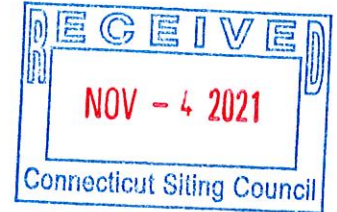


DAVID A. BALL

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

November 4, 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. 503 - 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 43 Osgood Avenue, New Britain, 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,

A handwritten signature in blue ink that reads "D.A. Ball".

David A. Ball

Enclosures

cc: Service List

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**



APPLICATION OF ARX WIRELESS INFRASTRUCTURE, LLC

**43 OSGOOD AVENUE
NEW BRITAIN, CT 06111**

Docket No. 503

APPLICANT'S POST-HEARING BRIEF

November 4, 2021

Submitted by:

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Bridgeport, CT 06604
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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:	:	
	:	DOCKET NO. 503
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 43 OSGOOD AVENUE,	:	November 4, 2021
NEW BRITAIN, CONNECTICUT	:	

**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 May 14, 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 2.62 acre parcel of property located at 43 Osgood Avenue, New Britain, Connecticut (the “Property” or “Site”). The Site is situated on the west side of Farmington Avenue, with Richmond Avenue to the north and Beach Street to the west. The Site is presently developed with a vacant building that is over 30,000 square feet in size and has a designated land use in the City’s tax assessment records as a “commercial warehouse.”

Need for the Facility:

New Cingular Wireless PCS, LLC ("AT&T") has identified an area of deficient services affecting a significant portion of New Britain, including key traffic corridors through the residential and business/retail areas of the City. The proposed Facility will bring the needed fill-in coverage to significant portions of Farmington Avenue, Eddy Glover Boulevard, and the residential neighborhoods and business/retail areas in the vicinity of these roads. 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 New Britain.

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 New Britain. Moreover, ARX and AT&T's exhaustive search process demonstrated that the Property at 43 Osgood Avenue is the most viable site to meet the carrier's RF needs that is available to be leased.

Facility Description:

ARX proposes to construct a 104-foot monopole tower with AT&T equipment and antennas, situated within a 50' x 50' fenced equipment compound within a 75' x 75' leased area, to be located behind the existing commercial warehouse building. The compound will be enclosed by an eight-foot-high chain-link security fence, and it will contain equipment operated by AT&T and future carriers. A 20'-wide utility easement originating off Beach Street will provide the Facility with underground utilities and vehicular access. The antennas affixed to the top of the monopole will consist of AT&T panel antennas,

mounted in three sectors, at a centerline height of 100'. The tower would also host the equipment of three 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.

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 May 14, 2021, proposing to construct a 104-foot monopole tower with AT&T antennas, and the equipment of three 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 May 12, 2021, and the legal notice was published in the *New Britain Herald* on May 12, 2021 and May 13, 2021. *Exhibits C and D to Application; Applicant's Exhibit 2*. On July 2, 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 4*.

AT&T intervened in support of the Application. The City of New Britain filed for party status.

On July 20, 2021, the Council conducted an evidentiary hearing and an evening public hearing on the Application. The hearing was continued on September 2, 2021, and following the City's Request for Extension of Time dated September 10, 2021, the hearing was re-opened for the limited purpose of considering two potential alternative sites identified by the City, and an evidentiary hearing was held on October 5, 2021 (collectively hereinafter referred to as 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 radio frequency 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.*

In this matter, AT&T identified a need for wireless coverage in this area of New Britain and agreed to support an application by ARX to construct a new facility in this location to provide the coverage required. *Id.* Due to terrain characteristics and the distance between the targeted coverage area and the existing sites, AT&T's options to provide services in this area are quite limited (maps of the terrain in this area and the distance to neighboring AT&T sites from the proposed site are included as Attachments 1 & 2, respectively, to the RF Report, *Exhibit E to Application*).

