

**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
ONE OF TWO SITES: KENT TAX ASSESSOR ID
#M10, BLOCK 22, LOT 38 BALD HILL ROAD OR 93
RICHARDS ROAD, TOWN OF KENT,
CONNECTICUT

DOCKET NO. 488

October 22, 2020

TOWN OF KENT POST-HEARING BRIEF

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PRELIMINARY STATEMENT

The Town of Kent, Connecticut (“Town” or “Kent”) respectfully submits this post-hearing brief in support of its opposition to the application of Homeland Towers, LLC (“Homeland Towers”) and New Cingular Wireless PCS, LLC d/b/a AT&T (“AT&T”) (individually, “Applicant” and together, “Applicants”), for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 488 (the “Application”). The Town opposes the Application because it (a) fails to demonstrate the public need for a new tower facility at the height proposed by the Applicants, (b) fails to balance the need for adequate and reliable services with the need to protect the environment and ecology, including minimizing damage to scenic, historic and recreational values, and (c) fails to use and deploy distributed antenna systems, small cells or micro-towers, collectively identified as “small cells,” as an alternative and less obtrusive technology.

Small cells are (and have been for many years) used and deployed by wireless carriers, including AT&T, throughout the state of Connecticut, throughout the United States and throughout the world to solve network coverage, quality and capacity requirements in urban and suburban environments. Small cells are the best approach for Kent as shown by the expert witness testimony, as well as the data and responses to the questions raised by the Connecticut Siting Council (“Siting Council”). In this proceeding, small cells were shown capable of providing the desired coverage, quality and capacity for AT&T, FirstNet and other potential wireless carriers’ systems while minimizing the substantial adverse impacts caused by a tower to the scenic ridgeline, residential neighborhood along Route 341 (Segar Mountain Road), numerous bucolic trails, ponds and lakes, the adjacent Town of Warren (“Warren”) and its viewshed from Lake Waramaug. In other words, there is nothing that seven identified small cells couldn’t provide, that

the proposed tower could, in terms of coverage, quality and capacity for both the general public as well as public safety.

Both small cells and towers rely on commercial power and connectivity (i.e., fiber/landline) to operate. The Applicants failed to address the lack of connectivity (fiber/landline) to its tower at Site A or Site B in the event of an emergency in which power and connectivity are lost. In Kent, power and connectivity (fiber/landline) travel over the same Eversource utility poles. The Applicants conceded that their proposed tower would fail to connect to mobile devices in the field or to either the AT&T network or FirstNet network, should the connectivity (fiber/landline) be damaged or cut off from the tower (e.g., single point of failure). Small cells, on the other hand, can be designed to mitigate such loss of a single point of failure. Contrary to the Applicants' assertion, generators are not a fail-safe to address connectivity issues in the event of such outage. A tower connected to a back-up generator during a power outage without connectivity is akin to a car with its engine running without a transmission.

As set forth in detail in the record, the Application, on its face, was built on assumptions that, through the proceedings in this Docket, have shown to be inaccurate or baseless. The Siting Council is now left to decide whether it should grant Applicants the authorization to build a tower on unverified facts and generalized assumptions - in an area designated as the Upper Housatonic Valley National Heritage Area,¹ at an unconfirmed minimum height,² with a single tenant occupant,³ situated within a rural residential neighborhood. If authorized, AT&T would be

¹ This is one of just 50 designations in the country. (CEQ Comments; Council Administrative Notice Item #76 (National Heritage Areas Map; PDA Administrative Notice Items III A 3 and 4)

² Applicants' testimony was that AT&T could not build a shorter tower or locate its equipment lower on the tower because of the Town's purported requirement for a microwave dish at 125.0 feet AGL. (Lavin Tr. 7/23/20, pp. 63-65) The Town testified it had no plans to locate any equipment on the tower, including a microwave or any other antennas. (Speck Tr. 9/3/20, p. 485)

³ Sprint/T-Mobile filed a letter with the Siting Council that it has no plans for use of the tower at either site. (Docket Filing, Telecom Carrier Response, 7/16/20) Verizon submitted a letter to the Siting Council indicating it would locate

providing only spotty coverage⁴ to a portion of a well-traveled roadway connecting Kent to Warren – with no businesses, schools, or retail areas⁵ within the vicinity.

The Town respectfully submits that neither of the proposed sites is suited for a tower facility, based on the information provided by the Applicants in these proceedings, the evidence submitted, the testimony of the witnesses, the practical and feasible alternative of small cells, and the significant adverse environmental impacts associated with the tower as proposed by the Applicants. The Application fails to meet the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) and the Town requests the Siting Council to deny the proposed tower facility. In the alternative, the Town is supportive of and encourages the use of small cells to provide the requested coverage by AT&T.

