Mail: dball@cohenandwolf.com
E-Mail: ppires@cohenandwolf.com
Juris No. 010032

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail on this 26th day of August, 2021, to the following:

Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel: (860) 275-8200
E-mail: kbaldwin@rc.com

Kristen Motel
Lucia Chiocchio
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
Tel: (914) 761-1300
E-mail: kmotel@cuddyfeder.com
lchiocchio@cuddyfeder.com

John W. Knuff
Jeffrey P. Nichols
Hurwitz, Sagarin, Slossberg & Knuff, LLC
147 North Broad Street
Milford, CT 06460
Tel: (203) 877-8000
E-mail: jknuff@hssklaw.com
jnichols@hssklaw.com



David A. Ball