AT&T and ARX conducted a search for tower sites, which included an investigation of fifteen (15) different sites in New Britain. *Exhibit F to Application.* As thoroughly explained in Exhibit F to the Application, AT&T and ARX determined that of the fifteen (15) sites within their 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 AT&T to determine that the site would not meet its coverage objectives, and property owners'

unwillingness to make their properties available for telecommunications development.

Exhibit F; Pre-Filed Testimony of Keith Coppins dated July 12, 2021 at p. 3.

B. Consultation with City of New Britain Officials.

On November 13, 2020, ARX sent a cover letter and technical report to the Mayor of New Britain, the Honorable Erin E. Stewart, proposing the Facility at the Site. *Exhibit M to Application*. On November 13, 2020, the cover letter and Technical Report were also sent via federal express to the New Britain Zoning Board, the New Britain City Plan Commission, the New Britain Conservation Commission, and to Attorney Joseph E. Skelly, Jr., Esq., Assistant Corporation Counsel for the City.

In the letter to Mayor Stewart, ARX's counsel wrote:

We would like to meet with you or your designee to review the proposed project and will contact you next week to set up an appointment at your convenience. If the City has any proposed alternative sites, it must provide them to us within thirty (30) days of that initial consultation meeting.

Further, the City may conduct a public information meeting as it deems necessary to provide recommendations or comments to ARX and AT&T concerning the proposed Facility. We would be pleased to provide an informational summary of the proposal. This public informational meeting must be held no later than sixty (60) days after our initial consultation meeting. If such a public information meeting is scheduled, we request you advise us as soon as possible.

On November 17, 2020, Attorney Skelly wrote to counsel for ARX indicating that he had reviewed the letter to Mayor Stewart and advised ARX that the City objected to a facility at the Site noting that 43 Osgood Avenue was "located in the middle of a residential neighborhood." Attorney Skelly then wrote:

There are two alternative sites. There is already a radio facility on a water tank on Elam Street, which is less than one mile away. In addition, Osgood Park is located north of the Elam Street water tank and may provide a more suitable site.

Exhibit M to Application.

On March 5, 2021 counsel for ARX wrote to Attorney Skelly with the results of ARX's investigation of the two alternate sites that Attorney Skelly had proposed. ARX's counsel explained that the site of the water tank on Elam Street (1780 Corbin Avenue) was only 0.4 miles from an existing AT&T site (site CT5419) and 1.1 miles from the search ring, and that AT&T had rejected this site as not viable. With respect to Osgood Park, counsel for ARX explained that this location was only 0.2 miles away from an existing AT&T site (site CT5419) and 1.2 miles from the search ring, and that AT&T had also rejected this site as not viable. Counsel for ARX noted that both of the proposed alternate sites suggested by the City were also in residential neighborhoods, and therefore moving the Facility to either of these sites would merely move the Facility into a different residential neighborhood. And, as noted, AT&T had rejected these two sites as not being viable. *Exhibit M to Application.*

On March 5, 2021, at 10:22 a.m. counsel for ARX e-mailed Attorney Skelly:

We would like to have a Zoom meeting with you, and anyone else from the city that would like to participate, regarding Arx's proposed telecommunications facility for 43 Osgood Avenue. Please let us know if you are interested in having a meeting to discuss the site, and if so, please let us know some convenient times for you and your colleagues in the next few weeks.

Attorney Skelly responded by e-mail stating that he wanted to understand why ARX would want to have a Zoom meeting because the City had already stated its position in opposition. In response, ARX's counsel e-mailed the March 5, 2021 letter to Attorney

Skelly and once again asked whether he would like to have a Zoom meeting to discuss ARX's proposed Site. *Exhibit M to Application.*

Attorney Skelly responded: "Will let you know." *Id.*

Finally, on March 9, 2021, Attorney Skelly suggested a willingness to meet with ARX to "get a better understanding of the exact area you are looking to cover." Later that day, counsel for ARX responded, explaining that all of the information about the proposed site and the need for coverage was detailed in the Technical Report that had been provided to the City on November 14, 2020. And again, ARX counsel wrote: "Please let us know if you would like to have a Zoom meeting next week. If so, please let us know a few times that work for your team. Thanks." *Id.*

