

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

HOMELAND TOWERS, LLC (“HOMELAND”) AND NEW
CINGULAR WIRELESS PCS, LLC (“AT&T”)
APPLICATION FOR CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC
NEED FOR A TELECOMMUNICATIONS TOWER
FACILITY IN BROOKFIELD, CONNECTICUT

DOCKET NO. 512

June 9, 2023

**HOMELAND TOWERS, LLC AND NEW CINGULAR WIRELESS PCS, LLC
OPPOSITION TO THE CONNECTICUT FOR RESPONSIBLE TECHNOLOGY OF
BROOKFIELD’S MOTION TO REOPEN THE EVIDENTIARY HEARING AND
MODIFY THE DECISION DUE TO CHANGED CONDITIONS**

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless, PCS, LLC (“AT&T”), Applicants in the above captioned Docket (“Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this brief in opposition to the letter motion of the Connecticut for Responsible Technology of Brookfield (“CRTB”) dated May 8, 2023 requesting a reopening of the evidentiary/public hearing process in Docket 512 and modifying the decision due to changed conditions (“CRTB’s Motion”).

I. The Docket may not be reconsidered under § 4-181a(b) as there are no changed conditions

Section 4-181a(b) of the Uniform Administrative Procedures Act (“UAPA”) provides that *on a showing of changed conditions*, an agency may reverse or modify a final decision, at any time, at the request of any person or on the agency’s own motion. *See C.G.S. § 4-181a(b) emphasis added.* There are no changed conditions which would warrant a reopening of Docket 512 under Section 4-181a(b) of UAPA to consider the location of the approved facility or the public need. CRTB’s Motion does not present any new facts or evidence that were lacking or not adequately considered during the initial evidentiary hearings. For this reason, as more fully set forth herein,

CRTB's motion to reopen the Docket 512 hearing must be denied on a substantive basis under UAPA.

a. There is no "new" evidence for the Council to consider

CRTB's Motion incorrectly claims that there are new facts concerning the location of 60 Vale Road adjacent to a railroad track which jeopardize the safety of the people and property of Brookfield. As the Council is well aware, the location of the approved facility is approximately 54 feet from the nearest railroad track, a fact which was contemplated and thoroughly evaluated by the Council. *Docket 512 Findings of Fact para. 5, 102, 103; Docket 512 Hearing Transcript pages 35, 50-54*. As such, a yield point at the 129-foot height of the 165-foot tower was designed to ensure the tower's setback radius remains within the property and does not encroach into the adjacent railroad track.¹ *Docket 512 Findings of Fact para. 122*. In sum, the Council had considered the effects of the facility and equipment location as it relates to the adjacent railway and determined that any potential adverse public effects had been addressed. CRTB's Motion attempts to nevertheless submit vague information regarding railroad car incidents and cell tower fires and poses irrelevant questions about the location of the facility and equipment. These distinct, unrelated examples of incidents do not materially affect the merits of the case.²

CRTB's Motion also submits that the form of the Applicants' expert testimony demonstrating the significant gap in service and thus public need for the approved facility is insufficient. In fact, CRTB claims that "the Citizens of Brookfield have only recently learned that cellular service gap analysis presented is a model and not an actual drive through, and that certain key facts, such as dropped calls, were not provided, or included in the analysis...." *CRTB Motion para. 3*. In reality, the Applicants' same report which provides its statement of need that CRTB now challenges had been filed with the Town of Brookfield with the Applicants' Technical Report

¹ The record also contains other safety information that was considered by the Council. *Docket 512 Findings of Fact para 91, 120, 123*.

² The photos of the approved facility site included in the CRTB's Motion appear to be taken from locations within the property. The photos were not accompanied by any authorization for taking the photos from the property or for release of the photos in the public record.

on April 14, 2022 and again with the Council with the Application on August 10, 2022. That report details the methodology employed by AT&T to determine the public need. Moreover, members of the public reflected in the CRTB's Motion, including its author Joan Polzin, and Paska Nayden, cofounder of Connecticut for Responsible Technology, both of whom appeared at the public hearing, even had the foresight to perform their own need analyses and present their findings during the November 3, 2022 public session on Docket 512. *Docket 512 Public Session Transcript pages 15-18, 28-32*. However, instead of seeking intervenor status during Docket 512 in order to cross-examine the Applicants' experts on their report or methodologies, CRTB waited until over an entire year had passed since AT&T's report was first circulated to now claim that CRTB "had only recently learned" of the methodologies employed by AT&T.