STATEMENT OF FACTS

I. Town of Kent

The Town of Kent is a rural community nestled within the foothills of the Berkshires and the Appalachian Trail in the northwest corner of Connecticut. Kent is home or within a short distance to some of Connecticut’s most scenic views and vistas. Kent is visited by people from all around the world for such scenic views and vistas, which are critically important to the rural landscape and character of Kent and its economic viability. (Pre-filed testimony Chairman Manes, Kent Conservation Commission 12/12/19 letter to Board of Selectmen (“BOS”)); Pre-filed testimony First Selectman Speck, Kent BOS) The Town’s residents are especially sensitive to changes that have an impact on its character, whether in the form of buildings, other types of

on the tower at either site. (Docket Filing, Verizon Carrier Response, 8/25/20) Verizon is not party or an intervenor. (Chiocchio/Rosemark/Silvestri Tr. 8/11/20, pp. 255-256)

⁴ Applicants testified that the coverage would not be complete and at least 2 more towers would be required to fill in the gaps of coverage. (Lavin Tr. 7/23/20, pp. 122)

⁵ “It’s very rural residential other than the camp, and I think there might be . . . a ‘single shingle’ contractor or two.” (Speck Tr. 9/3/20, p. 513)

commercial development, or free-standing towers. (Manes pre-filed testimony)

On December 13, 2019, the Applicants' representatives and consultants presented the telecommunications facility project to the Board of Selectmen at a public hearing. (Speck pre-filed testimony) The tower height of Site A or Site B will extend well above the surrounding tree line and ridge lines. (Manes pre-filed testimony; pre-filed testimony of Chairman Winter, Kent Planning and Zoning Commission, 12/12/19 letter to Cuddy & Feder, LLP, counsel to the Applicants) Over 100 residents showed up at the public hearing.⁶ (Speck Tr. 9/3/20, p. 515) Numerous citizens voiced their concerns about the substantial environmental impact a tower would cause to Kent, and the limited number of residences that would (or could) receive service from the proposed tower, given the topography and sparse number of homes located within the claimed coverage area. (Speck Tr. 9/30/20, p. 515; Speck pre-filed testimony)

The record demonstrates the rural and scenic character of Kent and the adverse impact which either of the two proposed towers would have on the vistas in this area. As summarized by Connie Manes, Chair of the Kent Conservation Commission and Executive Director of the Kent Land Trust: "Fundamental to Kent's natural beauty and character are its stunning, sweeping views of the Southern Berkshire foothills from scenic country roads as well as public trails and lakes." (Manes pre-filed testimony, p.1) Kent has taken great pains to preserve the Town's scenic vistas through the following initiatives.

Horizon-line Conservation District. In 2005, Kent was the first town in Connecticut to enact Horizon-line Conservation District ("District") overlay zoning, in order to "conserve and protect the hill summits and ridges that form the high horizon visible from the town's system of roads." (Kent Zoning Regulations § 5710) ("Horizon-line Regulation") The Horizon-line

⁶ "And there were over 100 people there. And for our tiny little Town of Kent, that's a lot of people, a lot of very spirited voices in opposition to it." (Speck Tr. 9/23/20, p. 515)

Regulation states the goals of the District as follows:

The specific goals of the District include the preservation of scenic views and vistas that are critically important to the rural landscape and character of the Town, and the minimization of erosion and sedimentation hazards caused by development and use of steep hillsides and ridges.

(Id.)

Proposed uses within District areas are subject to additional zoning review depending on area, height, and other potential disturbances.

Zoning Regulations. In its most recent update to the Zoning Regulations, the Planning and Zoning Commission attempted to balance the need for adequate telecommunications services against the protection of the town's rural character and scenic views. The stated purposes of the Zoning Regulations are to:

- Preserve the scenic, historic, environmental, and natural character and appearance of the Town of Kent while allowing adequate telecommunications services to be developed.
- Establish locations least disruptive to the public health, safety and welfare in Kent and consistent with the Plan of Conservation and Development.
- Minimize adverse visual effects through proper design, siting and vegetative screening.
- Avoid potential damage to adjacent properties.
- Minimize the height of towers and the number of towers, especially free-standing towers.
- Provide for the orderly removal of abandoned antennas and towers.
- Provide guidance for towers and other wireless communication facilities which are subject to the jurisdiction of the Connecticut Siting Council.
- Require the submission of information necessary to evaluate the proposed facility.

(Zoning Regulations § 9610)

The Zoning Regulations incorporate a preference for locations of telecommunications

facilities outside the District, and where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening and will have the least long-range visual effect.

(Id., § 9630)

POCD. Completed in 2012, the most recent Plan of Conservation and Development (“POCD”) emphasizes “protecting and maintaining scenic rural character as Kent’s topmost priority.” (Manes to BOS, 12/12/19, p. 2) As summarized by Ms. Manes:

The POCD strongly underscores a community objective of protecting scenic beauty, recognizing that Kent’s scenery plays a large part of what draws visitors to our town and its businesses, influences parental choices about our exceptional boarding schools, and compels new residents to purchase homes and settle here. Among strategies to preserve natural and rural heritage, the POCD asserts that “Kent will continue and refine use of the Horizon-line Conservation District standards to help preserve scenic integrity of the Town’s landscape.” (POCD, p.8.) The POCD goes on to discuss means of mitigating the impact of “disruptive” communications infrastructure in the Village Center by limiting future above-ground facilities, as well as other means of limiting the impact of residential and commercial development on the rural, scenic aspects of the town.

