

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC  
(AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR THE  
CONSTRUCTION, MAINTENANCE, AND OPERATION  
OF A TELECOMMUNICATIONS FACILITY AT 499 MILE  
LANE, CITY OF MIDDLETOWN, CONNECTICUT

DOCKET NO. 506

FEASIBILITY PROCEEDING FOR SHARED USE OF AN  
EXISTING FACILITY LOCATED AT 499 MILE LANE,  
CITY OF MIDDLETOWN, CONNECTICUT

FP-ATT-083-211214

March 3, 2022

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

Respectfully Submitted,



Christopher B. Fisher, Esq.  
Kristen Motel, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue  
14<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 761-1300

## **PRELIMINARY STATEMENT**

New Cingular Wireless PCS, LLC (“AT&T” or the “Applicant”), by its attorneys, Cuddy & Feder LLP, respectfully submits this consolidated post-hearing brief in support of its application in Docket No. 506 (“Docket”) and the Feasibility Proceeding identified as FP-ATT-083-211214 (“Feasibility Proceeding”).

This Docket addresses the demonstrated public need for a tower facility in the City of Middletown so that FCC-licensed wireless carriers and FirstNet may provide reliable wireless and emergency communication services in north central Middletown.

The only practical and feasible option to meet the public need for services and comply with the state’s statutory siting criteria is construction of a new co-locatable structure somewhere on City of Middletown property located at 499 Mile Lane, where a 180’ light duty single purpose municipal lattice tower was built in 2018 as the main hub site for all the City’s public safety communications needs (“City Tower”).

AT&T started the Council’s review process by filing a petition (No. 1465) for a 150’ monopole right next to the existing City Tower, a project approved by four City agencies and committees (“AT&T Monopole”). Subsequent Council proceedings have addressed various procedural matters, including decisions by AT&T to 1) facilitate participation by three residents, 2) elicit City testimony as a party, and 3) provide the Council with additional jurisdiction to explore certain alternatives within the City’s control.

The task at hand for the Council is to now apply state law to the facts and decide what type of facility to approve as part of a Certificate of Environmental Compatibility and Public Need (“Certificate”).

This brief identifies for Council members the relevant facts and law and articulates why AT&T’s project meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) for approval and, of all the alternatives evaluated by the Council, avoids the

unnecessary proliferation of towers in this area of the state in accordance with C.G.S. 16-50p(b)(1)(A) and 16-50aa.

**STATEMENT OF FACTS AND RELATED POINTS OF LAW**

**I. The Public Need for AT&T, FirstNet and Other Carriers' Wireless Services in North Central Middletown is Clear**

There is a significant deficiency in existing AT&T and FirstNet wireless communications network services provided to customers and first responders in the north-central part of the City of Middletown. Applicant's Ex.1(4).

The State database, of both existing tower and non-tower sites for all wireless carriers, shows that there are no macro wireless sites in this area of Middletown with the nearest sites mile(s) away in a triangular area along Interstate 91, State Route 9 and State Route 66. Council Notice 32.

Existing wireless communications sites along these highways serve other parts of the region and are simply not reaching this part of Middletown well, if at all, and there is a "significant gap in service" for the carriers. Applicant's Ex's. 1(4), 4(4) and response 12.

The Proposed Facility will provide reliable services to AT&T's consumers and FirstNet first responders in the coverage area which has a population of over 2,500 residents, 1000 business employees, and numerous roadway miles including portions of State Route 3 to the east and towards State Route 217 to the west. Applicant's Ex.1(1), p. 4.

The in-building coverage area also includes thousands of students that attend three nearby public schools including Lawrence Elementary to the north, and Keigwin Middle School and Middletown High School, located on adjacent properties to the east. Lavin and Bartolotta 12/21/21 Hearing Testimony.

The need for a new AT&T macro cellular facility in this part of Middletown is clear and uncontroverted by any competent evidence.

AT&T also consulted with Verizon, T-Mobile and Dish during the Council's proceedings and confirmed that, while there was some potential future interest in collocating on the proposed AT&T

Monopole, no such carrier had an open search ring with a capital budget allowing it to make any commitments to shared use at this time.<sup>1</sup> Applicant's Ex. 9 and Pike 2/3/22 Hearing Testimony.

