STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF THE TOWERS, LLC	:	
FOR A CERTIFICATE OF	:	DOCKET NO. 537
ENVIRONMENTAL COMPATABILITY	:	
AND PUBLIC NEED FOR THE	:	
CONSTRUCTION, MAINTENANCE, AND	:	
OPERATION OF A TELECOMMUNICATION	:	
FACILITY AND ASSOCIATED EQUIPMENT	:	
LOCATED AT 327 NORTH ANGUILLA ROAD,	:	
STONINGTON, CONNECTICUT	:	September 26, 2025

POST HEARING BRIEF OF PARTY TOWN OF STONINGTON

This post-hearing brief is submitted on behalf of the party, Town of Stonington, under Connecticut Environmental Protection Act, C.G.S. §§ 22a-14 et seq. ("CEPA"), to set forth the factual and legal grounds why the captioned application should be denied.

I. PRELIMINARY PROCEDURAL MATTERS

a. Standing

In response to the April 25, 2025 notice, the Siting Council ("Council") granted party status to Town of Stonington at its meeting of August 28, 2025.

b. Burden of Proof

The application to an administrative agency bears the burden of proof. *Samperi v. Inland Wetlands Agency*, 226 Conn. 579, 593 (1993). "It is an elementary rule that whenever the existence of any fact is necessary in order that a party may make out his case or establish his defense, the burden is on such party to show the existence of such fact." (Internal quotation marks omitted.) *Zhang v. Omnipoint Communications Enterprises, Inc.*, 272 Conn. 627, 645 (2005); see *Komondy v. Zoning Board of Appeals*, 127 Conn. App. 669, 678 (2011) ("[T]he

burden rests with the applicant to demonstrate its entitlement to the requested relief."). The applicants have the burden of proof to show they are entitled to approval of their applications.[1]

c. **Standard of Proof**

The statutes governing Siting Council consideration of applications for a Certificate of Environmental Compatibility and Public Need are silent as to the standard of proof that the applicant must meet for the application to be granted. "In the absence of state legislation prescribing an applicable standard of proof ... the preponderance of the evidence standard is the appropriate standard of proof in administrative proceedings ..." Goldstar Medical Services, Inc. v. Dept. of Social Services, 288 Conn. 790, 821 (2008).

d. **Due process and Fundamental Fairness**

The requirements of fundamental fairness and due process apply to Siting Council procedures. *Concerned Citizens of Sterling v. Connecticut Siting Council*, 215 Conn. 474, 484 (1990); *Rosa v. Connecticut* Siting Council, Superior Court, Judicial District of New Britain, Docket No. HHB-CV-05-4007974-S (March 1, 2007), 2007 WL 829582, *Torrington v. Connecticut Siting Council,* Superior Court, Judicial District of Hartford, Docket No. CV90-0371550-S (September 12, 1991), 1991 WL 188815.

In *Grimes v. Conservation Commission,* the Supreme Court defined the parameters of "fundamental fairness" in administrative proceedings:

> Although no constitutional due process right exists in this case, we have recognized a common-law right to fundamental fairness in administrative hearings. "The only requirement [in administrative proceedings] is that the conduct of the hearing shall not violate the fundamentals of natural justice." *Miklus v. Zoning Board of Appeals*, 154 Conn. 399, 406, 225

[1] See *Citizens Guide to Siting Council Procedures for Cell Towers*, Connecticut Siting Council, p.2 ("The cell phone service provide has the burden of proving to the Council that the site selected is needed to provide cell phone service and that the construction and operation of a cell tower at the site would not result in a significant environmental impact. The role of the Council is to review the service provider's evidence of need for cell phone service in the selected area and evidence of environmental impact for the selected site.")

> A.2d 637 (1967). Fundamentals of natural justice require that "there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary" *Parsons v. Board of Zoning Appeals*, 140 Conn. 290, 293, 99 A.2d 149 (1953), overruled on other grounds, *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 146-47, 215 A.2d 104 (1965). Put differently, "[d]ue process of law requires that the parties involved have an opportunity to know the facts on which the commission is asked to act and to offer rebuttal evidence." *Pizzola v. Planning & Zoning Commission*, 167 Conn. 202, 207, 355 A.2d 21 (1974); see also *New England Rehabilitation Hospital of Hartford, Inc. v. Commission on Hospitals 7 Health Care,* 226 Conn. 105, 149-50, 627 A.2d 1257 (1993) (administrative agency "cannot properly base its decision upon [independent] reports without introducing them in evidence so as to afford interested parties an opportunity to meet them"); *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 536, 525 A.2d 940 (1987) (administrative due process requires due notice and right to produce relevant evidence); *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 249, 470 A.2d 1214 (1984) (same). The purpose of administrative notice requirements is to allow parties to "prepare intelligently for the hearing." *Jarvis Acres, Inc. v. Zoning Commission*, supra, 163 Conn. [41] at 47, 301 A.2d 244 [(1972)].