(Id.)

Consistent with the conservation-weighted approach that is a linchpin of the document, the POCD advises a cautious evaluation of telecommunications towers and facilities: “[T]he Town should carefully evaluate proposed locations and siting of telecommunications towers or other major facilities to prevent or mitigate environmental and scenic impacts” (POCD, p. 25), and “[t]he Town should continue to monitor state regulations regarding all towers in order to ensure inclusion in siting discussions of possible future installations.” (POCD, p. 45)

Additional Municipal Directives. Beyond the clear admonitions in the District regulations and the POCD, other town initiatives speak to the continuing need to conserve Kent’s scenic and rural character. In 1989, the Town adopted a scenic road ordinance intended to protect scenic

vistas among other objectives. (Manes to BOS, 12/12/19, p. 2) Most of Kent's roads, including Bald Hill Road and Richards Road, offer pristine scenic views. The Conservation Commission authored a Town Character Study (POCD, Appendix 2) that describes and maps areas of special beauty in order to provide town boards and commissions with guidance in preserving critical elements of Kent's rural and unspoiled character. (Id., pp. 2-3) Also, the Conservation Commission's Natural and Cultural Resources Inventory is incorporated in the POCD as an entire chapter devoted to preservation of recreational and scenic resources. (Id.; see POCD, Chapter 10)

Letters submitted to the Siting Council on behalf of the Kent Board of Selectmen, Kent Conservation Commission and Kent Planning and Zoning Commission underscore the importance of preserving the unique and invaluable scenic and rural character of this portion of northwestern Connecticut. (See Speck pre-filed testimony with attached exhibits) In addition, the Weantinoge Heritage Land Trust, the Kent Land Trust, the Warren Land Trust, and the Housatonic Valley Association all have testified to the importance of the scenic and rural character of the region, and echo the Town's concerns about the lasting and damaging impact that the proposed tower will have on the environment, culture, character and economy of the area. (See Speck pre-filed testimony with attached exhibits.)

A tower at either of the proposed locations does not meet the Town's Planning and Zoning ordinances, POCD, or approval of the Kent Conservation Commission or Kent Planning and Zoning Commission. (Manes pre-filed testimony; Winter pre-filed testimony) "From a land use perspective, both of the sites do not meet Kent's current zoning regulations." (Winter Tr. 9/3/20, p. 491; Winter pre-filed testimony) For example, Site A and Site B fail to meet, among other things, the following:

Town Requirements	Site A	Site B
Minimum Lot Size = 3 acres	Lot size: Approximately 2 acres	
Set Back Distance from Property Lines Site A = 185 feet; Site B = 210 feet	63 feet from nearest lot line	84 feet from nearest lot line
Unmanned equipment and/or storage buildings (maximum 750 sq ft)	1,200 square feet	960 square feet
Preference that the tower location has the least long-range visual effect	Site is within the Horizon- line Conservation District ⁷	Site is within the Horizon- line Conservation District ⁸
Planting or screening plan	None proposed	None proposed
Encroachment to adjacent property		Seems to encroach on the adjoining property
Does either Site A or Site B meet the Plan of Conservation and Development?	No	No

(Winter Tr. 9/3/20, pp. 516-521; Winter pre-filed testimony)

II. Proposed Tower

The Applicants propose to build, operate and maintain a 150.0 foot tall AGL free-standing tower on the property located at Kent Tax Assessor ID #M10, Block 22, Lot 38 Bald Hill Road, Kent, Connecticut (“Site A”). (Application V.A, Attachment 3) According to the FAA 1-A Survey Certification, the tower on Site A would be situated on a ground elevation of 1,300.0 feet AMSL or approximately 1,450.0 feet AMSL to the top of the tower. (Application V.A, Attachment 3) The Applicants submitted an alternative location for the tower at a location identified as 93 Richards Road, Kent, Connecticut (“Site B”). (Application V.B, Attachment 5) According to the FAA 1-A Survey Certification, the tower on Site B would be 154.0 feet AGL to the top of the tower, situated on a ground elevation of 1,345.5 feet AMSL or approximately 1,499.5 feet AMSL to the top of the tower. (Application V.B, Attachment 5)

⁷ The purpose and intent of the Horizon-line Conservation District Regulations are to provide specific goals of the district to include the preservation of scenic views and vistas that are critically important to the rural landscape and character of the Town of Kent. (Winter Tr. 9/3/20, p. 518)

⁸ Site B will be seen from several roads, as well as from portions of the Appalachian Trail, Macedonia State Park, Lake Waramaug, portions of Spectacle Lake, and all of South Spectacle Lake. (Winter Tr. 9/3/20, p. 518; Winter pre-filed testimony)

