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October 21, 2022

Via e-mail and Hand Delivery

Attorney Melanie Bachman
Executive Director
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Ten Franklin Square
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Re: Docket No. 510 – New Cingular Wireless PCS, LLC d/b/a AT&T and Tarpon Towers II, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 92 Greens Farms Road, Westport, Connecticut

**New Cingular Wireless PCS, LLC d/b/a AT&T and Tarpon Towers II, LLC
Post-Hearing Brief**

Dear Attorney Bachman:

On behalf of the applicants, I've enclosed an original and fifteen (15) copies of the Applicants' Post-Hearing Brief.

Thank you.

Very truly yours,



David A. Ball

cc: Service List

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL



APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
AND TARPON TOWERS II, LLC

92 GREENS FARMS ROAD
WESTPORT, CT 06880

Docket No. 510

APPLICANTS' POST-HEARING BRIEF

October 21, 2022

Submitted by:

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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

NEW CINGULAR WIRELESS PCS, LLC
D/B/A AT&T AND TARPON TOWERS II,
LLC APPLICATION FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A
TELECOMMUNICATIONS FACILITY
LOCATED AT 92 GREENS FARMS
ROAD, WESTPORT, CONNECTICUT

DOCKET NO. 510

October 21, 2022

**NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T
AND TARPON TOWERS II, LLC
POST-HEARING BRIEF**

Applicants New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T”) and Tarpon Towers II, LLC (“Tarpon”) (AT&T and Tarpon are collectively referred to as the “Applicants”) respectfully submit this Post-Hearing Brief in support of the above-referenced Application.

I. INTRODUCTION / EXECUTIVE SUMMARY

On May 26, 2022, AT&T and Tarpon 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 1.99 acre parcel of property located at 92 Greens Farms Road, Westport, Connecticut (the “Property” or “Site”). The Site is situated on the east side of Hillspoint Road (and the

Hillspoint Road Interstate 95 overpass), to the south side of Greens Farms Road, with Interstate 95 directly to the south. While the Site is situated in a Residence AA zone, the location of the tower would be set back off the street, and the primary visibility of the tower will be along the I-95/Greens Farms Road/Metro North transportation/utility corridor, as well as areas to the south over open water and tidal marshland. As the Applicants and Intervenor Cellco Partnership, d/b/a Verizon Wireless (“Verizon”) demonstrated, there is a need to address significant coverage deficiencies in the AT&T and Verizon existing wireless communications networks in this area of Westport and along Interstate 95. Moreover, following an *eight-month* municipal consultation process, the Applicants evaluated every other potential location that could meet the coverage needs of AT&T and Verizon, and determined that the proposed Site is without question the best – and only – viable site to meet the carriers’ needs with the least environmental impact.

Need for the Facility:

AT&T and Verizon have identified significant services deficiencies in their existing wireless communications networks along Interstate 95, Greens Farms Road, Hillspoint Road, and the neighboring areas of Westport. The proposed Facility will provide necessary in-building residential and in-vehicle coverage (including vehicles on Interstate 95) if they are permitted to locate at the 120' and 110' levels, respectively. AT&T and Verizon’s locations at the 120' and 110' levels, respectively, will provide much-needed wireless services in the area within the proposed coverage footprint. With the development of the proposed Facility, residential customers would have reliable in-vehicle and in-building coverage for their voice and data needs as well as reliable coverage for E-911 services.

The Applicants introduced into the record an RF Report commissioned by AT&T containing AT&T propagation plots, and separate propagation plots prepared by Verizon, that collectively depict (1) coverage from existing and approved surrounding sites, and (2) coverage from the proposed Site in conjunction with existing and approved sites. See, *Exhibit E to Application*. Together, these propagation plots demonstrate AT&T's and Verizon's need for a tower in the area of the proposed Facility, and the effectiveness of the proposed Facility in meeting the need for wireless service in this area of Westport.