(Footnotes omitted.) *Grimes v. Conservation Commission*, 243 Conn. 266, 273-4 (1997). The Siting Council is bound by these requirements in its consideration of this application.

II. CLAIMS OF LAW

a. The Proposed Cell Tower Site

The subject of this proceeding is for the operation of a wireless telecommunications facility (the "Facility") consists of the construction, maintenance and operation of the Facility an approximately 78.24-acre parcel at 327 North Anguilla Road in the Town (the "Applicant's Proposed Site"). Towers, LLC plans to construct a 150-foot monopole tower in the southern portion of the parcel. Cellco Partnership d/b/a Verizon Wireless ("Cellco") plans to install antennas and remote radio heats at the 145

feet of the tower. Cellco will also install radio equipment and battery cabinets, and a diesel fueled generator within a fenced in compound near the base of the tower.

b. **Applicable Law**

C.G.S § 16-50p contains the criteria that the Siting Council must follow in deciding an application in a certification proceeding: (1) whether the applicant has established a public need for the facility; and (2) whether the applicant has identified all adverse environmental impacts and conflicts with state policy and established that they are not sufficient to deny the application.

C.G.S. § 16-50p (a) (3) sets forth the standards which the Siting Council must consider in determining whether to issue a certificate for the proposed cell tower. The Siting Council may not issue a certificate:

> Either as proposed or as modified by the Council, unless it shall find and determine: (A) ... a public need for the facility and the basis for the need, (B) the nature of the probable environmental impact of the facility ... including a specification of every significant adverse effect, including, but not limited to (ii) ecological balance, (iii) public health and safety, (iv) **scenic, historical and recreational values** ... (vi) forest and parks, (vii) air and water purity, and (viii) fish, aquaculture and wildlife [and] (C) why the adverse effects or conflicts referred to in subparagraph (3) of this subdivision are not sufficient reasons to deny the application ... (emphasis applied)

C.G.S.§ 16-50p (a) (3) (A) through (C).[2]

In addition to these factors, C.G.S. § 16-50p (b) (1) (C) requires the Siting Council, in every application for a proposed cell tower, to examine, among other things, "whether the proposed facility would be located in an area of the state which the Council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to

[2] See *Connecticut Siting Council Rules of Practice*, Article 1, Part 1 ("Pursuant to C.G.S. § 16-50j-1 of The Public Utility Environmental Standards Act (PUESA), the Council is charged with: (1) balancing the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; ... (3) encouraging research to develop new and improved methods of ... transmitting and receiving ... telecommunications signals with minimal damage to the environment.")

be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance." The Siting Council may deny an application if "the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location." C. G. S. § 16-50p (b) (1). Ultimately, the Council's task is to "balance[e] the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic and recreational values," while "assur[ing] the welfare and protection of the people of the state." Conn. Gen. Stat. § 16-50g.

c. **The Proposed Tower Would Significantly Affect a Scenic Area of Statewide Significance**

The pre-filed testimony of First Selectmen Danielle Chesebrough outlined the Town's concerns regarding the proposed location of the Facility: "This location is situated within a residential neighborhood. This neighborhood is home to a variety of wildlife, and the proposed site border sensitive natural areas. The introduction of a large-scale tower could disturb local ecosystems and negatively affect the animals that inhabit them. Further, the proposed location is exceedingly close to one homeowner, towering over their home and yard. This directly affects not their quality of life, but also the value of their home." (Pre-filed Testimony of Danielle Chesebrough). First Selectman Chesebrough further testified that: "A key request from the community is for the towers to be located in and near commercial areas where development has already taken place. The Community would like to see more effort and direction given to the applicant to do all they can to place towers in more appropriate locations, and not in rural and residential areas." (Pre-filed Testimony of Danielle Chesebrough).

In addition to the concerns of the Town of Stonington, local homeowners provided statements at the public hearing. Beatrice Biedermann stated that her property abuts the proposed cell "that will be only 661 feet away." (Hearing Tr., B. Biedermann, 11/10). She raised concerns with the structure "permanently marring the scenic landscape and in direct conflict of the rural/rustic character and sense of peace here." (Hearing Tr., B. Biedermann, 12/9-12). Andreas Biedermann also raised concerns regarding the impact upon the scenic road (Hearing Tr., A. Biedermann, 14/1-2). He continued with the likely reduction in his property values from the tower. "From talking to my realtor, they expect that it's about a 10 -20 percent reduction in the value of my house." (Hearing Tr., A. Biedermann, 15/3-5). Thomas Nicolai also voiced his concerns with the tower on a scenic highway and diminution of his property values. (Hearing Tr., Nicolai, p16/1 & 17/1-12). Scenic themes were outlined by Daniel Booker (Hearing Tr., Booker, p. 18/16-23) and by Max Bunting (Hearing Tr., Bunting, p. 25/16-22). Finally, Steve White submitted a comment after the close of the public hearing objecting to the tower's location in the historic farm land area of Stonington.