Attorney Skelly never responded, and the City never scheduled a meeting with ARX, despite these repeated offers to meet. Moreover, the City chose not to convene a public information meeting as ARX specifically advised it had a right to do in its letter to Mayor Stewart with the Technical Report dated November 13, 2020. And significantly, the City never proposed any alternative sites other than the two sites that AT&T rejected for coverage reasons – the water tank on Elam Street and Osgood Park.

Once it was clear that the City was not interested in meeting with ARX, nor proposing any other potential sites, on May 14, 2021 – six months after ARX sent its Technical Report to the City and over two months after ARX's last communication to the City – ARX filed this Application, having concluded that the proposed Site at 43 Osgood Avenue was the best site that could meet AT&T's coverage objectives, and that was available to be leased.

C. The Proposed Facility.

ARX proposes to construct a 104-foot monopole tower with AT&T antennas, situated within a 50' x 50' fenced equipment compound within a 75' x 75' leased area, to be located behind the existing commercial warehouse building on the Property. *Application at 7.* The compound will be enclosed by an eight-foot-high chain-link fence, and it will contain equipment operated by AT&T and future carriers. *ARX Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 18.* A 20'-wide utility easement originating off Beach Street would provide the Site with underground utilities and vehicular access. *Application at 7.* The antennas affixed to the top of the monopole will consist of AT&T panel antennas, mounted in three sectors, at a centerline height of 100'. *Id.* The tower would also host the equipment of three additional wireless carriers as well as City emergency services, if needed. *Revised Exhibit G dated July 13, 2021 at C-2; ARX Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 21.*

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 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 to enhance community broadband infrastructure, upgrade or construct public computer centers, and increase broadband access in areas that traditionally underutilized broadband services; and (3) developing a National Broadband Plan outlining strategic initiatives to maximize 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 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

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

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.*

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 devices to get help in an emergency.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 Coverage Deficiencies and Provide Enhanced Wireless Services in New Britain.

The Docket contains extensive written evidence and testimony regarding the need for improved wireless services in this area of New Britain. ARX and AT&T have demonstrated that the new Facility at 43 Osgood Avenue will provide needed coverage and will improve upon existing service deficiencies.

In the RF Report commissioned by AT&T, the analysis of propagation modeling and drive testing in New Britain concluded that AT&T has a significant gap in reliable service in New Britain, and “a significant coverage deficiency in the existing AT&T wireless communications network along Farmington Avenue and Eddy Glover Boulevard and the neighboring residential and business/retail areas in New Britain, referred to herein as the ‘targeted area’.” *See Exhibit E to Application at pp. 1, 2.* The RF Report explains that AT&T’s options to provide services in this area are “quite limited” because of terrain characteristics and the distance between the targeted coverage area and existing sites. *See Exhibit E to Application at p. 2.* As shown in the RF Report, the propagation modeling and drive testing in the City “reveal that AT&T’s network is unreliable throughout much of

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).

the area due to gaps in coverage, and that there is a service deficiency as a result.” See *Exhibit E to Application at p. 3*. The RF Report concludes that a new facility is needed because “[n]o existing structures were identified and available that would be able to satisfy the coverage requirements needed for this area.” *Exhibit E to Application at p. 5*.

In the Hearing, AT&T’s witnesses confirmed that AT&T would experience improved coverage from the new Facility at the Site, and that a new tower is preferred to multi-site or small cell options. *7/20/21 Transcript at pp. 102-105*. AT&T testified that there is a need for increased coverage and “[t]he most efficient and effective way to provide that is a macro site.” *7/20/21 Transcript at pp. 112-114*. Indeed, while small cells provide added capacity, they are not suitable for primary coverage. “This site is providing the primary coverage to this area, so it’s much more suited to a macro site.” *9/2/21 Transcript at p. 100*.

