

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC
AND NEW CINGULAR WIRELESS PCS, LLC
d/b/a AT&T FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE, AND OPERATION OF A
TELECOMMUNICATIONS FACILITY AT
1837 PONUS RIDGE ROAD IN THE TOWN OF
NEW CANAAN

DOCKET NO. 509

October 27, 2022

APPLICANTS' POST HEARING BRIEF

Respectfully Submitted,



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PRELIMINARY STATEMENT

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T”) (together the “Applicants”), by their attorneys Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of their application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 509. This Application addresses the long standing public need for a new tower facility in northwestern New Canaan so that AT&T, FirstNet, Verizon Wireless and the Town of New Canaan’s Fire Department, Police Department, and Emergency Management Services may provide reliable communication services to residents and visitors in this area of the community. The need for infrastructure in this part of New Canaan was identified eight (8) years ago by the Town of New Canaan through its independent wireless market study, and no new infrastructure was installed in this area of the Town that changed the conclusions in the Town’s report.

All parties and intervenors, including opponents, acknowledge that there is a significant gap in service in this part of New Canaan (and eastern Stamford) due to the lack of communications infrastructure. The party’s RF consultant, who never designed a network for a commercial wireless carrier, acknowledged the gap in service through his failed attempt to prove that feasible alternatives existed or that small cell technology is viable. Attempts to shift the Siting Council’s attention to the Town’s emergency communications needs by the intervenor was merely an acknowledgement that the Applicants demonstrated a public need for a new tower.

The Applicants’ professionals demonstrated with competent testimony that the location of the proposed Facility does not present significant adverse environmental impacts on any federal or state resources identified in the Siting Council’s enabling legislation. That’s why the opponents spent an inordinate amount of time in this proceeding speculating, fishing for cracks in the Applicants’ case, failing to prove any significant adverse environmental impacts and thereby unwittingly confirming that the proposed Facility is no more impactful than the single-family development in the area. Indeed, the only identifiable effect of note would be the tower’s

visibility above the tree line, the majority of which occurs over the reservoir, which is not publicly accessible. However, this visibility simply does not give rise to an overall environmental effect that remotely outweighs the critical public need for a tower to provide reliable wireless service in this part of the state. As such, the Applicants submit that the project meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) for approval and are requesting a Certificate for the proposed tower facility to meet the public need for wireless services in this area of the State.

STATEMENT OF FACTS

I. AT&T’s Consumer Mobile and Public Safety FirstNet Services

AT&T’s radiofrequency (“RF”) engineers establish site search areas where new wireless facilities are needed to address the public’s inability to reliably access its wireless network. In this case, AT&T experiences gaps in coverage in New Canaan along Ponus Ridge Road, Dan’s Highway, High Ridge Road (Route 127) and other local roads and areas in northwestern New Canaan. Applicants’ Ex. 1, Attachment 1. AT&T’s need for a facility to address this documented gap in coverage dates back approximately eight years. Applicants’ Ex. 1. The proposed Facility will also provide reliable services in AT&T’s network to a portion of northeastern Stamford. Applicants’ Ex. 1, Attachment 1. AT&T will also deploy FirstNet services from the proposed Facility. FirstNet is a nationwide broadband public safety network dedicated to first responders. Applicants’ Ex. 1, Attachment 1.

Town emergency communication networks also lack reliable wireless services in this area of New Canaan. Applicants’ Ex. 6. This critical need is evidenced by the Town’s attempt in 2015 to place a public safety tower facility on Aquarion property (approximately 100’ from the Laurel Reservoir) just over the City of Stamford municipal border. Tr. 8/16/22, pp. 77-78; 10/26/22 public comment from First Selectman Moynihan. The lack of service is fundamentally due to

the absence of any existing tower infrastructure or other wireless facility siting opportunities in this part of New Canaan, which is characterized by significant changes in terrain elevation.

Applicants' Ex. 1, pp. 1-2, Attachment 1. This lack of reliable wireless services is confirmed by the Town's 2014 independent wireless market study ("independent wireless market study").

Applicants' Ex. 1, Bulk Filing, Attachment f.

II. Site Search

For several years, wireless carriers and tower companies have explored siting options in northwestern New Canaan, none of which resulted in an application to the Siting Council until now. Applicants' Ex. 1, pp. 12. AT&T's historical search dates back approximately eight years and included the investigation of several sites, including town-owned property. Applicants' Ex. 1; Attachment 2. Homeland's search was conducted over a three and one-half year period and included the review of twenty-four (24) locations, including a combination of the Town-owned right-of-way and Aquarion property. Applicants' Ex. 1, pp. 12, Attachment 2; Tr. 7/28/22, pp. 28. The lack of reliable wireless service in this area of Town is also demonstrated in the Town's independent wireless market study. Applicants' Ex. 1, Bulk Filing, Attachment f.