Facility Description:

The Applicants are proposing to construct a telecommunications facility consisting of a 124'-tall monopole with AT&T and Verizon equipment and antennas, situated within a 35' x 64' fenced equipment compound within a 2500 square foot leased area. A 25'-wide access and utility easement originating off Greens Farms Road would provide the Site with underground utilities and vehicular access. The vehicular access would be over a 12' wide gravel driveway within the 25' wide easement. 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 120', and Verizon panel antennas, mounted in three sectors, at a centerline height of 110'.

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 forests; (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 have an impact on 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

AT&T and Tarpon filed the Application with the Council on May 26, 2022, proposing to construct a 124-foot monopole tower with AT&T and Verizon equipment and antennas. The tower would also accommodate the antenna arrays of two future wireless carriers including Town emergency services at no cost to the Town, if needed. *Application at p. 20.*

Notice of the Applicants' intent to file the Application was mailed to all abutting property owners on May 18, 2022, and the legal notice was published in the *Westport News* on May 13, 2022 and May 20, 2022. *Exhibits C and D to Application; Applicants' Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 1; Applicants' Exhibit 2.* On July 25, 2022, the Applicants posted a Public Notice Sign at the Site providing notice to the public of the application and hearing date and location. *Applicants' Exhibit 3.*

Verizon intervened in support of the Application. The Town of Westport filed for party status. Donald Bergman, a Westport resident, also intervened in the proceeding.

On August 9, 2022, the Council conducted a remote evidentiary hearing and an evening public hearing via Zoom on the Application. The hearing was continued on September 22, 2022. (Collectively hereinafter referred to as the “Hearing”). The Hearing was closed on September 22, 2022 after all parties were given a full and fair opportunity to present evidence and cross-examine witnesses.

Pursuant to Council direction and Section 16-50j-31 of the Regulations of the Connecticut State Agencies, the Applicants file 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.

Tarpon 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. It is only when it is clear that a new tower facility will be required to provide coverage and reliable service that Tarpon pursues a site search for a new tower. *Application at p. 18*. In performing its site search, Tarpon 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. at pp. 18-19*. In this case, AT&T and Verizon identified a need for wireless coverage in this area of Westport and agreed to support an

application by Tarpon to construct a new facility in this location to provide the coverage required, with AT&T serving as a co-applicant with Tarpon. *Id. at p. 19.*

AT&T conducted its own site search in this area of Westport, and there were no existing structures suitable for co-location. As a result, a search for tower sites was conducted. The search included independent reviews by Tarpon and AT&T and fieldwork conducted by consultants for both entities. *Id. at p. 19.*

The map of existing facilities within a four-mile radius with a table dated May 2022, along with the site selection narrative and map of rejected sites contained in *Exhibit F*, provide a thorough explanation of the Applicants' methodology for conducting site searches, the actual search for potential sites in the area, the locations reviewed during the Applicants' search, and the reasons for elimination from consideration of all but the proposed Site. As thoroughly explained in *Exhibit F* to the Application, AT&T and Tarpon determined that of the ten (10) 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 29, 2022 at p. 3.*

B. Consultation with Town of Westport Officials.

On August 31, 2021, the Applicants submitted a technical report to then-First Selectman, Jim Marpe, regarding the Facility. *Exhibit M to Application.* On that day, a cover letter and Technical Report were also sent via federal express to the Town of

Westport Planning and Zoning Commission, Town of Westport Conservation Commission, and Attorney Ira W. Bloom, Esq., Westport Town Attorney.