As such, while the AT&T Monopole has been designed for future co-location to meet the statutory requirement set forth in Section 16-50p(b)(1)(B), neither the City nor AT&T can expect capital contributions or future sublease rent from other wireless carriers as part of assessing the economic feasibility of other alternatives discussed in these proceedings.

The need for new vertical wireless infrastructure to serve the public in this part of Middletown is not seriously disputed by any party for purposes of Section 16-50p(b)(1) or the state's statutory presumption that wireless services are beneficial to the public.

## **II. AT&T's Appropriately Focused Site Search As a Matter of State Law**

AT&T has been focused, as a matter of state law, on the City's property at 499 Mile Lane ("Site") as a site needed for it to serve the public. The Site is a former U.S. Military missile base and training center and currently the City's emergency response center and used for fire training exercises and other ancillary purposes. Bartolotta 12/21/21 Hearing Testimony.

In 2017, AT&T learned the City was investing in a multi-million dollar municipal communications network and had plans to build a municipal tower facility on the Site. Early attempts by AT&T to work with the City to modify its single purpose design for the municipally owned tower to accommodate carrier collocation were unsuccessful. Pike 11/30/21 and Bartolotta 12/21/21 and 2/3/22 Hearing Testimony.

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<sup>1</sup> Intervenor Talias Trail provided the Council with copies of T-Mobile website marketing maps and the personal opinion of T-Mobile's service by a resident. There would be two major flaws in considering any such evidence as reliable which include: 1) T-Mobile's own disclaimer on its website which states "Map Information: Map approximates ***anticipated coverage outdoors*** (including 600Mhz 4G LTE) based on a variety of factors, which may include limited or no coverage areas, and does not guarantee service availability." <https://www.t-mobile.com/coverage/coverage-map>; and that 2) resident phone tests have been discredited by the courts as reliable evidence for a Board to rest a decision on in response to wireless carrier drive test and coverage modeling analyses and testimony by expert engineers in siting proceedings. *See Up State Tower Co. v. Village of Lakewood*, 431 F.Supp.3d 157 (NDNY 2020), *New York SMSA Ltd. v. Town of Oyster Bay*, No. 11-cv-03077 (MKB), 2013 WL 4495183 (E.D.N.Y. Aug. 16, 2013)

This is not surprising given the additional mid six figure capital costs such a bigger lattice tower design would add to the City's already taxpayer funded multi-million dollar public safety network project. Applicant's Ex.9 and 12/21/21 and 2/3/22 Hearing Testimony. The City was unable to develop hard commitments from multiple wireless carriers to cover that large an expense, an expense no single carrier could be expected to fund as a capital contribution to a municipally owned tower in exchange for the right to co-locate. Bartolotta 2/3/22 Hearing Testimony.

As such, in 2017 the City elected to proceed with construction of its 180' light duty lattice tower as planned, particularly given its own network deployment timelines. Bartolotta 12/21/21 Hearing Testimony. The City Tower was permitted in 2017, constructed in the first half of 2018 and operational by year end. Id. At that time, the Site presumptively became the preferred location for any new wireless carrier facilities under state law which encourages tower sharing to avoid the "unnecessary proliferation of towers." See 16-50p(b)(1)(A) and 16-50aa.

AT&T's funded search ring was issued in mid-2018 and encompassed the same strategic topographic area that the City had been focused on in designing its network to provide municipal and first responder services in north central Middletown. Applicant's Ex.4 and Lavin 12/21/21 and 2/3/22 Hearing Testimony. Other than the Site, the only other properties in AT&T's search ring consisted of two City public school sites at lower elevations to the east and an Eversource power line right of way to the south with very short 115kv poles in the 50' to 70' height range. Gaudet 2/3/22 Hearing Testimony.