III. Technical Consultation with the Town of New Canaan

Homeland's consultation with New Canaan began when Homeland was awarded the Town's request for proposal for a tower developer to work with the Town to locate facilities in areas where there is a documented need for wireless infrastructure. Tr. 6/8/22, pp. 125 & Tr. 8/16/22, pp. 135. As part of the search for sites in northwestern New Canaan, Homeland investigated the use of the town-owned right-of-way on Ponus Ridge Road for the tower and Aquarion's property for the equipment compound. Tr. 8/16/22, pp. 141. However, Aquarion was not interested in leasing space for the equipment compound. Tr. 8/16/22, pp. 77 & Tr. 6/28/22, pp. 80. Municipal consultation continued on October 5, 2021 when Homeland Towers met with Tiger Mann, Director of Public Works and Maria Coplit, Town Engineer, to discuss the preliminary design of the proposed Facility. Tr. 6/28/22, pp. 56. A follow-up call was held with Homeland Towers and

APT, Mr. Mann, Ms. Coplit and Kathleen Holland with the Town's Inland Wetlands Commission to discuss implementation of the Town's comments regarding the proposed access drive, mitigation of any potential run-off and implementation of soil and erosion control measures. Applicants' Ex. 1, pg. 23. A noticed balloon float was conducted by Homeland Towers on April 7, 2021. Applicants' Ex. 1, Attachment 8. A Technical Report for the proposed Facility at 1837 Ponus Ridge Road was provided to the Town as part of the C.G.S. 16-50l consultation process on December 14, 2021. Applicants' Ex. 1, Bulk Filing, Attachment g. On January 24, 2022, the Town of New Canaan Board of Selectmen held a duly noticed hybrid public information meeting, which included an opening statement by First Selectman Moynihan, a presentation by the Applicants, and comments and questions from the Board of Selectman and the public. The Applicants did not receive any additional comments from the Town after the public information meeting and prior to the Application filing. Applicants' Ex. 1, pp. 23-24, Attachment 10.

IV. Certificate Application, Parties & Intervenors & Pre-Hearing Filings

On April 12, 2022, the Applicants submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 1837 Ponus Ridge Road. The proposed Facility consists of a new self-supporting monopole designed to resemble a pine tree ("monopine") that is 110' in height with faux branches extending an additional 5' above the top of the pole, bringing the total height to approximately 115'. The monopine tower will be located within a 3,750 square-foot (s.f.) fenced equipment compound located within the 5,950 s.f. lease area in the northwestern portion of the Site. AT&T's antennas would be installed at an antenna centerline height of approximately 106' on the monopine tower, with a walk-in equipment cabinet and emergency back-up propane generator located within the fenced equipment compound. The equipment compound will be enclosed with an 8' tall wooden shadowbox fence. Landscaping around the proposed Facility includes 8'-10' tall Eastern Hemlock screening along the northern and eastern fence perimeter. Applicants' Ex. 10, 11 & 15. The monopine tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed

wireless carriers, such as Verizon, which intervened in this proceeding, as well as the Town fire, police, and EMS services communications equipment, all of which intend to use the proposed Facility for emergency communications. Vehicle access to the Facility would be provided from Ponus Ridge Road over an existing driveway a distance of approximately 40', then along a proposed access drive a distance of approximately 460' to the proposed compound. Utility connections would be routed underground from the existing utility pole on Ponus Ridge Road. Applicants' Ex. 10, 11 & 15.

The Siting Council granted intervenor status to Verizon Wireless on May 12, 2022. On May 27, 2022, the Siting Council granted Jamie Buschmann, Trustee party status, and granted Mark Buschmann, Trustee party status and CEPA Intervenor status ("Buschmann") and granted party status and CEPA intervenor status to the New Canaan Neighbors ("NCN").

V. Pre-Hearing Filings

The Applicants submitted responses to Siting Council Interrogatories on June 2, 2022 and filed a Supplemental Submission on June 21, 2022. Applicants' Exs. 4 & 6. The Applicants submitted responses to Buschmann and NCN interrogatories on June 21, 2022. Applicants' Ex. 7 & 8. Revised Site Plans were submitted on June 24, 2022. Applicants' Ex. 10. On June 30, 2022, the Applicants issued interrogatories to Buschmann and the NCN.

VI. Public Hearings and Supplemental Submissions

Pursuant to C.G.S. § 16-50m and Public Act No. 22-3, the Siting Council scheduled a public hearing via Zoom remote conferencing for June 28, 2022. At the June 28, 2022 public evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the Facility, the investigation of sites and any environmental effects associated with construction of the Facility. A public hearing session was conducted via Zoom remote conferencing on the evening of July 28, 2022.

