

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 16 COOTE HILL ROAD, TOWN OF SHERMAN, CONNECTICUT

Docket No. 499

July 24, 2021

INTERVENOR'S POST HEARING BRIEF AND PROPOSED FINDINGS OF FACT

Respectfully Submitted,

*Stan Greenbaum*

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## PRELIMINARY STATEMENT

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless PCS LLC d/b/a AT&T (AT&T)(together, the “Applicants”) in Docket #499 have resorted to an obfuscation of facts in their application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket #499. Their assertion that this Application addresses over a decade of efforts by numerous parties to meet the long standing public need for a new tower facility in the southern portion of Sherman is belied by the fact that in 2014 AT&T, by their own admission in this proceeding, that they placed their efforts “to meet the long standing public need for a new tower facility in the southern portion of Sherman” on their deferred action list. When asked about this deferred action, they stated that “it was a business decision.”

Stan Greenbaum (“Intervenor”) first became aware of the search for a cell tower facility site in southern Sherman in 2013 when AT&T submitted its preliminary proposal for a site at 16 Coote Hill Road. A neighbor on Peace Pipe Lane, where Mr. Greenbaum resides, asked if he was bothered about the location due to its proximity to his home. Mr. Greenbaum was not bothered by the visual impact from his home because his home is surrounded by a tree canopy to the south comprised of 100’ – 110’ oak, maple and ash trees that would block a view of the tower, even in the winter months. Mr. Greenbaum went to Mallory Town Hall and obtained a copy of the proposal. In reading the proposal, he made two pertinent observations. The first was that the visual impact study, particularly for properties on the west side of Lake Mauweehoo and parts of Cozier Hill Road, would be significant and was not adequately represented by AT&T’s Visual Impact Study. Mr. Greenbaum purchased three 5’ diameter weather balloons and a tank of helium. On July 26, 2013, with the assistance of two neighbors, and permission of a property owner whose driveway comes within 400’ of the proposed site and at the same elevation as 16 Coote Hill Road, they floated the balloons at 25’ intervals starting at the proposed tower height of 170’. The photos of that balloon float have been submitted to the Siting Council. All three balloons were clearly visible above the tree canopy with a gap to the canopy equal to at least one additional balloon interval. This indicated that approximately 70’ of the tower could be seen all year from that vantage point. This was not at all evident in the Visual Impact Study. The purpose for using three balloons spaced 25’ apart was to enable the observer to have a visual measurement reference point. A single balloon does not give you a measurable reference point.

With this information in hand, Mr. Greenbaum and other residents of southern Sherman prevailed upon the Town of Sherman to invest in a Cellular Communications Study that had already been recommended by the town Public Safety Communications Committee pursuant to an earlier study on emergency services and public works communications that was done in 2012 by RCC Consultants and presented to the Board of Selectmen in January of 2013 (Intervenor’s Exhibits 1, 2 and 3). The Town of Sherman contracted with RCC Consultants for the Cellular Communications Study as well.

Mr. Greenbaum, a Board Member of the Naromi Land Trust at that time, also noted that one of the properties that had not responded to AT&T's quest for a suitable site (26 Wagon Wheel Road) had recently been purchased by the Naromi Land Trust in a bankruptcy auction. In their Cell Phone Coverage Analysis, RCC Consultants identified that property as having a coverage area of 30.85% of the town with a 100' tower. The Coote Hill Site at 170' only covered 17.80% of the town area. At 120', the Coote Hill Site covered 13.91% of the town area, a decrease of only 3.89%. Mr. Greenbaum followed up on this study by doing a balloon float on this property as well, using the same methodology, three 5' diameter helium filled weather balloons spaced 25' apart. Though the target height was only 100', the balloons had to be floated to 120' to get the uppermost balloon above the tree canopy. The upper balloon was just visible above the canopy but only from the eastern end of Leach Hollow Road and for a short distance south of Leach Hollow Road on Route 39. The lower balloons were burst by tree branches shortly after they were launched.

AT&T was sufficiently interested in this site, that it sent a team of three people to meet with several members of the Board at the site. 26 Wagon Wheel Road was one lot of a four lot subdivision. Lots 1 and 2 had direct access to Wagon Wheel Road. Lots 3 and 4, 26 and 28 Wagon Wheel Road, were to be accessed by a road that had been approved the Sherman Planning and Zoning and Sherman Inlands and Wetlands but that would require construction to town road specifications and could not just be a driveway or access road. A section of the approved road had a slope of 20%. Ron Cooper, the Enforcement Officer for Planning and Zoning and Inlands and Wetlands, participated in these discussions as well.