As detailed in the Application, the municipal consultation process – which lasted *8 months* – was a collaborative process between the Applicants and the Town. The Applicants fully vetted every potential alternative site identified by the Town, as well as others. *Application at pp. 40-44.*

A nearby property at 55 Greens Farms Road did meet the carriers' coverage needs and led to months of discussions between Tarpon and the owner. Tarpon commissioned photo simulations depicting a potential tower on the site, as well as a Wetlands Inspection Map. Unfortunately, the only location agreeable to the owner that was not within a designated wetland area was problematic because any access road would have required the crossing of wetlands and a direct impact to wetlands. In late January 2022, the Town's Conservation Commission conducted a site visit at 55 Greens Farms Road which the Applicants participated in. On January 31, 2022, the Conservation Commission held a special meeting to consider, in an advisory capacity, both the proposed Site as well as 55 Greens Farms Road. The Applicants' wetlands consultant attended the meeting and, in response to questioning from Commission members, confirmed that there would be a significant impact to wetlands at 55 Greens Farms Road, in particular because developing that site would require wetlands to be filled to develop the access road. In contrast, there would be no direct impact to wetlands at the proposed Site, 92 Greens Farms Road. The vast majority of residents who attended the meeting spoke out against locating a tower at 55 Greens Farms Road, and a number of Conservation Commission members also expressed their concern about a tower on 55 Greens Farms Road due to the impact on

wetlands. In addition, the chair of the Conservation Commission noted that, by contrast, a tower at 92 Greens Farms Road (the proposed Site) would have “zero impact to the wetlands.” See *minutes of Westport Conservation Commission Special Meeting dated January 31, 2022 attached in Exhibit M to Application*. On February 2, 2022, the owner of 55 Greens Farms Road notified the Applicants that it was no longer interested in having a cell tower on the property, and it would not agree to enter into any lease for that purpose. *Application at pp. 41-43.*

On February 8, 2022, at the Town’s request, the Applicants participated in a Public Information Session. Because the site at 55 Greens Farms Road was no longer viable, the Applicants presented information concerning only the proposed Site at 92 Greens Farms Road.

Even after the Public Information Session, the Applicants continued to evaluate potential locations at the Town’s request, including:

- i) 197 Compo Road South owned by Eversource. On March 2, 2022, Eversource notified Tarpon that this property did not contain sufficient space to accommodate a cell tower and compound, as it is the location of the Compo Substation;
- ii) 57 Greens Farms Road, the Assumption Cemetery. On March 1, 2022, the Assumption Cemetery notified Tarpon that it was not interested in leasing its property for a cell tower;
- iii) 200 Nyala Farms office complex. AT&T performed an RF analysis, but because of the distance of this site from the needed coverage area, this property did not meet AT&T’s coverage objectives.

See Application at p. 43 and Exhibit F to Application.

In addition, prior to filing the Application, the Applicants spent months trying to get a meeting with CDOT to discuss whether its property on Hales Road – a potential alternative site suggested by the Town – might be a viable option. As detailed in the Application, between February 2022 and May 2022, Tarpon and its counsel repeatedly e-mailed CDOT representatives to no avail. CDOT did respond *to the Town*, on May 5, 2022, telling told Town officials that it did not have the resources to begin the process of licensing its land for a cell tower and that it had other projects that were of greater priority. The Town’s counsel relayed this discussion to Tarpon’s counsel, and it was then apparent to the Applicants that the CDOT property was not a viable option. *Application at p. 44.*

Finally in May 2022 – after 8 months of municipal consultation in which the Applicants worked in good faith with the Town to consider all potential alternative sites – it was clear that no other available locations existed to meet the carriers’ coverage needs, and the Applicants filed the Application.

After the Application was filed, CDOT sent a July 11, 2022 letter *to the Town* in which CDOT identified the following additional obstacles to the development of a tower at the Hales Road property:

“At this time, the Department is not in a position to lead open solicitation for a cell tower at this site alone.”

“The Department has identified risks with the proposed site location as it currently operates as an access, laydown, and material storage area for Metro-North Railroad. There is limited alternative access areas that could be used to mitigate elimination of this access area. This site also presents possible challenges with underground utilities that are used to facility communication for railroad power and signalization. A detailed investigation would need to occur.”