The evidentiary hearing was adjourned to July 14, 2022. On July 7, 2022, the Applicants submitted responses to the Siting Council's request for late-filed exhibits. Applicants' Ex. 11. At

the July 14, 2022 continued evidentiary hearing, the Applicants' panel of witnesses provided additional testimony and responded to questions regarding the need and the design of the proposed Facility to mitigate any potential environmental impacts.

The evidentiary hearing was adjourned to August 16, 2022. On August 8, 2022, the Applicants submitted responses to the Siting Council's request for late-filed exhibits, response to NCN interrogatory no. 14, and a supplemental submission. Applicants' Ex. 12, 13 & 14.

At the August 16, 2022 continued evidentiary hearing, the Applicants' panel of witnesses provided additional testimony about the need for the proposed Facility, including the need for public safety communications, lack of feasible alternatives, and the lack of significant environmental impacts when compared to single-family home development.

The evidentiary hearing was adjourned to September 8, 2022. On August 31, 2022, the Applicants' submitted a supplemental filing that included revised Site Plan drawings depicting a shift and rotation of the proposed Facility monopine tower and compound resulting in a greater distance from the Buschmann property, among other reduced impacts. Applicants' Ex. 15.

At the September 8, 2022 continued evidentiary hearing, the Applicants' witnesses provided additional testimony regarding mitigation measures and the lack of significant environmental impacts. The evidentiary record remained opened for the limited purpose of the Applicants' submission of Siting Council requested late-filed exhibits.

On September 15, 2022, the Applicants' submitted the requested late-filed exhibits.

The evidentiary record and hearing were closed on September 29, 2022 after all parties were given a full and fair opportunity to present evidence and cross-exam witnesses.

POINT I

A PUBLIC NEED CLEARLY EXISTS

FOR A NEW TOWER FACILITY IN NORTHWESTERN NEW CANAAN

I. AT&T Established A Public Need for a New Tower With Expert Testimony, Data And Analysis

Pursuant to C.G.S. Section 16-50p, the Siting Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need.” C.G.S. §16-50p(a)(1). In this Docket, AT&T provided coverage analyses, data and expert testimony that clearly demonstrate the need for a new tower facility to provide reliable wireless services in northwestern New Canaan to homes, business uses, public safety agencies and the traveling public. Applicants’ Ex. 1, Attachment 1; Applicants’ Ex. 4; Tr. 7/14/22, pp. 83. The Town’s 2014 independent wireless market study confirms that a coverage gap exists in this area of New Canaan. Applicants’ Ex. 2, Bulk Filing, Attachment f.

Indeed, the Application materials and AT&T’s expert witness testimony demonstrate that a new tower facility at a minimum height of 110’ AGL is required at the proposed site to provide reliable wireless telecommunications services to the public, as well as a broadband public safety network dedicated to first responders through FirstNet services. Applicants’ Ex. 1, Attachment 1; Applicants’ Ex. 4, Response No. 16; Tr. 6/28/22, pp. 83. In addition to expert testimony, AT&T’s analysis includes modeling and statistical analyses to show that a new tower facility is needed to provide wireless services to an area of the state that has never benefitted from access to reliable wireless service. Applicants’ Ex. 1, Attachment 1; Applicants’ Ex. 4, Response No. 14. The public need for a tower facility in this area is further supported by Verizon, which intervened in this proceeding and provided its own evidence and testimony of need. In addition, the proposed Facility will fulfill a critical need for emergency communications for the Town and will be used by the Town’s police, fire and EMS services. Applicants’ Ex. 6; Tr. 6/28/22, p. 90-91.

AT&T's evidence and expert testimony in this proceeding clearly establish that no other alternative technologies, such as distributed antenna systems ("DAS") or small cells would reliably address the coverage needs in this area of New Canaan given the size of the identified coverage gap. Further, these alternative technologies would only provide service to limited and specifically defined areas, leaving major holes in network services. Applicants' Ex. 4, Response No. 18; Tr. 6/28/22, pp. 86-87. AT&T confirmed that it does deploy small cells in Connecticut to provide capacity relief and very limited coverage in targeted areas and is a leader in using such technology where appropriate. Indeed, since 2018, AT&T has obtained approvals for over 200 small cells for deployment in urban and more densely populated areas of the state. *See* PURA Docket No. 18-06-13. This area of New Canaan simply does not have the same density, usage patterns and geography like more urban areas of the State, where AT&T is deploying small cells for capacity and very limited coverage. AT&T established that it appropriately designed its network in New Canaan to provide reliable wireless service over a wide geographic area based on the characteristics of where services are needed. *Id.*

AT&T's expert testimony and evidence, including coverage maps and terrain profiles, also confirmed that any alternatives suggested by the parties in this proceeding would not provide the service to the identified coverage gap, due to the distance from the area of need and the terrain which would block the signal from reaching the area of need. Applicants' Ex. 11; Tr. 6/28/22, pp. 108.

