

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 60
VALE ROAD, BROOKFIELD, CONNECTICUT

DOCKET NO. 512

December 1, 2022

APPLICANTS' POST HEARING BRIEF

Respectfully Submitted,



Lucia Chiochio, Esq.
Daniel Patrick, Esq.
Cuddy & Feder LLP
Hamilton Avenue
14th Floor
White Plains, NY 10601
(914) 761-1300

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. 512. This Application addresses the public need for a new tower facility in southern Brookfield as well as the eastern portion of the City of Danbury and northern portion of the Town of Bethel so that AT&T, FirstNet, the Town of Brookfield’s emergency services, and carriers who may choose to collocate upon the facility in the future may provide reliable communication services to residents and visitors in these areas. The need for infrastructure in this part of Brookfield has been identified by both AT&T and Homeland, including the significant coverage deficiency in the existing AT&T wireless communications network along the nearby roadways and the neighboring commercial/business and residential areas in Brookfield, Danbury, and Bethel.

The Applicants presented detailed RF analyses and data demonstrating the existing need for additional coverage in this area, including the challenges faced in meeting those coverage needs caused by the varying terrain and lack of existing tall structures to address those needs. The property at 60 Vale Road presents an ideal location which allows the installation of the proposed tower facility upon an industrial property that results in minimal environmental impacts, including the removal of only 4 trees with a dbh of 6” to 10”, no direct impacts on wetlands/watercourses, and minimal visibility which is largely limited to commercial and industrial areas within approximately 0.5 mile of the site. The proposed tower facility will include a monopole that will stand 165’ above grade level (AGL) and will include a hinge point at an elevation of 129’ AGL in the unlikely event of a catastrophic failure. This hinge point is intended to ensure the tower radius will be contained within the parcel boundaries, thus reducing any potential for damage to the railway cars located on the adjacent railroad tracks.

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. The record demonstrates that the tower facility complies with state and federal MPE standards. The Applicants showed through empirical evidence that the proposed tower facility will address a critical public need for a tower to provide reliable wireless service in this part of the state with minimal or no overall environmental effects. 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 Brookfield along U.S. Route 7 and Gray's Bridge Road as well other local roads and the neighboring commercial/business and residential areas in Brookfield, Danbury, and Bethel. *Applicants' Ex. 1, Attach. 1; Applicants' Ex. 4, A26 - A29.* A deficiency in AT&T's coverage is evidenced by the inability to adequately and reliably transmit/receive quality calls and/or utilize data services offered by the network. *Applicants' Ex. 1, Attach. 1.* The Facility will also support AT&T's deployment of FirstNet services which is AT&T's nationwide broadband public safety network dedicated to first responders. *Applicants' Ex. 1, Attach. 1; Applicants' Ex. 4, A33.*

The Facility will also accommodate the collocation of equipment by the Town's emergency services which currently suffer from a lack of reliable network coverages and outdated infrastructure. *Applicants' Ex. 1, Attach. 4; Tr. 11/3/22, pp 20-21.*

II. Site Search

AT&T and Homeland have been engaged in site searches in southern Brookfield and the surrounding area for a few years. *Applicants' Ex. 1; Attach. 2.* Homeland commenced their search in November of 2020 and AT&T first created its search ring to address the need for this area in March of 2020. *Applicants' Ex. 4, A6.* The site search included the review of twenty-one (21) locations, including a combination of municipal- and private-owned properties. *Applicants' Ex. 1, Attach. 2.*

III. Technical Consultation with the Town of Brookfield

Homeland began preliminary consultation with the Town of Brookfield in November of 2020 during the initial site selection process. Several Town-owned parcels were identified as potential candidates for the construction of the proposed Facility, including 93 Grays Bridge Road and 35 Old Grays Bridge Road. At an August 2, 2021 Brookfield Board of Selectman meeting, the Board of Selectman voted unanimously 3-0 to not pursue a lease with Homeland for a new tower at either of these locations. *Applicants' Ex. 1, Attach. 2.*