As testified during the proceedings in Docket 506, AT&T does not pursue public school properties in the first instance for tower siting given the Legislature's preference to avoid such sites as set forth in Section 16-50p(a)(3)(F(ii)). Applicant's Ex.9 and Bettuchi 2/3/22 Hearing Testimony. Additionally, power lines, which do not have a legislatively expressed preference for wireless siting like an existing tower does, would require in this case a 150' tower involving new visual impacts on a dense single family residential community to the south, a community that does not have material

views of the existing Eversource structures or City Tower at all now. Gaudet 2/3/22 Hearing Testimony.

As applied to the facts in this Docket, the AT&T Monopole avoids additional and undue visual impacts by keeping the visual effects confined to the same area of existing views of the existing City Tower.<sup>2</sup> The only natural location for AT&T to focus on as of 2018, and only location that would not implicate the “unnecessary proliferation of towers” as a matter of state law, was the Site and existing City Tower location.

It would have been shocking if AT&T did not focus its energy on working further with the City and undertook some illusory search for alternative sites given state law and the Council’s historical preference for municipal collaboration as well. Indeed, had AT&T taken such an approach, the City and more residents would have objected to such AT&T proposals, and the City would have presumably exercised its authority under Section 16-50l(f)(3) of state law forcing AT&T to consider the Site as the best alternative for the community as a whole.

### **III. AT&T’s Four Year Technical Consultations with the City of Middletown**

AT&T’s technical consultations with the City date back four or more years now to 2017. The City’s priorities as clearly articulated then and now are, first and foremost, the reliability of its public safety network and unique importance of the existing City Tower as the hub to its overall municipal network services to first responders. City Ex.2. Director Bartolotta’s testimony, including detailed technical descriptions of the City Tower’s use and importance were thorough,

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<sup>2</sup> Consideration of the Eversource transmission poles for construction of a new cell tower at least 150’ in height, even as a replacement structure, was never rejected by AT&T as an impossible engineering exercise, regardless of whether the poles are wood or steel in the future along this line. Eversource’s institutional limitations on construction of new or replacement towers for wireless facilities have been known by the Council and wireless industry for years. See 16-50p(b)(1)(A) and 16-50aa(b) and CSC Docket 388 FOF & Opinion in Applicant’s Notice 4. As such, even if Eversource would allow it, such an alternative would fail to address the major operational issues both Eversource and AT&T seek to avoid in providing their respective services to the public as fully vetted in Docket 388 and which led the Council to approve a new tower adjacent to existing Eversource power lines in Woodbridge. Notably, AT&T still co-locates on some power lines, where operational issues can be managed, and other more feasible options are not available like in this Docket.

uncontroverted and rationally explained the City's position in these proceedings. Bartolotta 12/21/21 and 2/3/22 Hearing Testimony.

Once the City completed construction of the exiting City Tower in 2018 and AT&T had issued its search ring, the City of course authorized AT&T to do a structural analysis in accordance with its general municipal policy favoring collocation and AT&T's tenancy at other existing City locations. A report by AT&T's professional engineers was completed in early 2019 and confirmed what everyone knew would be true from a visual inspection of the light duty lattice tower alone, that there was no potential for AT&T to collocate on the existing City Tower in compliance with the State Building Code with tower legs stressed over 250% of the applicable standard ("First PE Report"). Applicant's Ex's. 1(2), 4(2).

At that point in time, AT&T discussed other options with the City Administration and Director Bartolotta given the importance of the site to AT&T's network services including FirstNet. Structural reinforcements of the existing City Tower were considered, but ruled out by AT&T's professionals, particularly given the degree of compliance issues identified in the First PE Report and City concerns. Pike 11/30/21 Hearing Testimony. A full replacement co-locatable lattice tower was also ruled out by the City due to construction impacts with its municipal network facilities that could not be adequately addressed by phasing, temporary facilities or other cost-effective solutions for the parties. Bartolotta 12/21/21 Hearing Testimony.

As part of those discussions, Director Bartolotta highlighted the undue disruption and risks a replacement tower would have on the City's municipal network. Id. AT&T also identified that temporary towers or other construction methods used in less critical tower replacement projects would not address the Director's objections to any such project at the Site. Id.