II. The Parties' Suggested Tower Sites and Small Cells Are Not Feasible Alternatives

The record in this proceeding also demonstrates that the hypothetical small cells submitted by Buschmann and the alternative sites suggested by Buschmann and NCN are not viable alternatives for providing reliable wireless services in this area of New Canaan. Simply

put, the Parties' suggested alternatives and 360RF's proposed small cells are nothing more than unsupported opinion that lack any credible scientific or technical support.

G. Richard Slovenko, Buschmann's RF witness, is not qualified and admittedly has no experience or training with respect to the design, placement, construction or modification of personal wireless facilities. Tr. 9/8/22, pg. 111. Indeed, while Mr. Slovenko expounded on the accuracy of the model he used in his report, he could not name any commercial wireless service provider that actually used the model to design their network. Tr. 9/8/22, pg. 110. The inaccuracy of Mr. Slovenko's maps of the suggested small cell facilities and suggested alternative sites was apparent through his long-winded and non-responsive replies to questions about the accuracy of the maps he submitted, the availability of the suggested alternatives and his lack of understanding or knowledge regarding the requirements for pole attachments for small cell facilities. Tr. 9/8/22, pp. 94; 109-112; 118; 120-122.

NCN's attempt to disprove the public need for the proposed Facility by questioning the Town's need for the proposed Facility for emergency communications was not based on any technical analysis or empirical data. Tr. 8/16/22, pp. 108-109. NCN provided no evidence or data supporting its suggestion that alternatives were available for the Town's emergency communications equipment. Tr. 8/16/22, pp. 106-112.

In this proceeding, it was the Parties' burden of proof to demonstrate that their proposed alternative sites were technically viable and feasible for the industry to implement, not the Applicants'. Nevertheless, the Applicants provided detailed, clear coverage maps developed with a proven, sophisticated model, as well as terrain profiles to demonstrate that the suggested alternative sites could not provide reliable service to the area targeted for service by the proposed Facility. Applicants' Ex. 11. The Applicants also demonstrated that one or two small cell facilities, as suggested by the 360RF report, would not remedy the gap in service in this area of New Canaan. Applicants' Ex. 4, Response No. 18.

The record in this proceeding clearly demonstrates through AT&T's expert analyses, data and testimony that a public need exists for a new tower facility for AT&T, Verizon and other wireless carriers and emergency service providers including FirstNet and the Town's police, fire, and EMS to provide reliable wireless service to an area of New Canaan that has not had the benefit of wireless service. The record also shows that DAS or small cells are not a viable technological alternative here and that the suggested alternative sites are not technically feasible.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY

The Applicants submitted significant evidence that there are no existing structures or viable alternative tower sites for providing reliable wireless service to this area of New Canaan. The Applicants identified and investigated six (6) existing communication towers and four (4) rooftop facility sites located within four (4) miles of the proposed Facility. Applicants' Ex. 1, Attachment 2. None of these existing facility sites are feasible alternatives. Indeed, AT&T is currently located on most of these facility sites to provide wireless service outside of northwestern New Canaan. Applicants' Ex. 1, Attachment 2.

AT&T and Homeland independently investigated a number of different parcels of land within northwestern New Canaan and northeastern Stamford for construction of a new tower facility. AT&T's site search efforts date back several years. Homeland's search was conducted over a three and one-half year period and included a comprehensive investigation of twenty-four (24) locations. Applicants Ex. 1, pp. 12, Attachment 2. Homeland's search included investigation of the Town right-of-way on Ponus Ridge Road for the proposed tower with the equipment compound located on Aquarion property adjacent to the right-of-way, which Aquarion was not willing to entertain. Tr. 8/16/22, pp. 77 & Tr. 6/28/22, pp. 80. In addition, at the Siting Council's request, Homeland followed up a second time with each of the property

owners in the site search summary whose property may work from an RF perspective who did not respond to Homeland's initial requests to discuss leasing of their property for the proposed Facility. No additional feasible sites resulted from this additional communication. Tr. 7/14/22, pp. 53-54.

The parties suggested several alternatives that the Applicants demonstrated were not feasible. First, AT&T provided through expert testimony, propagation maps and terrain profiles that a facility at the suggested alternatives would not provide adequate or reliable service. Applicants' Ex. 11; Tr 6/28/22, pp. 108-110. Moreover, the Parties provided no evidence that the property owners of their suggested alternative sites would consider leasing space for a wireless facility on their property. Indeed, Mr. Slovenko was asked several times by the Siting Council, the Applicants and Verizon if any of the property owners of the suggested alternatives were approached. Each time, Mr. Slovenko responded with his opinion regarding the suggested alternatives and when pressed, finally indicated that no one contacted the property owners of the alternative suggested sites. Tr. 9/8/22, pp. 83; 121-122. Indeed, after repeatedly being asked whether the property owners of any of the suggested alternative sites were willing to lease space for a tower facility, Mr. Slovenko responded that the suggested alternative sites were selected because they were next to a site where an owner was contacted by Homeland, or, because they believed the alternative site was owned by the owners of the subject Site. This testimony confirms that these suggested alternatives are not feasible. Tr. 9/8/22, pp. 83-84; 122, 138, 104-141.