As the Council is aware, the use of a sophisticated model to represent existing and proposed coverage data demonstrating a gap in service is customary for Applications before the Council and throughout the industry. In any event, the radio-frequency data credibility had been questioned during the Council's public session in Docket 512 by members of the public prior to the Council's decision. Those public comments, including the results of the public's independent signal strength analyses, were raised before the Council which allowed the Council to inquire further, if it had chosen to do so. The information or claims submitted in CRTB's Motion therefore do not present any changed conditioned that would materially affect the merits of the case or otherwise warrant reconsideration.

As such, there is no new fact for purposes of the Council's decision to issue a Certificate that would warrant reconsideration of the decision made pursuant to the Public Utility Environmental Standards Act.

- b. There are no changed conditions which would warrant a reopening to consider modification of the final decision under § 4-181a(b)

There are no changed conditions which would warrant a reopening of Docket 512 under Section 4-181a(b) of UAPA to consider the location of the approved facility or the public need. As

indicated above, the claims made by CRTB regarding the location of the facility near the adjacent railroad tracks and the evidence presented regarding the public need for the facility had both been available to the Council prior to and at the time of its decision. Similarly, the circumstances or conditions regarding the location of the approved facility or demonstrated public need for same have not changed since the Council made its decision in this matter.

CRTB's claims regarding health effects also do not constitute changed conditions as there are no changes to the FCC's regulations concerning environmental effects of radio frequency emissions. As the Council is aware, Section 704 of the Telecommunications Act of 1996 prohibits any state or local entity from regulating wireless facilities on the basis of environmental effects of radio frequency emissions if compliance with the applicable FCC regulations is demonstrated. *Docket 512 Council Administrative Notice Items 1, 2, 3 and 4*. The record in the Docket 512 proceeding demonstrates AT&T's compliance with the FCC regulations, which was acknowledged in the Council's Finding of Fact No. 127.

The remaining statements in CRTB's motion contain their untimely objections to the facility approved in Docket 512 and as such, do not constitute change conditions or new information.

There is, therefore, no changed conditions which would warrant granting CRTB's Motion or otherwise revisiting the Council's decision in Docket 512.

II. The Docket may not be reconsidered under § 4-181a(a) as CRTB is not a party and the time for requesting reconsideration has passed

It is also noteworthy that the Docket 512 proceeding cannot be reconsidered under Section 4-181a(a)(1) of the UAPA, which provides that a party may file a petition for reconsideration within 15 days after the personal delivery or mailing of the final decision on the ground that (A) an error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and for good reasons was not presented in the agency proceeding; or (C) other good cause for consideration has been shown. *See C.G.S. § 4-181a(a)*.

Here, CRTB did not seek party or intervenor status despite the fact that the above referenced members of CRTB had ample notice of the proceeding and the timeline for requesting intervenor or party status as well as information on the process for requesting party or intervenor status. Given that the CRTB Motion was filed over four months from issuance of the Certificate, it is also untimely pursuant to UAPA Section 4-181a(a). Seeking to re-open Docket 512 now because they do not agree with the Council's decision is merely an attempt to delay and a waste of state resources.

III. Conclusion

CRTB presented no new evidence or other changed conditions which were not previously considered by the Council or not available to the Council at the time of its decision in Docket 512. Indeed, many of the statements in CRTB's Motion are objections to the approved facility that were raised during the November 3, 2022 public hearing.

For the reasons set forth above, there are no changed conditions and the motion for reconsideration by CRTB should be denied.

Dated: June 9, 2023

Homeland Towers, LLC and
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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and fifteen copies of the foregoing was sent electronically and by overnight mail to the Connecticut Siting Council.

June 9, 2023



Lucia Chiochio

cc: Homeland Towers, LLC
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