Only then did the parties consider the proposed addition of a second co-locatable wireless carrier tower adjacent to the exiting City Tower as an option. Pike, Bettuchi and Bartolotta 12/21/21 Hearing Testimony. By late 2020, a lease had been fully negotiated for a proposed 150' co-locatable

AT&T Monopole at the Site and an initial plan vetted with the City and various consulting State agencies like the State Historic Preservation Officer. Applicant's Ex.1(3, 5-8).

In 2021, numerous City agencies also reviewed the project for conformity with City policies and goals including the City's Plan of Conservation and Development as required by state law. See C.G.S. § 8-24. After months of agency reviews, the City Planning & Zoning Commission, Public Safety Committee and full City Council approved the AT&T project and authorized the Mayor to execute the negotiated lease.<sup>3</sup> Applicant's Ex.1(1), City Ex.1

The City's position, which has not changed since that time, is that a second monopole adjacent to the City Tower meets their primacy associated with reliable and uninterrupted operation of their municipal public safety network, will allow wireless carriers to serve the public from the Site and, that through immediate adjacency of the structure to the existing City Tower, the relevant community, environmental, aesthetic and future City objectives at the Site can be met.<sup>4</sup> Indeed, the City will not consent to or lease AT&T any property that involves a plan to replace or relocate the City Tower and build one taller 180' monopole or bigger 180' lattice tower site solution at the Site. Bartolotta 2/3/22 Hearing Testimony.

#### **IV. AT&T's Petition Filing & Conversion to a Certificate Application**

On September 30, 2021, AT&T filed a petition for a declaratory ruling with the Siting Council requesting a determination that the AT&T Monopole adjacent to the existing taller City Tower would not introduce significant adverse environmental effects on those resources expressly listed in Section 16-50p and noting that conventional tower sharing was not feasible as noted in the First

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<sup>3</sup> A copy of the fully negotiated approved lease with the City was filed with the Council and calls for AT&T lease rent and also a share of sublease rents that may be collected by AT&T from other wireless carriers for any future co-location. Applicant's Ex.4(3).

<sup>4</sup> A monopine was considered and presented municipally and as part of the Council's proceedings. All parties to these proceedings have indicated that a monopole, not a monopine, is the appropriate tower form in this Docket for consideration as a "latest design option intended to minimize aesthetic impacts" pursuant to Section 16-50p(b)(1)(D).



PE Report (Petition 1465). In response to public notices of Petition 1465, a handful of residents on Talias Trail expressed concerns over the project and contacted City officials.

As a courtesy to the City, AT&T converted Petition 1465 into Docket 506 in order to permit residents a full opportunity to participate in the proceedings and be heard at the Council. As part of AT&T's conversion to a docket, and in light of the nature of the project involving an additional tower at an already developed tower site owned by the City, the Council granted waivers of some of its submission guidelines for new tower applications.

Thereafter on November 23, 2021, AT&T responded to 72 Council interrogatories supplying additional information and slightly modifying the project to avoid man made wetlands to the rear of the existing City Tower location. Applicant's Ex.4. Interestingly enough, no residents or the City timely sought status as a party or intervenor under the Council's adopted schedule for Docket 506.

#### **V. Council Inquiries into Various On-Site Alternatives**

Evidentiary and public hearings were held on November 30<sup>th</sup>, at which time members of the Council considered the application for the second AT&T Monopole at the Site. At that time, the Council sought supplemental information from AT&T, related principally to the City's positions on various alternatives the Council had questions about. 11/30/21 Hearing Transcript.

The Council was focused on: 1) whether there is any way to structurally modify the exiting City Tower to accommodate AT&T; and 2) hearing from the City directly on the reasons why it would not agree to a replacement tower, whether a 180' monopole or larger 180' lattice structure ("Replacement Tower Options").<sup>5</sup> As such, the Council continued the evidentiary hearing to December.

In response to the Council's questions and requests, AT&T submitted supplemental information and testimony on December 13<sup>th</sup> including a second structural report from another

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<sup>5</sup> AT&T had offered to present Director Bartolotta as a witness as part of its Applicant panel at the November 30<sup>th</sup> initial hearing and Council staff expressed a preference for any such testimony to be presented in a subsequent evidentiary hearing with the City as an intervening party.

professional engineering firm confirming the First PE Report's findings and recommending against any structural modifications for safety reasons ("Second PE Report"). Applicant's Ex. 6(3) and Hamm 12/21/21 Hearing Testimony. This recommendation was made irrespective of cost or other City considerations and noting that any such reinforcement plan of the existing City Tower would never be able to accommodate future co-location by other carriers like T-Mobile, Verizon or Dish. Id.