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 New Britain. *AT&T Response to Connecticut Siting Council Pre-Hearing Interrogatories, A27*.

There is no dispute as to the benefits of the proposed Facility to meet AT&T’s wireless service objectives. Notably, the City failed to offer any expert report or testimony as to coverage. Accordingly, the record as to the need for the Facility and the fact that it will allow AT&T to provide enhanced wireless services is uncontroverted.

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

The Docket contains extensive written evidence and testimony demonstrating that the property at 43 Osgood Avenue is the best site to meet AT&T’s needs, and the only

available site to be leased. ARX and AT&T conducted a search for tower sites, which included an investigation of 15 different sites in New Britain. *Exhibit F to Application*. As detailed in Exhibit F to the Application, ARX and AT&T determined that of the 15 sites within their search area, only the proposed Site was feasible because the other sites investigated were not viable for RF reasons or because property owners were not willing to make their properties available for telecommunications development. *Exhibit F; Pre-Filed Testimony of Keith Coppins dated July 12, 2021 at p. 3*.

In addition, at the 11th hour, for the first time the City suggested two alternative sites – properties owned by Eversource and Beth Alom Cemetery, respectively – which were shown to be not viable.

a. The two sites suggested by the City during the municipal consultation are not viable.

During the municipal consultation process, the City suggested two potential alternative sites in different residential neighborhoods – a water tank on Elam Street, and Osgood Park. Following an investigation of those sites, on March 5, 2021 counsel for ARX wrote to Attorney Skelly explaining that AT&T had rejected both sites because each was in close proximity to an existing AT&T site (site CT5419) and therefore not viable to meet AT&T's coverage needs. *See Exhibit M to Application*.

b. The two sites suggested by the City after the evidentiary hearing was closed are not viable.

For nearly a year after receiving the Technical Report, the only sites ever suggested as potential alternatives by the City were the two properties identified above – the water tank on Elam Street, and Osgood Park. ARX repeatedly offered to meet with the City during the municipal consultation process and the City refused. The City also

ignored ARX's offer to conduct a public information session for the City concerning the Application. *Exhibit M to Application.*

Despite its own failure to meaningfully participate in the municipal consultation phase, and its disinterest in working with ARX to examine alternative sites or to discuss the pending Application, after the close of the record following the second evidentiary hearing the City suddenly purported to express interest in working to facilitate discussions with two other property owners, Eversource and Beth Alom Cemetery. The City filed a "Request for Extension of Time" dated September 10, 2021, which led to the hearing being re-opened for the limited purpose of considering these two potential alternative sites. At the evidentiary hearing on October 5, 2021, it became clear that there was no basis whatsoever to the City's 11th-hour request.

First, Eversource made clear to ARX that its property located at 148 Farmington Avenue was not available for tower development because this small parcel was being reserved for future use by Eversource. *Pre-Filed Testimony of Keith Coppins dated September 30, 2021 at p. 2.*

Second, the property owned by Beth Alom Cemetery at 48 Allen Street (the "Cemetery Property") also proved not to be viable. Contrary to the City's implications to the Siting Council, the owners of this property were not in a position to move forward with a lease with ARX. The record shows that ARX immediately began jumping through hoops to try to explore whether this might be a suitable site, including multiple calls and e-mails to the Cemetery's representatives, Attorney Seth Feigenbaum and his brother, Ira Feigenbaum. When Ira Feigenbaum finally called Mr. Coppins on September 30, 2021 and asked Mr. Coppins to send him a proposal, Mr. Coppins immediately sent a draft land

lease agreement for Ira Feigenbaum to bring to his Board. *Pre-Filed Testimony of Keith Coppins dated September 30, 2021 at p. 3.*

By the time of the hearing on October 5, 2021, Attorney Feigenbaum responded to Mr. Coppins that the Board would not agree to the location on the property that ARX had suggested. *10/5/21 Transcript at pp. 10-15.* The Cemetery Board did not indicate that there was any particular area that it would agree to lease to ARX, and at that late date, there was no way the Cemetery, ARX, and AT&T could meaningfully evaluate the viability of the site. *Id.*