The drawings for Site A are not signed by a professional engineer licensed in the State of Connecticut. (Application V.A, Attachment 3) The drawings for Site B also are not signed by a professional engineer licensed in the State of Connecticut. (Application V.B, Attachment 5) The Applicants testified that they would submit signed drawings for Site A and Site B. (Burns Tr. 8/11/20, p. 268) No signed drawings were submitted and are thereby unverified as to correctness or compliance with federal, state and regulatory standards from a professional engineering perspective. (Application)

The drawings for Site A and Site B show a free-standing monopole with AT&T's antennas at the 150.0 foot centerline (9 antennas, each antenna 8.0 feet in length) extending up to 154.0 feet AGL. The drawings also show (i) three omni-stick antennas approximately 20.0 feet in length, identified as municipal antennas that extend to approximately 170.0 feet AGL; (ii) a microwave antenna at 156.0 feet AGL, identified as a municipal microwave antenna; (iii) three omni-stick antennas at 120.0 feet AGL, identified as municipal antennas; and (iv) approximately 30 feet of space between 116.0 feet AGL and 146.0 feet AGL reserved for three future tenants. (Application V.A, Attachment 3; Application V.B, Attachment 5) The Application does not contain a structural analysis from a professional engineer certifying that the proposed tower at Site A (as identified on the FAA 1-A Certification) or Site B (as identified on the FAA 1-A Certification) is structurally capable of supporting itself and the proposed equipment under applicable federal, state and regulatory standards. (Application)

The Applicants' tower will only have one tenant (AT&T) should it be granted authorization by the Siting Council. (Application) The Town has no plan to install any equipment on Site A or Site B. (Speck Tr. 9/3/20, p. 485) T-Mobile (successor-in-interest to Sprint and T-Mobile following the close of merger on April 1, 2020) indicated it does not intend to install any equipment

on Site A or Site B. (Docket Filing, Telecom Carrier Response, 7/16/20) Verizon submitted a letter claiming it could locate on the tower at 121.0 feet AGL. (Docket Filing, Verizon Carrier Response, 8/25/20) Verizon is not a party/Intervenor to Docket 488. (Chiocchio/Rosemark/Silvestri Tr. 8/11/20, pp. 255-256) Homeland Towers has been marketing the Kent project to wireless carriers since 2012. (Vergati Tr. 8/11/20, pp. 272)

A tower requires commercial power and connectivity (fiber/landline) back to the wireless carrier's network in order to operate. (Application, Attachment 1, Sec. 3; Lavin Tr. 8/11/20, pp. 235-236; Maxson Tr. 8/11/20, pp. 351-352) The Applicants identified commercial power to Site A and Site B from Eversource utility poles and connectivity to its network from Frontier. (Application V.A, Attachment 4; Application V.B, Attachment 6) The telephone service in Kent is provided over the same utility poles as power. (Application V.A, Attachment 4; Application V.B, Attachment 6; Maxson Tr. 8/11/20, pp. 351-352) Fiber is predominantly used by the wireless carriers, including AT&T, for network connectivity. (Lavin Tr. 8/11/20, pp. 235-236) Fiber was identified on the Eversource utility poles along Route 341 and adjacent roadways. (Maxson Tr. 9/22/20, pp. 599, 606-607; Vergati Tr. 8/11/20, pp. 208-209) A generator at Site A or Site B is not a fail-safe to address connectivity (fiber/landline) in the event of an outage (Lavin Tr. 8/11/20, p. 236) The Applicants conceded that their proposed tower would fail to connect to mobile devices in the field or to either the AT&T network or FirstNet network, should the connectivity (fiber/landline) be damaged or cut off from the tower. (Lavin Tr. 8/11/20, p. 260-261) Small cells, as opposed to a tower, could continue operating with cell phones, wireless devices, FirstNet equipment and the network in the event of a loss of power or break of communication lines along the utility poles as shown by the small cells deployed in Chilmark. (Maxson Tr. 8/11/20, pp. 365, 294, PDA Late Filed Exhibits)

III. Coverage Area

Homeland Towers claims that it developed a search ring for the central portion of the Town of Kent to address AT&T's coverage gap. (Application IV.A) During the parties/Intervenors' cross examination of the Applicants, no member of the Applicants' panel of witnesses had knowledge of the search ring or the date it was created. (Vergati Tr. 8/11/20, pp. 271-272) The parties/Intervenors were denied the ability to cross examine the Applicants with regard to the search ring. (Rosemark motion to strike, joined by Ainsworth and DiPentima and ruling by Silvesteri Tr. 9/22/20, pp. 673-682)

C Squared Systems, LLC ("C Squared Systems") was retained by AT&T to evaluate a proposed wireless facility at Site A and Site B. (Application, Attachment 1). According to C Squared Systems, the deficient area of coverage or "targeted area" exists along Segar Mountain Road (Route 341), Richards Road and the neighboring residential and business/retail areas in Kent. (Application, Attachment 1, Sec. 3 for Site A and Site B) There are no businesses, retail areas or schools in the area along Segar Mountain Road or Richards Road within the "targeted area" with the exception of a contractor or two. (Speck Tr. 9/3/20, p. 513)

C Squared Systems testified that the proposed interim tower at Site A or Site B will not provide complete coverage to the targeted area. (Application, Attachment 1, Sec. 4 for Site A and Sec. 6 for Site B) As C Squared Systems admitted, neither Site A nor Site B would completely meet AT&T's coverage objective, and more tower sites will be needed to provide coverage to the area. (Lavin Tr. 7/23/20, p. 122) C Squared Systems could not provide an accurate number of additional sites needed for the area or a time frame within which the future sites would be released by AT&T (Lavin Tr. 07/23/20, pp. 68-69), leaving the area with non-contiguous (i.e., spotty) coverage.