Conventional tower sharing of the City Tower at the Site is not feasible at all for technical (State Building Code), public safety (Welding Fire Risks and City Communications Network Concerns). Even it were feasible, that option would be very costly, result in a waste of private capital, and only defer for the Council to sometime in the future a problem when another carrier seeks to share use of the Site to provide wireless services to the public. No evidence has been submitted by any party or intervenor seriously questioning these factual conclusions and opinions.

AT&T respectfully submits that the evidence overwhelmingly supports a finding that conventional tower sharing of the existing City Tower is not feasible for AT&T under the "feasibility" language found in both Section 16-50p(b)(1)(A) (Docket 506) and Section 16-50aa (Feasibility Proceeding) of the statutes governing the Council's review of this project.

**VI. AT&T's Feasibility Proceeding Was Filed for Two Procedural Purposes and Ensured a Complete Record**

On December 13, 2021, AT&T also invoked the Council's jurisdiction under Section 16-50aa(b) for two specific procedural purposes in a "friendly" way with the City: 1) to ensure the City was made a party to Docket 506 so that the material testimony of Director Bartolotta would be heard by the Council; and 2) so the Council would have jurisdiction to consider if needed a) whether it has authority to compel a tower owner to replace and relocate a tower to accommodate shared use and b) if so, whether the Replacement Tower Options are even feasible in this Docket in relation to

the AT&T Monopole as proposed.<sup>6</sup> Applicant's Ex.6(1). AT&T's use of the statute achieved both purposes and, over the course of three more evidentiary hearings and numerous supplemental filings by the parties, the Council now has a full and complete record evaluating no less than five alternatives and enabling a substantive ruling in the Docket and Feasibility Proceeding.<sup>7</sup> See all Applicant's, City and Party filings.

**APPLICANT'S POINTS ON THE STATUTORY CRITERIA GOVERNING THE COUNCIL'S FINDINGS IN THE DOCKET AND FEASIBILITY PROCEEDING**

**I. The AT&T Monopole Adjacent to the City Tower Presents No Significant Adverse Environmental Effects Recognized by the Statute**

Pursuant to C.G.S. Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impacts of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity, fish and wildlife, distances from schools and commercial child daycare centers and the facility design. As part of the factual development of a record here, not one environmental resource as recognized by state law has been implicated as part of the AT&T Monopole and modest expansion of the existing compound that is part of the City Tower facility.

The visibility change is simply aesthetic with less of an overall viewshed area than the existing City Tower given that it is 30' taller than what AT&T proposes.<sup>8</sup> Applicant's Ex's 1(8), 4(5), 6(4).

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<sup>6</sup> The Council certainly has the authority to inquire about "alternatives" in a docket, but has no independent legal authority to compel a property owner to consent to any specific alternative or condition of an approval in rendering a decision in a docket. A feasibility proceeding is also not legally required for the Council to rule out conventional tower sharing as an option in any docket, and it's a tool never invoked by AT&T previously. Here, AT&T exercised the option in this Docket to procedurally ensure the City's participation as a party for both its direct testimony and eliciting the City's consent or objections to various alternatives as part of the Council's administrative record in the proceedings.

<sup>7</sup> Small cells are not a technical alternative for the type of AT&T and FirstNet coverage required in this part of Middletown and, regardless, such a plan at over \$3 million in this case is certainly not economically feasible to serve a wide area coverage gap with multiple objectives including in-building services including schools in the area. Applicant's Ex.9 and Lavin 12/21/21 and 2/3/22 Hearing Testimony.

<sup>8</sup> Addition of the second tower structure next to the existing City Tower does not implicate Section 16-50p(b)(1) and the Council's authority to deny an altogether new "greenfield" tower site where the tower "would substantially affect the scenic quality of its location or surrounding neighborhood" unless public safety concerns require the location. Here, there are no listed scenic resources in this area of Middletown and the surrounding homes to the east and west in the neighborhood, including homes along Talias Trail, already have views of the exiting City Tower.