The City's last minute advocacy supporting a tower on property owned by the Cemetery is more puzzling considering the complete absence of any due diligence by the City as to whether these lots would simply result in opposition by a different group of neighbors. With respect to 48 Allen Street, the City claimed to "support" a tower on that site even though it had no idea whether residents in that neighborhood would be opposed, no visibility analysis had been done, and no environmental studies had been performed. *10/5/21 Transcript at pp. 57-58.*

In addition, the City claimed to "support" a tower on two other small lots owned by the Cemetery on 65 Allen Street and 73 Allen Street, respectively. As the record demonstrated, the property at 65 Allen Street is just 0.34 acres in size, and only 54' away from the nearest residents. The property at 73 Allen Street is just 0.1 acres in size, and only 45' away from the nearest residents. *10/5/21 Transcript at pp. 59-60.* The City claimed to support a tower on these small lots even though it had no idea whether nearby residents would be opposed, and even though a substantial number of trees would have to be removed from either of these undeveloped lots. *Id.*

In sum, there is nothing in the record supporting the viability of the Cemetery Property. To the contrary, the record is clear that the City waited until the last minute to suddenly show interest in facilitating potential alternative sites, after abdicating its own responsibility to participate in the municipal consultation process. Not only did the City fail to identify Cemetery property as a potential site during the municipal consultation period, but it neglected to do so at any time in the 10 months that followed. *10/5/21 Transcript at pp. 61-62.* Had the Cemetery responded to the notices sent before ARX filed the Application, or had the City made any attempts to facilitate a discussion during the municipal consultation process, at least the site could have been vetted in a more orderly way. Finally, there has been no indication from the Cemetery that it is actually interested in leasing any portion of the Cemetery Property to ARX for the development of a tower. Therefore, based on the record, there is simply no way that the sites identified by the City after the first two evidentiary hearings can be considered viable options.

Accordingly, the record contains uncontroverted evidence that the proposed Site at 43 Osgood Avenue is the only viable option to meet AT&T's wireless coverage and service needs.

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.

While the Property is located in a residential area, the Site is presently developed with a vacant building that is over 30,000 square feet in size and has a designated land use in the City's tax assessment records as a "commercial warehouse." *Application at p. 7.* While the City raised complaints about the current owner's failure to maintain the Property, upon approval of the Application ARX has committed to purchase the Property and to properly maintain it. *7/20/21 Transcript at pp. 32-33, 50, 59-60; 9/2/21 Transcript at pp. 14-15.* One would think that the City prefers to have a responsible landowner, rather than leaving the warehouse and property in its current state.

The visibility of the Facility would be limited primarily to locations within approximately 0.5 miles of the Site. *Application at p. 21; Exhibit H to the Application, Visual Assessment & Photo-Simulations ("Exhibit H"), p. 8.* Adjacent neighborhoods (within ± 0.25 miles of the Site) will experience year-round and seasonal views. Predicted seasonal visibility is estimated to include approximately 87 acres. *Id.* The predicted year-round visibility of the Facility is estimated to include an additional ± 47 acres. *Id.* Thus, the total acreage of visibility represents just $\pm 1.66\%$ of the 8,042-acre Study Area. *Id.*

No schools or commercial daycare centers are located within 250 feet of the Facility. E.C. Goodwin Technical High School is located approximately 0.73 miles west of the Site at 735 Slater Road in New Britain. *Exhibit H to the Application at p. 8.* A small area of year-round visibility is predicted from the northwestern portion of the school grounds. *Id.* The nearest commercial childcare center is Learn 'n Play Childcare approximately 0.82 miles to the east of the Site at 357 Allen Street in New Britain. *Id.* No visibility is predicted from or in the vicinity of the day care center. *Id.*