AT&T claimed that it was restrained from locating its equipment lower on the tower or

having a lower tower built because of municipal requirements for a microwave antenna at approximately 125.0 feet AGL at either Site A or Site B. (Lavin Tr. 7/23/20, pp. 63-65) Homeland Towers testified that the microwave antenna on Site A or Site B would connect back to microwave antennas situated on towers located outside of Kent. (Vergati Tr. 8/11/20, pp. 237-238) No microwave path analysis was submitted by AT&T or Homeland Towers as part of the Application. (Application) The Town testified that it does not have any plan to install microwave antennas at Site A or Site B (Speck Tr. 9/3/20, p. 491). Furthermore, Intervenor PDA's consultant, Isotrope, performed a study of the microwave paths that contradicted the testimony of the Applicants. (PDA Late-filed Exhibits D, E and F; Maxson Tr. 9/22/20, pp. 610-613) Isotrope's analysis determined that a microwave path from either Site A or Site B could be established at a height of approximately 80.0 feet AGL. (PDA Late-filed Exhibits D, E and F; Maxson Tr. 9/22/20, pp. 610-613)

The radio frequencies that AT&T intends to deploy in Kent are primarily based on AT&T's 700 MHz LTE spectrum. (Application, Attachment 1; Lavin Tr. 7/23/20, p. 120) AT&T is also planning to integrate the 700 MHz spectrum for FirstNet. (Application, Attachment 1) Small cells, like a tower, can operate at the 700 MHz spectrum for both AT&T and FirstNet. (Lavin Tr. 8/11/20, p. 226) The AT&T and FirstNet 700 MHz spectrum has much better propagation characteristics than any of the other spectrum bands held by AT&T. (Lavin Tr. 7/23/20, p. 120; Stebbins Tr. 8/11/20, p. 255; Maxson Tr. 8/11/20, pp. 367-368) The propagation characteristics include the ability to travel over a longer distance, penetrate dense foliage and go around hills, rocks and ledges. (Maxson Tr. 8/11/20, pp. 367-368) Should small cells be deployed to the targeted area, the 700 MHz spectrum would be very robust at 30 feet to 50 feet AGL. (PDA Exhibit Isotrope Report 7-16-20, Fig. 3; Maxson Tr. 8/11/20, pp. 370-371) These unique 700 MHz propagation characteristics would essentially provide contiguous coverage between each small cell and well

into the surrounding areas, depending on the field engineering design. (Maxson, Isotrope Report 7-16-20 at pp. 9 - 10) Moreover, small cells deployed in the targeted area would have increased wireless coverage to first responders using FirstNet ruggedized handsets, tablets and computers, because some of the FirstNet devices operate at higher power than devices made available to the general public.⁹ (Stebbins Tr. 8/11/20, p. 258; Maxson Tr. 8/11/20, pp. 371-373) According to Maxson, 700 MHz essentially doubles the coverage footprint for in-vehicle portable connectivity from usual coverage footprints, and that coverage distance would be further increased if a first responder was using a FirstNet device with higher power.¹⁰ (Maxson Tr. 8/22/20, pp. 371-376)

IV. Use of Alternative Technology

A small cell is currently installed in Kent on an Eversource utility pole on Route 341. (Application, Attachment 2; Speck Tr. 9/3/20, pp. 513-514) The small cell “[has] been completely unremarkable. . . . [W]e haven’t had any complaint or any remark about it [small cell] in the office.” (Speck Tr. 9/3/20, p. 514) AT&T, as the sole tenant on the tower proposed by Homeland Towers, acknowledged it did not perform any analysis on the potential use of small cells in Kent. (Lavin Tr. 8/11/20, p. 266) AT&T claimed there were difficulties with utility pole sites. (Lavin Tr. 8/11/20, p. 266) Yet AT&T has deployed hundreds of small cells on Eversource utility poles (and utility poles owned by others) throughout the state of Connecticut (Applicants’ Administrative Notice PURA Docket No. 18-06-13) and in other locations, such as Nantucket and Chilmark, Massachusetts. (Maxson Tr. 8/11/20, p. 357; PDA Late Filed Exhibit at Ex. G, Isotrope, III B 9) In its filings, AT&T acknowledges that small cells cause substantially less impact to the

⁹ “Primarily, the first responders do buy the ruggedized [devices] because of what they do.” (Stebbins Tr. 8/11/20, p. 258)