After the Town decided not to pursue a lease for the Town-owned parcels, Homeland pursued and executed a lease for the 60 Vale Road location. A Technical Report for the proposed Facility at 60 Vale Road was prepared and provided to the Town of Brookfield as part of the C.G.S. 16-50l consultation process on April 14, 2022. *Applicants' Ex. 1, Bulk File Section 5.* On June 16, 2022, a duly noticed (in person) public information hearing was held at the Town of Brookfield Town Hall which included a presentation by the Applicants and comments and questions from the First Selectperson and the public. *Applicants' Ex. 1, pp. 22; Applicants' Ex. 4, A5.* The Applicants did not receive any additional comments from the Town after the public information meeting and prior to the Application filing.

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

On August 9, 2022, the Applicants submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 60 Vale Road. As proposed in the Applicants' August 9, 2022 Application, the proposed Facility consists of a new self-supporting monopole that is 165' AGL in height with two (2) whip antenna for the Town installed at the top, bringing the total height to approximately 191' AGL. During the November 3, 2022 public hearings, the Applicants presented minor revisions to the proposed facility whereby only one (1) whip antenna for the Town would be installed at the top while the second would be installed at the 90' AGL height. *Tr. 11/3/22, pp 13-14*. The total height of the proposed Facility with appurtenances would remain at 191' AGL. The monopole will be located within a 3,150 square-foot (s.f.) fenced equipment compound located within the 3,600 s.f. lease area in the northern portion of the Site. AT&T's antennas would be installed at an antenna centerline height of approximately 161' on the monopole, with a walk-in equipment cabinet and emergency back-up diesel generator located within the fenced equipment compound. The equipment compound will be enclosed with an 8' tall chain link fence with anti-climb mesh/weave. The monopole tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed wireless carriers as well as the Town fire, police, public works, 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 Vale Road over an existing driveway a distance of approximately 640'. Utility connections would be routed overhead with new utility pole placements on Vale Road and right outside the proposed equipment compound. *Applicants' Ex. 1, Attach. 4; Tr. 11/3/22, p. 50*.

V. Pre-Hearing Filings

The Applicants submitted an Affidavit of Publication of the Legal Notice evidencing the notice published in the Danbury News-Times noticing the Applicants' intent to file its application for a Certificate of Environmental Compatibility and Public Need and a Sign Posting Affidavit

evidencing the sign posted at the Site informing the public of the Council hearing on the Application scheduled for November 3, 2022. *Applicants' Ex. 2; Applicants' Ex. 3.* The Applicants also provided responses to Siting Council Interrogatories on October 26, 2022. *Applicants' Ex. 4.* The Applicants' submitted Pre-Hearing Information on October 26, 2022, and on October 24, 2022 submitted a Motion for Protective Order Related to Disclosure of the Exact Monthly Rent in the Lease Agreement between Homeland Towers, LLC and Lessor. *Applicants' Ex. 5 & Ex. 6.*

A letter from Cellco Partnership d/b/a Verizon Wireless ("Verizon") was submitted to the Siting Council informing that, while collocation on the proposed facility would provide Verizon's customers with improved wireless service, that need is currently not a priority in Verizon's building program budget and Verizon would therefore not be intervening. *Applicants' Ex. 4, A16.*

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 November 3, 2022. At the November 3, 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. The duly noticed public hearing session was conducted via Zoom remote conferencing on the evening of November 3, 2022.

The evidentiary record and hearing were closed on November 3, 2022 after the Applicants and public were given a full and fair opportunity to present evidence and comment.