Simply put, the alternatives suggested by the Parties were a failed attempt to show that the Applicants did not exhaust all potential alternatives. The record establishes through data, analyses and expert testimony that none of the suggested alternatives are technically feasible. The record also reflects that none of these suggested alternative sites are available for the siting of a wireless facility.

Based on the comprehensive investigation of alternative sites, the Applicants submit that there is no better known site for a tower to serve this area of New Canaan.

POINT III

THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

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, distance to schools and commercial child daycare centers¹ and facility design. The Applicants respectfully submit that while some impacts are associated with the proposed Facility, such impacts will have no significant environmental effects on the resources listed in C.G.S. Section 16-50p and clearly do not outweigh the public need for the Facility as proposed in this Docket.

I. Potential Visual Effects

The Applicants respectfully submit that the evidence and testimony in this proceeding, as summarized below, demonstrates that the visibility of the proposed Facility will not result in an overall significant adverse visual impact. The Applicants' comprehensive Visibility Analysis demonstrates that areas from where the Facility would be visible are comprised of approximately 98 acres, 95 acres of which occur over open water on the Laurel Reservoir, which is not publicly accessible. Seasonal visibility is predicted to include an additional approximately 80 acres, with approximately 21 acres occurring in forested areas immediately surrounding the Reservoir. Together, this represents approximately 3.5% of the 2-mile radius study area. Applicants' Ex. 1, pp. 15, Attachment 8. Topography, vegetation and the relative height of the tower and the

¹ Distance to schools and commercial day care facilities are evaluated in the context of significant visual impacts.

monopine design will collectively obscure, partially or totally, views of the tower from most locations in the study area during leaf-on conditions. Moreover, the monopine design is a stealth design to mitigate visual impacts, the same as the Soundview Lane monopine (Docket No. 487) where all the carrier antennas will be concealed within the branches, painted to match the tree, as well being wrapped in camouflage socks. Tr. 6/28/22, pg. 63-64; pg. 7/14/22, pg. 32-33; Applicants' Ex. 11. No schools or commercial day care facilities are located within 250' of the proposed Facility. Applicants' Ex. 1, Attachment 8.

While Buschmann focused on the location of the Reservoir as part of the Centennial Watershed State Forest², the reality as demonstrated by the visual analysis, is that the proposed Facility will not be visible from publicly accessible areas of the forest. Applicants' Ex. 4, Response No. 29, Attachment 5; Tr. 8/16/22, pp. 37. Thus, Buschmann established that the majority of the anticipated views of the proposed Facility, which occur over the Reservoir, will not have a significant impact as the Reservoir is not accessible by the public Tr. 8/16/22, pp. 37.

Through a shift and rotation of the proposed Facility compound and monopine tower, the Applicants added distance between the proposed monopine tower and facility from the Buschmann's adjacent property without increasing height to further reduce visual impacts. Applicants' Ex. 15. The photos of the April 7, 2021 balloon float submitted by NCN demonstrate that the majority of views of the monopine from the nearby properties will be views through existing trees and mature vegetation. NCN Exs. 2 & 3. In addition, during the design phase of the proposed Facility and prior to submission of a Technical Report to the Town, Homeland met with the abutting property owners and kept an open dialogue with them as the project was being planned to address their concerns. Indeed, when Mr. Vergati met with the Buschmanns he offered to plant vegetative screening on their property.³ Tr. 6/28/22, pp. 125. The proposed equipment

² The boundaries of the Centennial Watershed State Forest shown on the watershed map included in Applicants' Ex. 4, Attachment 5 were sourced from the State property GIS database.

³ The Buschmann's initial request for screening was \$300,000. When Homeland requested a detailed quote from a landscaper, the request was reduced to approximately \$22,000.

compound will be enclosed by an 8' tall wooden shadowbox decorative fence and robust landscaping is proposed to further screen the equipment compound. Applicants' Ex. 15, Tr. 7/14/22, pp. 33. While the parties attempted to find fault in the Applicants' proposed design by pointing out that it did not completely comply with the Town's wireless regulations regarding the design of the equipment shelters to resemble sheds or other building types found in New Canaan, the Town's regulations are guidance and not controlling⁴. Moreover, the intent of this Town regulation is met by the proposed fencing and landscaping which will effectively screen the equipment and generator within the compound. Id.

With respect to compliance with the Town's wireless guidelines/regulations, it is noteworthy that none of the existing wireless facilities in New Canaan would fully comply with the Town's standards.