¹⁰ “About a year ago, FirstNet began to promote the development of devices that would operate at about six times the power of a standard cell phone ensuring that people using that equipment could reach a cell site that a normal cell phone couldn’t reach.” (Maxson Tr. 8/11/20, p. 372)

environment.¹¹ (Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11)

The Applicants can expect expedited review of any small cell application, whether with PURA or the Siting Council, due in part to the recent passage of Public Act 19-163 (Administrative Notice Public Act 19-163) The statute, in pertinent part:

- adopts the definition of “Small Wireless Facilities” as provided in 47 CFR 1.6002, as amended;
- mandates, among other things, that the Department of Transportation make highways and Department of Transportation public rights-of-way available for the placement, construction, maintenance and operation of small wireless facilities in accordance with any applicable FCC regulations, rulings or orders; and
- provides that the Office of Policy Management, in consultation with the Public Utilities Regulatory Authority, the Office of Consumer Counsel, the State Broadband Office and the Connecticut Siting Council, shall work with municipalities and representatives of the wireless industry to encourage the establishment of streamlined processes for siting small wireless facilities in accordance with FCC rules regulations or orders.

(Public Act No. 19-163, Administratively Noticed)

The Applicants mistakenly posited that small cells are not authorized on Connecticut’s highways. (Applicants’ Response No. 46 to CSC Pre-Hearing Interrogatories Set Two) To the contrary, Public Act 19-163 expressly authorizes the use of small cells on state roads. The small cells deployed by AT&T fall within the definition of “Small Wireless Facilities” and would be subject to expedited review mandated by law. (Applicants’ Administrative Notice PURA Docket No. 18-06-13; Kent Administrative Notice No. 6 PURA Docket No. 20-01-06; Kent Administrative Notice No. 7 PURA Docket No. 20-02-11; CSC Petition No. 1409, No. 1413 and

¹¹*Petition for Declaratory Ruling: Installation Having No Substantial Adverse Environmental Effect* wherein AT&T identified a need for additional coverage and/or capacity relief in its network and proposed a small cell facility within an area characterized by above-ground utility poles which support utility infrastructure. In that petition AT&T contends that (i) its installation will not require tree removal and involves minimal disturbance, and (ii) the proposed pole and AT&T’s small cell facility would not result in significant visual impact to the area. (Petition No. 1409; see also Petition No. 1413 and Petition No. 1432)

No. 1432; Maxson Tr. 8/11/20, pp. 293-294)

Small cells are deployed in urban and rural areas as acknowledged by AT&T. (Kent Administrative Notice No. 4, ThinkSmallCell: AT&T case studies of outdoor small cells in the suburbs; PDA Late Filed Exhibits; Isotrope Report 7-16-20 Ex. G on Chilmark) As modeled by Isotrope, a series of seven small cells would provide more contiguous coverage to the targeted area (including the dangerous curve along Route 341 where accidents are known to occur) than a tower at Site A or Site B. (Maxson Tr. 8/11/20, pp. 373-377; PDA pre-filed testimony of Maxson, Isotrope Report, Figure 3; PDA Late Filing Ex. D, E and F) The targeted area is comprised of sparsely located homes along Route 341, Bald Hill Road and Richards Road. (Speck Tr. 9/3/20, p. 513) The installation of small cells along Route 341 and the related roadways would have little to no impact on residences in Kent, as opposed to small cells deployed in a more densely populated environment where the small cell equipment is directly outside of a residence. (Speck Tr. 9/3/20, pp. 512-513; Kent Administrative Notice No. 1, CSC Docket No. 467; Kent Administrative Notice No. 6, PURA Docket No. 20-01-06; Kent Administrative Notice No. 7, PURA Docket No. 20-02-11)

The coverage propagation from the small cells modeled by Isotrope at 700 MHz for AT&T and FirstNet also shows uninterrupted hand-offs between each of the small cells. (Maxson Tr. 8/11/20, pp. 370-371; PDA pre-filed testimony of Maxson, Isotrope Report, Figure 3) AT&T acknowledged that a hand-off between sites is essential to reliable coverage (Application, Attachment 1, Sec. 3) Small cells deployed along Route 341 will fill in the coverage targeted area between Kent and Warren with substantially less visible impact than the tower proposed at either Site A or Site B. (Maxon Tr. 8/11/20, p. 352; Administrative Notice Public Act 19-163; PDA pre-filed testimony of Maxson, Isotrope Report) Small cells as modeled by Isotrope would eliminate

the need for a second tower between Kent and Warren, as testified by the Applicants. (Lavin Tr. 8/11/20 pp. 264-265; Maxson Tr. 9/22/20, p. 616; PDA pre-filed testimony of Maxson, Isotrope Report)

The Town of Kent supports a balance of technology and aesthetics, and strongly encourages the Siting Council to consider the implementation of a small cell solution as a viable alternative or a practical solution. (Speck Tr. 9/3/20, p. 502) Small cells can utilize back-up power sources mounted to the utility pole, on the ground or deployed as needed. (Maxson Tr. 8/11/20, pp. 365-366) The Isotrope design of seven small cells deployed over Route 341, Richards Road and adjacent roadways provides a more robust back-up alternative than a single tower structure at Site A or Site B in the event of loss of connectivity due to a downed communication line. (Maxson Tr. 8/11/20, p. 365)

STANDARD FOR ISSUANCE OF CERTIFICATE

General Statutes § 16-50p(3) sets forth the standards which the Siting Council must consider in determining whether to issue a Certificate for a cell tower project. As it provides, 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 ... (iii) public health and safety, scenic, historic and recreational values ... [and] (C) why the adverse effects or conflicts referred to in subparagraph (3) of this subdivision are not sufficient reason to deny the application” C.G.S. § 16-50p(3)(A) through (C).