In light of this record, the Application should be denied because it will create adverse effects on residential neighbors that are unnecessary and avoidable. *See* General Statutes § 16-50p(b)(1) ("The Council may deny an application for a certificate if it determines that … (iii) the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location.").

d. The Applicant's purported investigation of other available locations was not sincere or credible

The Applicant has failed to credibly investigate or disprove the availability of other locations for the proposed tower. As outlined by First Selectman Chesebrough:

> "The Town of Stonington identified and shared alternative locations for the tower that are situated farther back from the scenic road and residential area-areas far more appropriate for such infrastructure. These alternatives would better balance the need for improved connectivity with the preservation of residential and environmental integrity. However , the alternative locations were rejected by the applicant due to potential environmental constraints including wetland and vernal pools.
>
> According to the applicant's own documentation, forty-five (45) potential sites were identified during the search for a suitable location. Each property owner received a single certified letter, yet forty-three (43) of the recipients did not respond. Despite this lack of engagement, there was no meaningful follow-up or effort to pursue these leads further. This minimal outreach reflects a reactive rather than proactive approach and undermines the transparency and community collaboration that should be foundational to project of this scale and impact.
>
> A key request from the community is for the towers to be located in and near commercial areas where development has already taken place. The Community would like to see more effort and direction given to the applicant to do all they can to place towers in more appropriate locations, and not in rural and residential areas." (Pre-filed Testimony of First Selectman Danielle Chesebrough).

These concerns were echoed by the various public speakers at the public hearing on August 28, 2025. These residents also desired that the Applicant be required to look to commercial areas or to place the tower in an alternative location.

The Applicant acknowledged at the hearing public hearing that it took no action to follow up on its initial solicitations. Brian Paul testified:

> THE WITNESS (Paul): This is Brian Paul again.
> We don't typically follow up once we send out our standard letter to folks in the area. It's much like cold calling. If people don't answer or aren't interested in our service, then we move on to the next person. And once we find a willing landlord, we typically will move forward with that person.

(Hrg. Tr. 41:7-14)

Even after receiving the Town's concerns, the Applicant took no action to investigate other possible sites:

> ATTORNEY ESTEP: But you were aware that the Town - - at some point you became aware the Town was concerned at this site location. Is that correct?
> THE WITNESS (Paul) : This is Brian Paul again.
> I believe that was well into the process.
> ATTORNEY ESTEP: So, well into the process, but did you consider at that point attempting to locate this in a more commercial area where there's already pre-existing structures?
> THE WITNESS (Paul): Brian Paul again.
> I - - I'm not sure exactly which sites here, which locations you're referring to. So, I can't really provide you with a correct answer to that question as is, as it references the initial 45 notices we sent.

(Hrg. Tr. 41:15-42:4.)

In addition, the Applicant did not consider moving the tower to a less visible location because of concerns with environmental impacts but took no action with the Town of Stonington's Inland Wetlands Officer to ascertain if there were problems with the relocation of the tower:

> ATTORNEY ESTEP: And did you seek any information from the inlands wetlands officer of the Town of Stonington to either confirm or deny your concerns?
> THE WITNESS (Gustafson): I've had no contact with the inland wetlands officer to - - to that effect, no.

(Hrg. Tr. 44:6-11.)

The Applicant's insincere "investigation" of other potential locations, should give the Council serious pause. The paramount purpose of the statutes and regulations governing the field of public utilities is to promote "the welfare and protection of the people of the state." (emphasis applied) *See* Conn. Gen. Stat. § 16-50g. As a business seeking to participate in this regulatory framework, the Applicant was obligated to help the Council find the best available solution for the public. *See* Conn. Gen. Stat. §§ 16-50l, 16-50p. However, the Applicant has prioritized its own interests over the public interest and has hindered the Council's ability to identify the best available solution, by refusing to provide a full record on alternative solutions.

CONCLUSION:

In summary, the only conclusion that can be confidently drawn from the present record is there is good reason to believe that more suitable locations (not in a scenic rural area) are available that have not been fully explored. There is time for this process to be done right, which ought to include cooperative consultation with the Town, genuine investigation of other locations, and a well-developed record on which the Council can make a fully-informed decision. Therefore, the Town respectfully submits that the Application should be denied without prejudice, according to the Council's precedent in similar circumstances.

TOWN OF STONINGTON

By: _____

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CERTIFICATION OF SERVICE

This is to certify that a copy of this Post-Hearing Brief has been electronically served on September 26, 2025 as follows:

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