The evidence demonstrates that the proposed Facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood or community.

II. Potential Impacts to the Natural Environment

The Applicants' evidence and expert testimony clearly established that potential impacts to the natural environment from the proposed Facility are not significant. Indeed, the record demonstrates that the proposed Facility with recommended environmental protection measures will have less of an impact to the natural environment than the existing adjacent single-family developments.

a. Wetlands and the Laurel Reservoir

As set forth in the Wetland Investigation Report in the Application, the proposed Facility will not result in direct impacts to on-site wetlands. Applicants' Ex. 1, Attachment 6. The

⁴ Pursuant to C.G.S Section 16-50x, the Siting Council has exclusive jurisdiction over telecommunications matters in the State. Based on judicial decisions of the United States Second Circuit Court of Appeals and the Supreme Court of the State of Connecticut, no local zoning approvals or compliance with local zoning regulations are required for such telecommunication tower facilities. See Sprint Spectrum LP v. Connecticut Siting Council, 274 F.3d 674, 677 (Dec. 17, 2011); Town of Westport v. Connecticut Siting Council, 47 Conn. Supp. 382 (Super. Ct. 2001), *aff'd*, 260 Conn. 266, 274 (2002).

proposed Facility compound is located approximately 201' east of the wetland. Applicants' Ex.

15. Indirect impacts to the wetlands were also evaluated. The vegetated buffer that will separate the proposed Facility development footprint will continue to provide important functions including water quality, such as sediment and nutrient removal, stormwater filtration and infiltration, groundwater recharge, water temperature moderation and wildlife habitat. Applicants' Ex. 7.

Moreover, the implementation and maintenance of the erosion and sedimentation control plan designed in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control throughout the duration of construction will also be protective of the wetlands and the nearby Laurel Reservoir. To ensure proper maintenance of the erosion and sedimentation control plan, Homeland committed to monitoring of the controls by a civil engineer, independent of the contractor, as well as implementation of wetland protection plan to be monitored by a wetland scientist. Applicants' Ex. 7; Tr. 6/28/22, pp. 40, pp. 117-118.

An added layer of protection for the Reservoir will result from the implementation of the Resource Protection Plan which will include all of the Connecticut Department of Public Health construction best management practices for sites within a public drinking water supply. Applicants' Ex. 5. These are the same protection measures implemented for other approved tower facilities located within a public drinking water supply. For a few examples see Docket No. 449 Redding; Docket No. 453 Manchester; Docket No. 445 Southington; and Docket No. 473 Easton. Tr. 8/16/22, pg. 13-14. In addition, Homeland and the owner of the subject parcel agreed to site inspections by Aquarion personnel during construction and at project completion. Applicants' Ex. 11. As indicated by Mr. Vergati, this access is strictly limited to Aquarion personnel given prior incidents of trespass in connection with this proposed Facility.⁵ Tr. 8/16/22, pp. 23. Mr. Vergati also testified that Homeland has an open dialogue with Aquarion regarding the proposed Facility.

⁵ Bob Smith, the former owner of the adjacent property at 59 Squires Lane conducted a "balloon float" on the Premises without authorization from the property owner.

This dialogue includes recent communications. Mr. Vergati noted that Homeland will continue to communicate with Aquarion during the design and construction phases and endeavor to incorporate any Aquarion recommendations protective of the watershed. Tr. 6/28/22, pp. 116-117; Tr. 8/16/22 pp. 21 & 23. The fact that Aquarion entered into a lease with the Town in 2015 for a public safety tower on its property in Stamford in proximity to the Reservoir shows that watershed protective measures can be incorporated into the design of the Proposed Facility to address Aquarion's comments. Tr. 8/16/22, pp. 77-78.

Despite the parties' unsupported claims that the Site is Class I Watershed Property and as such cannot be developed with the proposed Facility, the statutes and evidence are clear that privately held properties cannot be classified as a Class I Watershed Property. C.G.S. §25-37(c). If that were the case, then the adjacent privately held properties would be precluded from development. It is also noteworthy that there is no evidence in the record that the single-family development of the adjacent properties included any DPH drinking water protection measures that will be implemented by Homeland for the proposed Facility.

The parties were also ineffective in showing that the proposed Facility will result in a significant adverse impact to the Reservoir or on-site wetlands. They focused on the erosion and sediment control plan and stormwater design details that are provided as part of the Development & Management Plan ("D&M Plan") for approved facilities. It appears the parties' focus on this was simply to further one former Siting Council member's agenda that the D&M Plan should be submitted with a certificate application, which contravenes R.C.S.A. §16-50j-75(b), which specifically states when a D&M Plan is required – after a certificate is issued.⁶ The parties asked questions about specific provisions of the 2002 Connecticut Guidelines for Soil Erosion and

⁶ R.C.S.A. §16-50j-75(b) **Development and Management Plan; When required.** A partial or full D&M plan shall be prepared in accordance with this Section and shall include the information described in Sections 16-50j-76 to 16-50j-77, inclusive, of the Regulations of Connecticut State Agencies for any proposed facility for which the Council issues a certificate or for a modification to an existing site, except where the Council provides otherwise at the time it issues the certificate. Relevant information in the Council's record may be referenced.