In addition to these factors, C.G.S. § 16-50p(b)(1) requires the Siting Council, in every application for a cell tower project, to examine, among other things, “(C) 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 be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance, and (D) the latest facility design options intended to minimize aesthetic and environmental impacts.” The Siting Council may deny an application “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.” C.G.S. § 16-50p(b)(1)(iii).

Finally, under C.G.S. § 22a-19, the Council may not approve the Certificate if the project “does or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or natural resources of the state [and] considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with reasonable requirements of public health, safety and welfare.” R. Fuller, *Connecticut Land Use Law & Practice* § 32:6, p. 206 (2007 ed.), citing § 22a-19(b). Given the substantial evidence demonstrating the proposed towers’ unreasonable impact on the scenic vistas in this relatively undisturbed corner of the state, and the importance which federal, state and local authorities place on preserving those scenic attributes, the burden is on the Applicants to demonstrate that, “considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the ... conduct and that such conduct is consistent with the reasonable requirements of the public health, safety and welfare.” C.G.S. § 22a-17; see City of Waterbury v. Town of Washington, 260 Conn. 506, 549-51 (2002).

I. THE APPLICANTS HAVE NOT SHOWN THAT A TOWER SATISFIES THE PUBLIC NEED STANDARD

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). The record reflects significant evidence that the Application fails to provide the essential facts and data necessary for the Siting Council to determine the Application’s completeness. The defects in the Application are many and include, without limitation, the following:

- failure to consider small cells as a viable alternative to the tower (or towers) necessary to provide the coverage to the area;
- the incorrect assumption that small cells cannot be located on Connecticut’s highways;
- incorrect statement that the Town will be a tenant occupying the proposed tower and installing a generator on-site;
- incorrect statement that AT&T cannot locate at a lower height because the Town needs a minimum height of 125.0 feet AGL to operate its microwave dish;
- the acknowledgement that the proposed site will not fully satisfy the targeted area, requiring more sites in the area of Kent; and
- the difference in representations in AT&T’s own coverage maps showing contiguous coverage on AT&T’s website and the coverage maps submitted to the Siting Council.¹²

Basic and fundamental data and requirements are missing from this Application, making it difficult to impossible for the Siting Council to glean from the record a basis to approve the Application for a tower at either location. Compare Fairwindct, Inc. v. Connecticut Siting Council, 313 Conn. 669, 694-95 (2014), with Finley v. Inland Wetlands Comm’n, 289 Conn. 12, 41-43 (2008)

¹² Mr. Edelson: “Much to my surprise, it [AT&T website] showed that there was full coverage by AT&T for all users in the Town of Kent. Can you help me reconcile the maps that were in our -- or your submission with regard to coverage gaps and what’s on AT&T’s web site with regard to what customers can expect in the Town of Kent?” Mr. Lavin: “Mainly there is a rather extensive legal disclaimer on those maps on the web site.” Mr. Edelson: “Well, that is a little distressing because it does raise concerns about what AT&T is putting out there for its customers.” (Edelson/Lavin Tr. 8/11/20, pp. 214-216)

(improper to approve permit in absence of an existing plan in record showing compliance with pertinent regulations).

Based on the Applicants' inability to carry their burden of showing that the deficiency in coverage will be filled with the least intrusive means possible, the preponderance of the expert testimony that small cells not only meet, but exceed, the coverage of either of the proposed tower locations, the testimony of the witnesses regarding the substantial adverse impact of a tower to the Town, and the lack of witness support for the positions taken by the Applicants, it is clear that a tower at either location fails to meet the requisites of C.G.S. Section 16-50p and must therefore be denied.

II. THERE ARE EXISTING STRUCTURES AND OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY

The record contains compelling evidence that small cells are currently being used by AT&T and other wireless carriers on existing structures for providing reliable wireless service to communities throughout the state of Connecticut. Small cells present an option that is comparable, if not better, in terms of cost (Maxson Tr. 8/11/20, pp. 310-311), predictable and uniform rent for attachment to the utility poles, and availability of commercial power and network connectivity. (Maxson Tr. 8/11/20, pp. 310-311; Maxson Tr. 9/22/20, p. 607) Initiatives such as the AT&T partnership promoted by Governor Lamont, and AT&T's use of small cells for such critical projects, show that AT&T is capable of deploying and building out small cells in the state of Connecticut for its use and the support of its FirstNet contract requirements. (Kent Administrative Notice No. 3, Connecticut Governor Ned Lamont Press Release of Public/Private Partnership with AT&T to Enhance Service on New Haven Line with small cell nodes and related equipment) In sum, the parties/Intervenors presented credible evidence to rebut the Applicants' argument that there are no viable alternative sites.