Additionally, the 150' monopole is further setback from an isolated pocket of on-site manmade wetlands than the existing compound developed by the City.<sup>9</sup> Applicant's Ex.6(8,9).

All other environmental effects are commonplace and in compliance with federal, state and local requirements. As such, we respectfully submit that the impacts associated with the proposed AT&T Monopole are not significant and these proceedings have confirmed it's the type of facility that could have been approved by petition as originally contemplated by AT&T in Petition 1465.

## **II. AT&T's Proposal Avoids the "Unnecessary" Proliferation of Towers**

AT&T's position is that this project does not legally involve the "proliferation of towers" because it involves the modification of an existing legally established tower facility site. In our opinion, a second monopole proposed adjacent to an existing tower as part of an expanded compound simply can't be deemed the "proliferation of towers" given the Legislature's express statutory findings associated with tower siting and which must be read consistent with one another and in context.

Specially, C.G.S. Section 16-50i expressly defines and states that only those new towers that "may have substantial environmental effects" require a certificate from the Council, not all new towers. C.G.S. Section 16-50p further recognizes that co-location may not always be technically, environmentally, economically, or safely feasible to achieve.

When conventional co-location on an existing tower is not possible or where there are legitimate reasons why a singular tower replacement project is not feasible, the Council has to give significant statutory weight to accommodating the need for new tower infrastructure. Especially where a proposal involves a second shorter tower adjacent to an existing tower at an established tower site involving no state significant environmental effects, something other state jurisdictions refer to as horizontal co-location.

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<sup>9</sup> The monopole, while located in a locally defined adjacent area, is a passive use post construction and introduces no specific impacts to the wetlands at the Site and is consistent with those already associated with the City's development of the existing tower compound and historically as part of the U.S. Military and City's uses of the overall Site.

This is exactly that case, and one rarely if ever seen in Connecticut. Moreover, the proliferation of towers would only have been implicated here had AT&T actually proposed construction of a tower facility on an altogether new property, such as the public school sites or Eversource power lines located in the site search area.

The City has testified quite cogently that it has legitimate concerns over its public safety network's continuity of service, which is critical for first responders, and opposes any of the Replacement Tower Options the Council explored in these proceedings. The City's position is not unreasonable given the unique facts associated with its municipal network hub site that is the City Tower.

Additionally, there is no way to fully and adequately mitigate the City's concerns, regardless of the excessive costs and construction phasing problems a replacement tower represents. That is why the City has objected to any of the Replacement Tower Options and said it will not offer AT&T any such option.<sup>10</sup>

As such, the installation of a second tower consisting of a fully co-locatable carrier monopole as part of a modification of the existing City Tower facility at the Site involves the "necessary" installation of a new tower structure. This is necessary to achieve exactly the goals the Legislature expressly articulated in the statute.<sup>11</sup>

Moreover, the only technically, environmentally, and economically feasible alternative to accomplish these Legislative goals is the AT&T Monopole as proposed. It involves no incremental visibility in the community as a whole and only a very localized change in the type of existing tower views a few homes to the east and west currently have.

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<sup>11</sup> Notably the AT&T Monopole does a superior job of ensuring future co-location compared to a replacement tower given the available mounting positions much lower on a replacement pole due to the City's existing and reserved vertical positions on any such tower. Applicant's Ex. 9 and Lavin 2/3/22 Hearing Testimony.

In fact, any other locations on the Site, hundreds of feet south and east as explored in the proceedings, would materially add new areas of tower visibility to residents in Middletown, some of which have no views of the City Tower now.<sup>12</sup> As such, we respectfully submit that the AT&T Monopole as proposed immediately adjacent to the City Tower best meets the state’s siting criteria as applied to the facts in the Docket and Feasibility Proceeding.