“Risks have also been identified with the grades of the area proposed and the visibility to nearby residences. Vegetation may be required to be removed which would increase complaints to the Department.”

See Supplemental Pre-Filed Testimony of Keith Coppins and Douglas Roberts, AIA dated September 13, 2022 at pp. 3-4, and Exhibit A to testimony.

Even after CDOT had rejected the site and completely failed to communicate with Tarpon, Tarpon submitted a formal application to CDOT concerning the Hales Road property, and to this date, CDOT has never responded to the Applicants. See *Supplemental Pre-Filed Testimony of Keith Coppins and Douglas Roberts, AIA dated September 13, 2022 at pp. 3-4, and Exhibits A and B to testimony.*

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 Tarpon and AT&T, both pre-filed and at the Hearing, and the Applicants’ 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 seek 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 the 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 by 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 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.

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.

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).

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

The Docket contains extensive written evidence and testimony regarding the need for improved wireless services in this area of Westport. The Applicants have demonstrated that the new Facility at 92 Greens Farms Road will provide needed coverage and will improve upon existing wireless service deficiencies. 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 the RF Report commissioned by AT&T dated August 23, 2021, the analysis of propagation modeling concluded that AT&T has a significant gap in reliable coverage and wireless services in Westport. *See Exhibit E to Application at pp. 1, 2.* As such, high speed data service/capacity are not available in this area of Westport. *See Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, p. 2.*

The RF Report further states: “Specifically, AT&T determined that much of southwest Westport is without reliable service in the following areas and town roads, including but not limited to:

- Interstate-95
- Greens Farms Road
- Hillspoint Road
- The surrounding roads, businesses, and neighborhoods in the proximity of the proposed site and the above-mentioned roads.”

Exhibit E to Application at p. 3.

The RF Report concludes that “an additional facility is needed to provide reliable service and additional capacity throughout Westport, CT. AT&T determined that installing

a proposed wireless communications facility at 92 Greens Farms Road in Westport at an antenna centerline height of 120 feet (AGL) will provide additional capacity and coverage needed in the targeted coverage areas including roadways such as Interstate-95, Greens Farms Road, Hillspoint Road, and the surrounding roads, businesses, and neighborhoods in the proximity of the proposed site.” *Exhibit E to Application at p. 6.* The Application materials and AT&T’s expert witness testimony demonstrate that a new tower facility at a minimum antenna centerline height of 120’ is the lowest height at which AT&T could provide reliable wireless telecommunications services to the public. *Applicants’ Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 29.* In addition to providing needed coverage and data capacity, the proposed Facility will offset traffic from AT&T’s site at CT 2132, which is already at capacity. *See Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, p. 2.*

In the Hearing, Martin Lavin on behalf of AT&T testified that the Facility at the proposed Site would also provide a service benefit to the Metro North trains on the south side of Interstate-95. *8/02/22 Transcript at pp. 56-57.*

As discussed in more detail below, 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 Westport given the identified coverage gap, and that these alternative technologies would only provide service to limited, specifically defined areas leaving major holes in network services. *See Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, pp. 2-3, and 8/02/22 Transcript at pp. 59-60.*

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 Westport. *Applicants' Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 45.*

There is no dispute as to the benefits of the proposed Facility to meet the carriers' wireless service objectives. 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 southern Westport to homes, business uses, public safety agencies and the traveling public.

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

The Docket contains extensive written evidence and testimony demonstrating that the property at 92 Greens Farms Road is the best site to meet the carriers' needs, and the only available site to be leased.