POINT I

A PUBLIC NEED CLEARLY EXISTS

FOR A NEW TOWER FACILITY IN SOUTHERN BROOKFIELD

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 southern Brookfield to homes, business uses, public safety agencies, and the traveling public. *Applicants’ Ex. 1, Attach. 1; Applicants’ Ex. 4, A26 – A29; Tr. 11/3/22, pp 20-21 & 54-55.*

Indeed, the Application materials and AT&T’s expert witness testimony demonstrate that a new tower facility at a minimum height of 165’ 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, Attach. 1; Applicants’ Ex. 4, A21; Tr. 11/3/22, p 20.* 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 experiences significant gaps in both emergency communications and reliable wireless services. *Applicants’ Ex. 1, Attach. 1; Applicants’ Ex. 4, A26 – A29 & Attach. 2.* 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. 1, Attach. 4; Tr. 11/3/22, pp 20-21.*

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 Connecticut 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. 1, Attach. 1; Applicants’ Ex. 4, A22; Tr. 11/3/22, pp 19 & 54-56.* 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 Brookfield and nearby Danbury and Bethel 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 Brookfield to provide reliable wireless service over a wide geographic area based on the characteristics of where services are needed. *Applicants' Ex. 1, Attach. 1.*

AT&T's expert testimony and evidence, including coverage maps and terrain profiles, also confirmed that any alternatives to the proposed Facility 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. 1; Attach. 1; Tr. 11/3/22, pp 54-56.*

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 Brookfield, Danbury, and Bethel. The Applicants determined that no tall, non-tower structures were located within the identified area of need that were available for leasing due to the fact that the area consists of mainly single story commercial structures within the search area which are inadequate in height. Mr. Martin Lavin testified that a rooftop facility at the proposed Site would not provide adequate height to remedy the identified gap in reliable wireless services. *Applicants' Ex. 1, Attach. 2 Tr. 11/3/22, pp 19.* Although there are existing Eversource structures in the area that carry transmission lines, due to delayed outage windows required by Eversource and the need for 24/7 access for emergency maintenance to both the Town's and AT&T's antennas, these

structures are not considered viable options by the Applicants. *Applicants' Ex. 1, Attach. 2.* None of these existing facility sites are feasible alternatives.

AT&T and Homeland have been engaged in site searches in southern Brookfield and the surrounding area over a period of over two years. *Applicants' Ex. 1; Attach. 2.* Homeland commenced their search in November of 2020 and AT&T first created its search ring to address the need for this area in March of 2020. *Applicants' Ex. 4, A6.* The site search included the review of twenty-one (21) locations, including a combination of municipal- and private-owned properties. *Applicants' Ex. 1, Attach. 2.*

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 Brookfield, Danbury, and Bethel.

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

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

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 year-round comprise 35+/- acres of the 8,042-acre study area and is generally limited to within 0.25 mile of the Site. Seasonal visibility (when leaves are off the trees) is estimated to include an additional 96 +/- acres. Together, this represents approximately 1.63%, or less than 2% of the 2-mile radius study area. Visibility will mainly occur within the surrounding commercial and industrially developed area with the exception of seasonal views along some sections of Park Lane and Parkwood Drive (approximately 0.3 mile to the south). The Town's whip antenna located at the top of the monopole does not affect the visibility associated with the proposed Facility. Due to its narrow profile, it is not a prominent feature to a near-view observer and becomes indistinguishable beyond distances of approximately 0.25 mile away. Topography, vegetation, and the relative height of the monopole will collectively obscure, partially or totally, views of the tower from most locations in the study area during leaf-on conditions. No schools or commercial child-care centers are located within 250' of the Site. Country Kids Child Care is located approximately 0.38 mile north-northwest of the Site. As shown in Photo 30 in the enclosed Visibility Analysis, the proposed Facility will be visible from a distance from this daycare center. *Applicants' Ex. 1, Attach. 8.*

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.

a. Wetlands, Drainage, and Other Environmental Factors

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, Attach. 6.* The proposed Facility compound is located approximately 123' north of the nearest wetland. *Applicants' Ex. 1, Attach. 6.* The minimal grading proposed and 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 be protective of the wetlands. *Applicants' Ex. 1, Attach. 6; Tr. 11/3/22, pp 21-26.* Given the distance of AT&T's proposed diesel back-up emergency generator from the wetlands and the generator design which includes a double-walled tank and containment trench, adverse impacts to the wetland resources are not anticipated. *Applicants' Ex. 1, Attach. 4, Attach. 6; Tr. 11/3/22, pp 42.*