Sediment Control out of context and without a detailed designed plan in a feeble attempt to show that the proposed Facility could not be designed to protect the Reservoir and wetland from runoff. The reality is that the proposed Facility can be designed so that the rate of runoff will be the same after construction as it is today for the 2, 10, 25, and 100 year storm events, as testified by Mr. Robert Burns. Tr. 8/16/22, pg. 18. And, the Buschmann's own expert testified that design in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control is effective in controlling the rate of runoff from development. Tr. 9/8/22, pg. 103.

In order to address the Town's stormwater design requirements, the Applicants met with Town staff during the municipal consultation to review the proposed stormwater management measures. Like the Soundview Lane facility (Docket No. 487), the Applicants will continue to consult with Town Staff during the building permit process should the Siting Council approve the proposed Facility and the D&M Plan. Applicants' Ex. 1. As noted above, the Applicants will also continue to consult with Aquarion during the design and constructions phases.

By raising two isolated and rare occurrences of a release of sediment during construction, Buschmann established that the construction erosion and sediment control measures are effective in avoiding long-term or significant adverse impacts. Applicants Ex. 14. As Mr. Gustafson testified, these two incidents, out of more than 25 sites that APT has designed and been involved in the construction of, were the result of intense or strong storms and due to the monitoring and inspection protocols that are routinely implemented, were immediately remediated. Tr. 8/16/22, pp. 41.

The Buschmann's introduction of acid rock drainage as a potential significant impact to the Reservoir is also a non-starter as evidenced by the record and the Applicants' expert testimony. The fact that neither the DPH nor Aquarion raised this concern is one of the indications that it is not a significant impact. The environmental notes included in Site Plans specify compliance with the Department of Energy and Environmental Protection ("DEEP") guidance for evaluating impacts associated with blasting development activities. Applicants' Ex. 15. As Mr.

Dean Gustafson testified, following the DEEP guidance will be protective of the watershed. Tr. 9/8/22, pg. 32-33. Moreover, as Mr. Gustafson explained, the potential for acid rock drainage is not limited to the proposed Facility, as it could result from the residential development around the Reservoir. Tr. 9/8/22, pg. 31. In fact, Buschmann raised acid rock drainage but could not confirm whether the construction of the in-ground pool, patio and cabana at the Buschmann property resulted in any acid rock drainage. Tr. 9/8/22, pp. 92.

And, unlike the surrounding single-family homes, the proposed Facility is not occupied and as such, presents less of a risk of impacts to the wetlands or watershed. No lawn maintenance or winter driveway clearing substances, which could runoff to the adjacent properties, are required. No wastewater facilities are needed. The septic systems of the adjacent single-family homes pose more of a risk of impacts to the Reservoir as these systems leach into the watershed area surrounding the Reservoir and septic systems failures can result in significant adverse impacts to the watershed and Reservoir. Tr. 8/16/22, pp. 80-81. Once constructed, the proposed Facility will be a passive use with little or no activity. Applicants' Ex. 1.

The Applicants demonstrated through data, analyses and expert testimony that the design of the proposed Facility in combination with the protection measures and construction monitoring will not result in a significant adverse impact.

b. Clearing and Grading

The total area of disturbance, including grading and clearing required for the proposed Facility, is approximately 37,000 s.f. and approximately one hundred and three (103) trees will need to be removed, ten (10) of which are 14" or greater dbh. Fourteen (14) eastern hemlocks, approximately 8' -10' in height will be planted along the northern and eastern equipment compound boundaries. Applicants' Ex. 15.

The testimony by the Applicants' witnesses establishes that the proposed Facility location on the Site balances the grading and clearing required due to the topography of the Site with the proposed Facility height. Tr. 9/8, pp. 48-50. Due to the terrain of the Site, moving the proposed

Facility closer to the road would require an increase in tower height and would open up views of the tower from the road. Applicants' Ex. 11.

The proposed Facility is unmanned and is monitored remotely. Thus, unlike the surrounding single-family homes, after construction, there is very little vehicle activity associated with the facility. Maintenance is limited to approximately once per month for each carrier using a light duty van or truck. Applicants' Ex. 1. Snow clearing is only performed if/when access is required. Applicants' Ex. 8, Response No. 8.