The proposed Site itself is extremely well-suited for a tower. The Property slopes downward from Greens Farms Road towards I-95. The location of the tower would be set back off the street, and as detailed in the All-Points Technology Visual Assessment (*Exhibit H to the Application*), the primary visibility of the tower will be along the I-95/Greens Farms Road/Metro North transportation/utility corridor, as well as areas to the south over open water and tidal marshland. *See Pre-Filed Testimony of Keith Coppins dated July 29, 2022 at p. 5.* Mr. Roberts testified that the location of the compound would be in a wooded area "down elevation from the existing road itself." *8/02/22 Transcript at p. 22.*

Tarpon and AT&T conducted a search for tower sites, which included an investigation of 10 different sites in Westport. *Exhibit F to Application*. As detailed in Exhibit F to the Application, the Applicants determined that of the 10 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 29, 2022 at pp. 3-6*. Existing wireless sites in Westport do not provide sufficient coverage to portions of Westport, mainly due to the distances between existing sites, intervening topography, and the volume of user traffic in the area. *See RF Report and Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, p. 1*.

As detailed above in the Municipal Consultation section of this brief (pp. 6-9 *supra*), over an 8-month period the Applicants vetted every possible location within the search ring, as well as specific locations suggested by the Town. The proposed Site remains the only viable option to meet the carriers' coverage needs.

Further, at the hearing, Council member Silvestri asked AT&T whether locations on 4 Elaine Road or New Creek Road might work from an RF perspective. Mr. Lavin testified that neither of those sites would work to solve the coverage gap, because they were "directly adjacent to existing sites." *8/02/22 Transcript at p. 108*.

In addition, even though CDOT rejected the Town's overtures to consider a tower on Hales Road in May, 2022, the Town and the Applicants continued to try to explore that site even after the Application was filed. After its May 2022 rejection, CDOT sent a letter to Town First Selectwoman Tooker dated July 11, 2022. The letter, among other things,

outlined “several risks” with respect to the development of a tower on the CDOT site, in which it stated the following:

“At this time, the Department is not in a position to lead open solicitation for a cell tower at this site alone.”

“The Department has identified risks with the proposed site location as it currently operates as an access, laydown, and material storage area for Metro-North Railroad. There is limited alternative access areas that could be used to mitigate elimination of this access area. This site also presents possible challenges with underground utilities that are used to facility communication for railroad power and signalization. A detailed investigation would need to occur.”

“Risks have also been identified with the grades of the area proposed and the visibility to nearby residences. Vegetation may be required to be removed which would increase complaints to the Department.”

See Supplemental Pre-Filed Testimony of Keith Coppins and Douglas Roberts, AIA dated September 13, 2022 at pp. 2-3, and Exhibit A to testimony.

Despite the fact that CDOT refused to respond to the Applicants for nearly 6 months, on August 24, 2022 Tarpon submitted a formal application to CDOT. Again, CDOT did not respond. *Supplemental Pre-Filed Testimony of Keith Coppins and Douglas Roberts, AIA dated September 13, 2022 at pp. 3-4, and Exhibit B to testimony.*

Furthermore, Tarpon representatives testified about additional issues with the CDOT site. Whereas there are only 67 residences within 1,000 feet of the proposed Site at 92 Greens Farms Road, there are 228 residential properties within 1,000 feet of the CDOT site. *Supplemental Pre-Filed Testimony of Keith Coppins and Douglas Roberts, AIA dated September 13, 2022 at p. 4.*

And if there was any doubt about the uncertainty of the CDOT site, even the Town’s First Selectwoman refused to express a preference for the CDOT site over the Proposed Site, in this colloquy with Council member Morissette:

THE HEARING OFFICER: Thank you, Mr. Lynch.

My first question -- well, actually my only question, it relates to the C-DOT property. Can the Town indicate why it would prefer the C-DOT property over the site that has been proposed here? And what are the benefits to develop that site over the Applicant's site?

THE WITNESS (Tooker): I don't think we stated a preference -- actually, I know we did not state a preference of that site over the -- the current, the current site.

We just made the statement that I -- I made the statement that I believe that the process has not been completed. Part of the process before putting up a cell tower is to make sure that we --that every alternate site is fully analyzed.

And it is my belief that this, that the DOT site has not been fully analyzed. So we distinctly did not state a preference between the two sites.

9/22/22 Transcript at pp. 80-81.