**III. The AT&T Monopole Should Be Issued a Certificate and the Feasibility Proceeding Dismissed as Moot**

The evidence in these proceedings overwhelmingly supports Council findings of fact that: a) the existing City Tower cannot be modified to permit conventional tower sharing; b) that AT&T has an uncontroverted need for a new facility to serve the public; and c) that the AT&T Monopole as proposed has no significant environmental effects.<sup>13</sup> As such, we respectfully submit the Council should issue a Certificate for the project and that the agency need not reach the legal issues presented in the Feasibility Proceeding, which would be moot upon adopting any such findings in the Docket.

The evidence adduced in these proceedings has also more than sufficiently demonstrated that there are major feasibility issues with any of the Replacement Tower Options, not the least of which is the City’s objections directly on point to C.G.S. Sections 16-50p and 16-50aa. Notably, the dictionary defines the word “feasibility” as the “state or degree of being easily or conveniently done”<sup>14</sup> and the Council need not find that an alternative is “impossible” in recognizing how difficult it would be for AT&T and the City to implement as an alternative.

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<sup>12</sup> We recognize that the Talias Trail homeowners have expressed their personal preference to move the AT&T Monopole east and south, but that preference must be evaluated by the Council in context with the negative effect that alternative would have with: a) a larger overall viewshed in the region with two towers separated that far a distance from one another and b) that such an option would create altogether new tower views for residents east and south of the City Tower, where such views do not exist today, and which is not the case with the AT&T Monopole as proposed. Gaudet 2/3/22 Hearing Testimony.

<sup>13</sup> The Council has in other Dockets approved two new towers at a site from the outset to address other statutory objectives. Applicant’s Notice 3, Docket 442.

<sup>14</sup> Oxford Online Dictionary.

Moreover, even if the Council were to accept perhaps novel interpretations of Section 16-50aa that it has jurisdiction to order altogether new tower replacements and relocations of the existing City Tower over its municipal objections, the Council would have to first deny alternatives AT&T and the City have consented to as presented in the Docket for supportable reasons in Section 16-50p of the statute. Then the Council would have to expressly overrule the City's objections and develop an order in the Feasibility Proceeding compelling one of the Relocation Tower Options with a rationale equally supported in the law.

We submit that any such result in this unique case would result in one of two things: 1) unnecessary litigation between the City and Council over any such Council order issued pursuant to Section 16-50aa; and/or 2) AT&T deferring its capital to other projects in the state given the over \$1 million dollars in additional and excessive costs that would impose on this project. Bettuchi 2/17/22 Hearing Testimony. Either of those outcomes would be to the detriment of consumers in need of wireless services, including FirstNet public safety communications, in this area of Middletown and without a demonstrated environmental benefit.

Given the foregoing, AT&T respectfully requests that the Council approve a Certificate in the Docket and dismiss the Feasibility Proceeding as moot.

### **CONCLUSION**

On behalf of AT&T, we thank the Council for its thorough examination of the facts in these proceedings which have been focused on tower sharing at an existing municipally owned tower site. In balancing the limited visual effect associated with the proposed AT&T Monopole Facility and its clear need to serve the public, the Applicant respectfully submits that issuance of a Certificate is wholly warranted. Conventional tower sharing of the City Tower is not possible and the statutory standards and criteria set forth in C.G.S. Section 16-50p for approval of a co-locatable and necessary second tower at an existing municipal tower site have been met. The Feasibility Proceeding, which presents questions of statutory interpretation under Section 16-50aa not previously addressed, and important unique facts associated with the City's public safety network, should be dismissed as

moot upon issuance of a Certificate in the Docket. Indeed, AT&T respectfully requests that the legal questions raised in the Feasibility Proceeding might be better saved for the future and a different set of facts given the City's legitimate interests and objections here.



**CERTIFICATE OF SERVICE**

I hereby certify that on this day an electronic copy and one original and fifteen (15) copies of the foregoing were sent via overnight mail to the Connecticut Siting Council with an electronic copy sent to the parties and intervenors.

Dated: March 3, 2023



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Christopher B. Fisher  
Cuddy & Feder LLP  
445 Hamilton Ave, 14<sup>th</sup> Floor  
White Plains, NY 10601  
(914)-761-1300  
Attorneys for the Applicant

cc: AT&T  
Parties