Given the existing development of the surrounding properties, the tree clearing required for the proposed Facility is consistent with clearing associated with the surrounding homes and improvements.⁷

The record demonstrates that the grading and clearing required for the proposed Facility will not result in significant adverse impacts and will be less impactful than the single-family development of the area.

c. Habitat Assessment and Wildlife

The proposed Facility is located within a DEEP Natural Diversity Data Base ("NDDB") buffer zone. According to DEEP, three State-listed species may be influenced by activities associated with the proposed Facility: Little brown bat, Red bat, and Eastern box turtle. Homeland will comply with all protective measures to minimize impacts to these species as detailed in DEEP's January 7, 2022 correspondence. Applicants' Ex. 1, Attachment 9, Applicants' Ex. 15. These protection measures are consistent with protection measures order by the Siting Council in other proceedings where the potential for sensitive species exists. (See for example: Docket No. 445 Ridgefield, Docket No. 446 Trumbull, Docket No. 455 Southington, Docket No. 462 Danbury, Docket No. 473 Easton, Docket No. 499 Sherman).

⁷ The Buschmann's proposed an easement over the subject Site for views of the Reservoir which would have resulted in the removal of several trees.

Homeland also conducted a review of the potential impact of the Proposed Facility on the northern long-eared bat (“NLEB”) and bog turtle, two federally listed threatened species. With respect to the NLEB, while the proposed Facility is not located within 150’ of a known occupied NLEB maternity roost tree and is not within 0.25 mile of a known NLEB hibernaculum, Homeland will implement the protection measures as outlined in the USFWS & NDDDB Compliance Report, including tree clearing restrictions. An assessment of the potential suitable habitat for bog turtle revealed that the wetlands at the Site do not support the preferred habitat of bog turtles. As such, the proposed Facility will not affect bog turtles. Applicants’ Ex. 1, Attachment 9, Applicants’ Ex. 15.

The record shows that the proposed Facility will comply with the U.S. Fish and Wildlife Service (“USFWS”) guideline for minimizing impacts to bird species. Applicants’ Ex. 1, Attachment 9.

Homeland will also implement an invasive species control plan to avoid invasive plant material on the Site. Applicants’ Ex. 15.

III. Other Environmental & Neighborhood Considerations

The proposed Facility will comply with all public health and safety requirements. Applicants’ Ex. 1, Attachment 7 & Narrative p. 17. Additionally, since the proposed Facility will be unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste or material impact on air emissions.

Consultation with the State Historic Preservation Office (“SHPO”) confirmed that no historic resources will be impacted by the development of the proposed Facility. Applicants’ Ex. 4, Attachment 4. In addition, there are no prime farmland soils on the proposed Facility property. Applicants Ex. 4, Response No. 30.

The proposed Facility will be designed with a hinge point at an elevation of approximately 80’ AGL. Applicants’ Ex. 15.

Given the foregoing, the Siting Council should find and determine that the proposed Facility will not have any significant environmental, historic, cultural or visual impacts on the neighborhood.

CONCLUSION

The Applicants demonstrated a critical public need for and lack of any significant adverse environmental effects associated with, the proposed Facility. The Applicants demonstrated the importance of this proposed tower Facility needed to serve the public and provide reliable emergency communications through FirstNet in an area which has experienced gaps in reliable services. In addition, the record shows that the proposed Facility is needed by the Town of New Canaan for its emergency communications network. The Applicants' evidence, based on data and expert analyses and testimony, reveals that there are no known practical or feasible alternatives to the proposed Facility at 1837 Ponus Ridge Road to remedy long-standing gaps in wireless service and provide wireless services to the public.

While there are some limited visual effects associated with the proposed Facility, almost all visibility is expected over the Laurel Reservoir which is not accessible by the public. The Applicants respectfully submit that any localized effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services in this part of the state.

The record also demonstrates that parties in this proceeding offered non-expert opinions that were unsupported by any credible data or analysis. These positions were based on legal theories that have been proven wrong or are immaterial to the Siting Council's jurisdiction. We respectfully submit that these efforts, in the absence of solid facts, were actually intended to cloud the record and unnecessarily delay the proceedings with the hope that the Applicants might withdraw or the Siting Council deny this Application given the costs incurred to defend the project.

We submit that when the Siting Council cuts through the hyperbole and reviews the facts, this Docket is very straight forward:

- An existing gap in reliable wireless service exists and can only be remedied by a tower facility.
- A comprehensive site search yielded one viable alternative location.
- No other rational technical or location alternatives exist for providing critical public safety and mobile communications services to the public.
- The environmental effects are limited to localized visibility of a tower above the tree line.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed Facility, the Applicants respectfully submit the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicants submit that the standards and criteria set forth in C.G.S. Section 16-50p for approval of tower facilities by the Siting Council have been met and fully warrant issuance of a Certificate for the proposed Facility in Docket No. 509.

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was sent electronically and fifteen (15) hard copies were sent overnight mail to the Connecticut Siting Council and sent electronically to the parties on the service list as noted below.

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