Finally, the record in this proceeding establishes that the hypothetical small cell alternative submitted by the Town's RF consultant, David Maxson, is not a viable alternative for providing reliable wireless services in this area of Westport.

AT&T's evidence and expert testimony clearly establish that DAS or small cells would not reliably address the coverage needs in this area of Westport given the size of the identified coverage gap. *See Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, p. 2.* Small cells and DAS are best suited for specifically defined areas where capacity is necessary, such as more urban environments, shopping malls, stadiums, and other densely populated areas. *Applicants' Responses to Connecticut Siting Council Pre-Hearing Interrogatories, no. 30.* Mr. Lavin testified clearly that a small cell in the vicinity of Hales Road would not provide AT&T with the needed coverage. *9/22/22 Transcript at p. 43.* As Mr. Lavin explained, these alternative technologies would only provide service

to limited and specifically defined areas, leaving major holes in network services. 8/02/22
Transcript at pp. 59-60.

Simply put, the Town's suggested small cell or DAS alternatives are not viable options for providing reliable services to this area of Westport. Mr. Maxson is not qualified with the credentials required to give his testimony any authoritative weight related to the design and operation of commercial wireless networks. In fact, Mr. Maxson's position in this Docket is the same one that has been dismissed by the Siting Council in numerous other proceedings involving tower siting. See *CSC Docket No. 488; Docket No. 427; CSC Petition No. 1010.*

Mr. Lavin confirmed that AT&T would experience improved coverage from the new Facility at the Site and that a new tower is preferred to a small cell option. 8/02/22
Transcript at p. 59. Mr. Lavin testified that a macro tower, as the one being proposed in this docket, is the appropriate type of facility for primary coverage, which is required in this area. By contrast, "[s]mall cells are generally for filling in very small areas or for providing extra capacity," particularly in densely populated areas in cities. 8/02/22
Transcript at pp. 59-60. The Town's suggested small cell alternatives are nothing more than unsupported opinion that lack any credible scientific or technical support.

In addition to providing reliable wireless services to AT&T's customers, the proposed Facility is being built as part of AT&T's FirstNet public safety network, where wide area coverage is of paramount importance. Small cells are not equipped with battery backup power, so the coverage provided would be lost in a power outage. Deploying generators to each small cell facility in emergency situations is not practical or feasible. See *Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, p. 2.*

Mr. Maxson's suggested alternative of using utility poles in the public right-of-way is also not feasible. As Mr. Lavin noted, not all existing utility poles are available for attachments and placement of new utility poles where service is needed will not always occur in the public right-of-way, necessitating private property owner consent for a new utility pole installation. *See Pre-Filed Testimony of Martin Lavin, dated September 14, 2022, pp. 2-3.*

Accordingly, the record in this proceeding contains uncontroverted evidence in the form of expert analyses, data and testimony, that the proposed Site at 92 Greens Farms Road is the only viable option to meet the carriers' 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 the Applicants unequivocally satisfies these statutory criteria, thereby warranting the issuance of 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.

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

The proposed Site itself is extremely well-suited for a tower. The Property slopes downward from Greens Farms Road towards I-95. The location of the tower would be set back off the street, and the primary visibility of the tower will be along the I-95/Greens Farms Road/Metro North transportation/utility corridor as well as areas to the south over open water and tidal marshland. *See Pre-Filed Testimony of Keith Coppins dated July 29, 2022 at p. 5.*

As presented in the viewshed maps attached to the Visibility Analysis, year-round views of the Facility would be primarily limited to immediately surrounding areas along Greens Farms Road and the Interstate 95/Metro-North transportation/utility corridor, as well as coastline areas west of Sherwood Island State Park, and areas of open water on Sherwood Mill Pond. Views extend westward along Greens Farms Road approximately 0.69-miles (Photo 15) and eastward approximately 0.69-miles (Photo 24) on the Sherwood Island Connector. Year-round views may also extend south/southeastward over Long Island Sound at distances more than a mile away. Distant views would be limited to the top of the monopole above the tree line, beyond the transmission line structures, similar to conditions depicted in Photo 22 in Exhibit H to the Application. Seasonal visibility may extend approximately 0.23-miles northwestward from the Facility