III. THE PROPOSED TOWER FACILITY WILL CAUSE 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 tower 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 centers and facility design.

The testimony presented by the parties/Intervenors compels a finding by the Siting Council that the area from which the towers will be visible is “relatively undisturbed ... and possesses scenic quality of local, regional or state-wide significance,” and that the proposed towers “would substantially affect the scenic quality of its location or surrounding neighborhood.” See C.G.S. § 16-50p(b)(1)(iii). The demonstrated substantial impact of a tower at either Site A or Site B contravenes the policies and initiatives of the Kent Planning and Zoning Commission and the Kent Conservation Commission. Numerous associations and trusts as well as the town of Warren have presented testimony or letters advising of the substantial negative impact the towers would have on the community, the natural environment, and scenic, historic and recreational values, trails and lakes and ponds in the area of Kent and Warren. (Manes Tr. 9/22/20, pp. 648-651. “Our duty within the town [is] to mitigate the scenic impact and the impact to the rural character of our town if telecommunications structures are needed . . . and that either a tower at Site A or Site B would not meet the goals of the POCD.” (Manes Tr. 9/22/20, p. 651) “It seems to me that the small cell technology would be one way to mitigate impact of . . . telecommunications structures. It seems to me if it’s true that the height of those facilities would make them less disruptive of the scenic and rural character that . . . could be a mitigating factor.” (Manes Tr. 9/22/20, p. 654)

The Town respectfully submits that the adverse impacts associated with the proposed tower will cause significant environmental effects on the resources listed in C.G.S. Section 16-50p as well as in C.G.S. § 22a-19, and clearly outweigh the need for a tower as proposed in this Docket, especially given the testimony and evidence of small cells as a viable and preferred alternative.

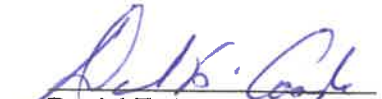
CONCLUSION

Throughout the hearing, the Applicants attacked the testimony by Isotrope (Maxson) on the viability of a small cell alternative by pointing out that parties/Intervenors had not performed a full-scale engineering analysis of the application of small cell technology to the targeted area. To the contrary, it was not the parties'/Intervenors' burden to engineer AT&T's project.¹³ Due to the undisputed adverse impact of the tower at either proposed location on the scenic and rural character of Kent, the burden was on the Applicants to demonstrate that there is no feasible alternative to the proposal. On these unique facts, the Siting Council should deny the Application and direct AT&T, in any resubmission, to conduct a robust analysis of small cells as a way to meet the coverage needs while at the same time preserving the critical scenic and rural nature of Kent.

The parties/Intervenors have demonstrated that the feasible alternative of small cells will provide greater coverage than proposed by the Applicants, thereby compelling the Siting Council's finding that "no public safety concerns require that the proposed facility be constructed" in the locations preferred by the Applicants. Accordingly, pursuant to C.G.S. § 16-50p(b)(1)(iii), the Siting Council can and should deny the Application.

¹³ "Ultimately, it is PDA's obligation to provide more technical information from Isotrope if they are asking the Council to consider their arguments by counsel for lower tower heights or small cell alternatives substantively in this proceeding." (Applicants' Response No. 46 to CSC Pre-Hearing Interrogatories Set Two)

Respectfully Submitted,


Daniel E. Casagrande, Esq.
Cramer and Anderson, LLP
30 Main Street, Suite 204
Danbury, CT 06810
(203) 744-1234


Daniel S. Rosemark, Esq.
Rosemark Law, LLC
100 Mill Plain Road, 3rd Floor
Danbury, CT 06811
(203) 797-8100

CERTIFICATE OF SERVICE

This is to certify that, on the 22nd day of October, 2020, a copy of the foregoing was sent electronically and via first-class United States mail, postage prepaid, to the following counsel and pro se parties of record:

(1 Original, plus 1 Electronic Copy):

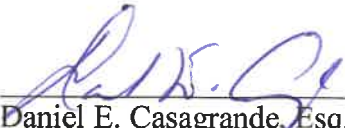
Ms. Melanie Bachman, Esq.
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051
Siting.Council@ct.gov

Electronic copies to:

Homeland Tower/AT&T
c/o Lucia Ciocchio, Esq.
Cuddy & Feder, LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
lchiocchio@cuddyfeder.com

Michael D. Rybak, Jr., Esq.
Guion, Stevens & Rybak, LLP
93 West Street
P.O. Box 338
Litchfield, CT 06759
mdrjr@litchlaw.com
afd@litchlaw.com

Keith R. Ainsworth, Esq.
Law Offices of Keith R. Ainsworth, Esq.
51 Elm Street, Suite 201
New Haven, CT 06510-2049
keithrainsworth@live.com



Daniel E. Casagrande, Esq.