Notably, the City failed to offer any expert report or testimony as to visibility. ARX's extensive testimony and expert analysis establish 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 – 17.05% of the applicable Maximum Permissible Exposure (MPE). *Application at pp. 23-24; Exhibit J to the Application, Calculated Radio Frequency Exposure Report dated October 19, 2020 at p. 4.*

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. *ARX Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 18.* 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 pp. 24-27; Exhibit I to the Application, NEPA Compliance Review dated December 10, 2020 at pp. 4-7 (“Exhibit I”).* On November 24, 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 pp. 22-23; Exhibit I, SHPO Letter dated November 24, 2020.* ARX is prepared to fully comply with these conditions. *Application at p. 23.*

Oddly, the City took the position that the Property would be eligible for historic status based on its supposed inclusion in “the City of New Britain’s 1996 Grand List

Historic Properties Survey.” Affidavit of Steven P. Schiller dated July 8, 2021, par. 12. However, as ARX demonstrated in response, the Property at 43 Osgood Avenue is not eligible for historic status. In Pre-Filed Testimony of Michael Libertine, LEP and Brian Gaudet dated July 12, 2021, the expert witnesses testified:

First and foremost, the status or eligibility of the building for inclusion on the National Register of Historic Places requires formal nomination and acceptance at both the state and federal level. The process is typically initiated through the State Historic Preservation Office (“SHPO”). Proposed nominations are reviewed by the SHPO and the state’s National Register Review Board. Complete nominations, with certifying recommendations, are submitted by the state to the National Park Service in Washington, D.C. for final review and listing by the Keeper of the National Register of Historic Places. In its determination letter dated November 24, 2020, SHPO concluded that: **“The Subject Property itself, known as the Israel Putnam Elementary School, does not appear eligible for listing on the National Register.”** (Emphasis added.)

Pre-Filed Testimony of Michael Libertine, LEP and Brian Gaudet dated July 12, 2021 at A11.

Further, the Property at 43 Osgood Avenue is not listed on any local designation of historic places. *Id.*, and see *Exhibit B to Pre-Filed Testimony of Michael Libertine, LEP and Brian Gaudet dated July 12, 2021*. The claimed inclusion of the Property on the 1996 Grand List Historic Properties Survey carries no weight at all. As ARX’s experts explained:

The 1996 Grand List Historic Properties Survey is not a City of New Britain listing. Rather, it is a “window survey” conducted by SHPO identifying properties that may potentially have historical significance. However, the ultimate determination as to whether a building or property is in fact one of historical significance is made by SHPO in its determination letter, which supersedes any prior surveys. As detailed above, in this case, in its determination letter SHPO concluded that: “The Subject Property itself, known as the Israel Putnam Elementary School, does not appear eligible for listing on the National Register.”

Pre-Filed Testimony of Michael Libertine, LEP, and Brian Gaudet dated July 12, 2021 at A12.

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 pp. 25-26; Exhibit I at pp. 1, 6; ARX's Exhibit 8, Pre-Filed Testimony of Michael Libertine, LEP, and Brian Gaudet dated July 12, 2021 at A9 ("Exhibit 8").* No wetlands will be impacted. *Application at pp. 25-26; Wetland Inspection contained in Exhibit I.*

ARX also consulted with eight Native American Indian tribes, all of whom confirmed that they do not have any interests that would be impacted by the Facility. *Application at 26.* Those eight (8) tribes include: the Bad River Band of Lake Superior Tribe of Chippewa Indians, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Mohegan Indian Tribe, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Narragansett Indian Tribe, Mashantucket Pequot Tribe, the Lac du Flambeau Band of Lake Superior Chippewa Indians, and the Sac and Fox Nation. The Tribal Consult is included in *Exhibit I to the Application.*

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 Site 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 dated April 15, 2021 attached as Exhibit K to Application; Exhibit 8 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 page 19.* 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 pp. 13-14.* 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 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,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail on this 4th day of November, 2021, to the following:

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