(Photo 10) and approximately 0.16-miles northeastward from the Facility (Photo 2), and may potentially reach portions of Clapboard Hill approximately one mile to the east. No views are anticipated from State Route 136, which is a State-designated Scenic Road in the western portion of the Study Area (Photos 16, 17, 18, and 19 in Exhibit H). *Application at pp. 21-22; See Exhibit H to Application, Visual & Photo-Simulations prepared in March 2022 by All-Points Technology Corporation, P.C.*

The predicted year-round visibility of the proposed Facility is estimated to include approximately 439 acres, 408 acres of which occur over open water and associated tidal marsh areas. The predicted seasonal visibility is estimated to include an additional ± 144 acres. Collectively, the total ± 538 acres of visibility represent only $\pm 7.25\%$ of the 8,042-acre Study Area. Approximately 75.84% of predicted visibility occurs over open water and the associated tidal marsh areas. *See Exhibit H to Application.*

No schools or commercial daycare centers are located within 250 feet of the Facility. Saugatuck Elementary School is located approximately 1.32 miles northwest of the Site at 170 Riverside Avenue in Westport. No visibility is predicted from or in the vicinity of the school. Children's Community Development Center is located approximately 0.23 miles north-northwest of the Site at 90 Hillspoint Road in Westport. No visibility is predicted from or in the vicinity of the daycare center. *Application at p. 22, and see Exhibit Q to Application.*

Notably, the Town failed to offer any expert report or testimony as to visibility. The Applicants' 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 – 33.58% of the applicable Maximum Permissible Exposure (MPE). *Application at p. 25; Exhibit J to the Application, Calculated Radio Frequency Exposure Report dated July 22, 2021 at pp. 3-4.*

Moreover, the proposed Facility will be monitored and secure. An eight (8) foot high chain link fence would secure the equipment housed within the compound area. *Applicants' Responses to Connecticut Siting Council Pre-Hearing Interrogatories, nos. 19, 21.* In addition, there will be a 14' wide gate for access to the compound fabricated utilizing a similar design. The gate will have a combination lock on it to restrict unauthorized access to the compound. *Id. Response to Interrogatory no. 21.* The equipment located at the Facility would be monitored 24 hours a day, 7 days a week from a remote location. *Application at p. 26.* 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.

The Applicants have 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. 26-29; Exhibit I to the Application, NEPA Compliance Review dated March 4, 2022 at pp. 4-7 (“Exhibit I”).* On December 13, 2021, 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. 23-24; Exhibit I, SHPO Letter dated December 13, 2021.* The Applicants are prepared to fully comply with these conditions. *Application at p. 24.*

b. Protected Land and Designated Environments.

The Facility will not be located in 100-year floodplains. Moreover, the construction of the Facility will not involve a significant change in surface features (e.g., wetlands fill, water diversion, or deforestation). Specifically, the proposed development will not result in either temporary or permanent direct impacts to any wetland resource area. Tarpon retained All-Points Technology Corporation, P.C. (“APT”) to conduct a wetlands inspection and delineation on the Property. *See APT Wetland Inspection, Exhibit L to Application.* Two wetland areas were identified and delineated near the project area consisting of an isolated depressional wetland system (Wetland 1) and an intermittent