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 15,000 s.f. and only four (4) trees will need to be removed which are between 6" and 10" dbh. *Applicants' Ex. 1, Attach. 3; Applicants' Ex. 1, Attach. 4.*

The proposed Facility location on the Site utilizes the currently developed and disturbed areas of the Site to the greatest extent to reduce any potential impacts related to clearing or grading. *Applicants' Ex. 1, Attach. 4; Tr. 11/3/22, pp 21-26.*

The proposed Facility is unmanned and is monitored remotely. Thus, unlike the surrounding commercial uses and single-family homes, after construction, there is very little vehicle activity associated with the facility. Maintenance is limited to approximately once per month by AT&T using a light duty van or truck. *Applicants' Ex. 1, Attach. 5.*

Utility routing was designed in consultation with Eversource and connections would be routed overhead with new utility pole placements along Vale Road and right outside of the

equipment compound. As Mr. Vergati testified, burying the utility lines for the proposed Facility may not be feasible given the seasonal swale on the side of the road, which would preclude trenching. Moreover, the existing utility infrastructure on Vail Road is all overhead, therefore, the proposed simple overhead utility route for the proposed Facility would not add a significant risk to utility damage during storms. *Applicants' Ex. 1, Attach. 4; Tr. 11/3/22, pp 50.*

The record demonstrates that the grading and clearing required for the proposed Facility will not result in significant adverse impacts.

c. Habitat Assessment and Wildlife

The proposed Facility and Site are not located within a DEEP Natural Diversity Data Base (“NDDB”) buffer zone. *Applicant's Ex. 1, Attach. 9.* Thus, in accordance DEEP review policy, consultation is not required. An evaluation of federally-listed threatened, endangered or special concern species was also conducted. One federally listed threatened species, the northern long-eared bat (“NLEB”), is known to occur in the vicinity of the Site. An adverse effect on the NLEB is not expected as the proposed Facility is located within a Site associated with industrial development and limited tree clearing is anticipated. In addition, the NDDB map reveals that the proposed Facility is not located within 150 feet of a known occupied NLEB maternity roost tree and is not located within 0.25 miles of known NLEB hibernaculum. *Applicants' Ex. 1, Attach. 9.*

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, Attach. 9.*

III. Other Environmental & Neighborhood Considerations

The proposed Facility will comply with all public health and safety requirements. *Applicants' Ex. 1, Attach. 7.* 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. 1, Attach. 9.* In addition, there are no prime farmland soils on the proposed Facility property. *Applicants’ Ex. 4, A17.*

The proposed Facility will be designed with a hinge point at an elevation of approximately 129’ AGL which is intended to ensure, in the unlikely event of a catastrophic failure, the monopole radius will be contained within the Site boundaries and will avoid the railway and railroad cars on the adjacent property. *Applicants’ Ex. 1, Attach. 4; Tr. 11/3/22, pp 46 & 51-54.*

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 which is 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 Brookfield for its emergency and public works communications networks. 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 60 Vale Road to remedy gaps in wireless service and provide wireless services to the public.

While there are limited visibility effects associated with the proposed Facility, 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.

We submit that when the Siting Council reviews this Docket, the Applicants have demonstrated:

- An existing gap in reliable wireless service exists and can only be remedied by a new tower facility.
- A comprehensive site search yielded no viable alternative locations.
- 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 and mitigated to the greatest extent.

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. 512.

CERTIFICATE OF SERVICE

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

Dated: December 1, 2022

A handwritten signature in blue ink that reads "Lucia Chiochio". The signature is written in a cursive, flowing style.

Lucia Chiochio, Esq.
Daniel Patrick, Esq.
Cuddy & Feder LLP
445 Hamilton Ave, 14th Floor
White Plains, NY 10601
(914)-761-1300

cc: Homeland
AT&T
APT
C Squared