stream system with narrow bordering forested wetlands (Wetland 2). Wetland 1 is a very small, narrow, and isolated wetland feature formed in a small topographic depression. This wetland system exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with the proximity to this transportation corridor (as evident by disturbed soil profiles, prolific refuse material, and high densities/dominance of invasive plant species). *Exhibit L at p. 4 and Application at pp. 27-28.* Wetland 2 consists of a channelized intermittent watercourse with narrow bordering forested wetland areas that are seasonally saturated and occasionally flooded. The regulatory boundary of the intermittent stream system generally starts at a 72-inch reinforced concrete pipe culvert with the watercourse flowing to the east, parallel to Interstate 95. This wetland system also exhibits high levels of human disturbance, both historically from the proximate construction of Interstate 95, as well as ongoing disturbances associated with the transportation corridor (as evident by road sand deposition and bank erosion due to flashy hydrology from the highway's stormwater runoff). *Exhibit L at p. 6 and Application at p. 28.* Mr. Gustafson testified that with the implementation of appropriate erosion and sedimentation controls throughout construction, "we do not anticipate any likely adverse effect to nearby wetlands including wetland two." *8/02/22 Transcript at p. 23.* Thus, APT's unrefuted conclusion is that the proposed Facility will not result in any adverse effect to the nearby wetlands.

The Facility will not utilize high-intensity white lights in a residential neighborhood. *Application at p. 28.*

APT 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*

27. Those eight (8) tribes include: Bad River Band of Lake Superior Tribe of Chippewa Indians, Delaware Nation, Delaware Tribe of Indians of Oklahoma, Lac du Flambeau Band of Lake Superior Chippewa Indians, Mashantucket Pequot Tribe, Mohegan Indian Tribe, Narragansett Indian Tribe, and Red Cliff Band of Superior Chippewa Indians of Wisconsin. 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 p. 26; Exhibit I to Application*. The proposed Facility will not affect threatened or endangered species or designated critical habitats. *Id.*

APT concluded that no migratory bird species are anticipated to be impacted by the proposed Facility. See *Avian Resources Evaluation dated June 23, 2021 attached to Application as Exhibit K*. In addition, the tower height would be below 200 feet, would not include guy wires, and would not require lighting. *Application at p. 28*. The Site is not located within any Important Bird Area (“IBA”) or Waterfowl Focus Area. The closest IBA to the Property is the Nature Conservancy’s Devil’s Den Preserve in Weston located about 7.5 miles to the northeast. The nearest Waterfowl Focus Area is located 0.3 miles to the southeast in Westport. See *Exhibit K*.

As a result, the Facility is categorically excluded from any requirement for further environmental review by the FCC in accordance with the NEPA, and no permit is required by the FCC prior to construction of the proposed Facility. See 47 C.F.R. §§ 1.1306(b) and 1.1307(a).

d. Absence of Noise Impacts.

At the Council's request, the Applicants commissioned and introduced into the record as a late-filed exhibit a Noise Study prepared by Reuter Associates dated August 18, 2022. *See Applicants' Exhibit 14*. The Noise Study conservatively assumed a "worst-case" scenario where both AT&T and Verizon backup generators were running simultaneously. Mr. Reuter concluded that "[t]he existing noise levels resulting from traffic on Interstate 95 far exceed the property-line noise level standards provided by DEEP," and therefore the proposed Facility complies with and is consistent with DEEP Regulations. *Applicants' Exhibit 14 at p. 3*. Mr. Reuter concludes: "no combination of proposed equipment has any potential for adverse noise impact." *Id.*

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 the 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 pp. 22-23*. There are also limited distant views. These limited aesthetic impacts are unquestionably outweighed by the public benefit derived from the Facility – specifically the coverage and capacity benefits. *See supra at pp. 14-16*. 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.

The Applicants' voluminous evidence demonstrates that there are no alternatives to the proposed Facility at 92 Greens Farms Road to remedy long-standing gaps in wireless service and provide reliable wireless services to the public. 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, the Applicants have established that there is a demonstrated need for the Facility and that the limited environmental impacts associated with the Facility are outweighed by the public benefits. The Applicants therefore respectfully request that a Certificate issue for the proposed Facility.

RESPECTFULLY SUBMITTED,

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CERTIFICATION OF SERVICE

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