As a Board member of the Naromi Land Trust, Mr. Greenbaum, in an effort to be a good neighbor, personally met with all of the neighboring property owners and did site walks with a couple of them to allay concerns about visibility. The Naromi Board was also prepared to assist in negotiating access to the property from Mauweehoo Hill Road in order to avoid the construction of the subdivision road. The subdivision road would have provided access to the acreage at 28 Wagon Wheel Road. This was not deemed desirable. However, AT&T expressed no further interest in the site and subsequently placed their efforts to find a site in southern Sherman on their deferred action list. Twenty-eight Wagon Wheel Road was donated to the Naromi Land Trust in December of 2019, without restrictions.

In this Application, the Applicants state "this parcel was reviewed by the AT&T Radio Frequency Engineer and was rejected as it did not provide adequate coverage to the intended area." Radio frequency parameters have not changed since 2013 in this geographical area. No large buildings or other obstructions have been added or removed. It begs credibility that AT&T would have invested a full day of professional time at 26 Wagon Wheel Road in 2013 if it didn't meet their radio frequency parameters.

The Applicant lacks credibility when they state that the Intervenor has acknowledged significant gaps in southern Sherman through citation of the Town's 2013, not 2014, Public Safety Committee presentations to the community. It is the Applicant who has referred to this

study for that purpose in the Executive Summary of their Application. The Intervenor has, on the contrary, demonstrated through the use of that same study, the presentation of lease agreements between the Town of New Fairfield and Verizon and T-Mobile for the Tower Hill tower in Patterson, NY executed in 2018, and a drive study done in June 2021 in southern Sherman, that cell phone reception in southern Sherman has improved dramatically since 2013. In the drive study done in June 2021 by Jennifer Prescott and Loretta Quaranto, they were able to establish connectivity on approximately 50% of roads they drove on, a significant improvement from 2013.

There is nothing respectful about the Applicant's efforts to submit an Application that misleads the Siting Council in a number of important areas. The calendar for this Application has been adhered to and the Intervenor appreciates the extent to which the Siting Council has been helpful to the Intervenor who has no prior experience with this process.

Furthermore, the Intervenor was, initially, fully prepared to assist the Applicant in developing a cell tower location on Mauweehoo Hill (26 and 28 Wagon Wheel Road) with the Northwest Connecticut Land Conservancy (NCLC), a site identified in the 2013 RCC Communications Study as being significantly superior to 16 Coote Hill Road. This was precluded by the Applicant's finding that this site was now "rejected (by the AT&T Radio Frequency Engineer) as it did not provide adequate coverage to the intended area." To that end and to identify other more suitable sites, the Intervenor retained the same Radio Frequency Engineer that did the work for RCC Consultants in 2012 and 2013.

The NCLC is a quasi-public non-profit organization dedicated to the preservation of land in northwestern Connecticut. They have many small contributors in southern Sherman who may or may not have been able to influence the organization when considering that NCLC owns a site just to the north of the Coote Hill Road site that is not as environmentally challenged and that would have a public benefit."

In the opinion of the Intervenor, the Sherman Inlands and Wetlands Commission, the Northwest Connecticut Land Conservancy and the Sherman Planning and Zoning Commission, the Applicants' professionals failed to demonstrate through detailed competent testimony and field studies that the tower facility at the Proposed Site does not present significant adverse environmental impacts on all federal and state resources identified in the Council's enabling legislation. The Applicants claim that "any potential environmental effects can be fully mitigated." However, much of the claimed mitigation planning is deferred to a post-approval "Development and Management (DM) plan." The Intervenor contends that the Application, as presented, has environmental effects that cannot be ignored and that do not outweigh the public need for a tower in this location to provide reliable wireless service in this part of Connecticut and that in order for this tower to meet the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes ("C.G.S.") the plan would require significant modification, to wit, a reduction in height to 120' resulting in a loss of propagation area of 3.8% and a re-location on the subject property such that it is not necessary to cross the wetland area.

## PROPOSED FINDINGS OF FACT

### **Conclusions resulting from Radio Coverage Analysis of Proposed Coote Hill Road Tower Site:**

Allegiant Wireless (“Allegiant”) has analyzed alternatives to the 170’ tower proposed for construction at 16 Coote Hill Road to improve cellular coverage in Southern Sherman. Their analysis has included the following major considerations:

- Analysis of various elements included in the proposed Homeland Towers’ application before the Connecticut Siting Council (“CSC”)
  - Analysis of alternatives to other candidate locations considered in years past.
  - Analysis of other candidate locations considered over the past several months.
  - Suitability to reduce the overall height of the proposed 170’ tower to 120’.
1. There is an assertion included in the Homeland Towers application, in Attachment 10, page 47, which is incorrect. In reference to the use of 26 Wagon Wheel Rd as prospective cell tower site, the applicant states the following: “this parcel was reviewed by the AT&T Radio Frequency Engineer and was rejected as it did not provide adequate coverage to the intended area”. The basis of this conclusion is not given, as engineering studies have shown that the 26 Wagon Wheel Road site – using a 120’ tower -- covers the intended area almost 10% better than does the proposed Coote Hill Road tower site using a 170’ tower at the target -83 dBm signal strength. 26 Wagon Wheel Rd covers 16.29% of the intended area using 50’ of lower tower height, than does Coote Hill Road, which covers 14.74% of the area. Unless it is the intent of AT&T RF Engineers to cover less area, the basis for rejecting 26 Wagon Wheel Road as a suitable alternative using 50’ lower antenna height has no merit.
  2. The applicant identifies the “Coverage Area” in Attachment 1, Section 3 of the application as follows: “There is a significant coverage deficiency in the existing AT&T wireless communications network along State Route 37 and State Route 39 and the neighboring residential and business/retail areas in Sherman, referred to herein as the "targeted area". It is alleged that by constructing a 170’ tower at 16 Coote Hill Rd., AT&T will provide coverage to the “targeted area”. Included in Attachment 1 is a propagation study -- Attachment 4: CT1341 Existing 700 MHz LTE Coverage with Proposed Site for the AT&T Network. This propagation study clearly shows key residential neighborhoods, such as Deer Run Shores, Orchard Rest, much of Leach Hollow and Timber Lake. Although some of these areas are very difficult to provide cellular coverage, we show that use of the recommended alternative site on Wanzer Mountain does provide cellular radio coverage to these important

residential areas, even using the high AT&T target signal strength of -83 dBm, while using a lower tower height than proposed at the Coote Hill Road site. In addition, in the Application, the target coverage areas for AT&T were generally described as the southern portions of Routes 37 and 39. In the coverage map provided in response to the Intervenor's interrogatory, the maps show that both Routes 37 and 39 are covered by 120' tower as well as a 170' tower.

3. In an effort to provide accurate propagation simulation analysis showing the impact of site and height alternatives, the Applicant was requested to provide the Effective Radiated Power ("ERP"), in Watts or dBm, from the output of the site antenna on Coote Hill Road. In answer to our inquiry regarding ERP for the proposed Coote Hill Rd. tower, Homeland answered instead by giving the power output of a typical cellular phone. In other applications before the Citing Council – i.e. Lakeville Site in Salisbury, CT. – base station power levels were provided. It's not clear why the tower site ERP information would be withheld from us for analysis purposes. Why respond with misleading terminal ERP specifications? It is important to consider that our reason for requesting the site ERP was simply to ensure that propagation analysis predictions would depict comparable results with those included by the Applicant, both in their original application, and in subsequent interrogatory responses. The fact that the applicant responded to our requested data with misleading information raises cause for unnecessary speculation. In answer to the Intervenor's inquiry regarding ERP for the proposed Coote Hill Rd site, Homeland answered by giving the power output of a typical cellular phone. In other applications before the Siting Council – e.g., the Lakeville Site in Salisbury, CT, base station power levels were provided. Here, when asked for, they were not provided.
4. Allegiant performed propagation predictions to determine the impact in cellular coverage from Coote Hill Road, if the antenna heights were lowered from 170' to 120'. Our findings showed that a 50' reduction in tower height would result in only a 3.5% reduction in cellular coverage area. To mitigate the adverse impact on the residents of the area by considering a lower tower height, the Applicant repeatedly asserted that the 170' was necessary, but never explained what coverage areas would be lost if the tower height was reduced. What is more dubious is that the Applicant didn't seem to have a problem moving their tower site to a ground elevation which was 20' lower height above mean sea level ("AMSL") to protect the habitation of the slimy salamander. However, repeated requests to lower the tower height in consideration of the impact to the human residents of Southern Sherman were refused.
5. Perhaps the most compelling conclusion of our analysis is that the Applicant refused to consider development of a better tower site providing better cellular coverage –

on Wanzer Mountain -- than the Coote Hill Road site. Wanzer Mountain is less than 1600' south of Coote Hill Road, and 270' higher in AMSL! Propagation predictions performed from Wanzer Mountain – using a 120' tower -- showed cellular coverage would outperform the Coote Hill Rd. site – using a 170' tower; and provide coverage to the important residential communities including most of Deer Run Shores, Orchard Rest, much of Leach Hollow and Timber Lake. Why would the Applicant not consider use of a better site, that is higher in elevation, and have far less adverse effect on the residents of Sherman?

In conclusion, Allegiant's analysis provided engineering data which answered two critical questions posed before the Applicant:

1. Can the proposed Coote Hill Road tower height be reduced from 170' to 120' without significant adverse effect to the targeted coverage area? The answer is "Yes", with only 3.5% reduction in area covered, thereby mitigating the adverse impact to the residents in Southern Sherman.
2. Is there a better alternative site to Coote Hill Road that provides equal or better cellular coverage without as much adverse impact to the residents of South Sherman? The answer is "Yes", by relocating the site to the higher elevated Wanzer Mountain site where there is far less adverse impact to the residents. One further important note to this analysis is consideration of the impact to Sherman public safety communications. It is Allegiant's conclusion, that Sherman public-safety communications would best be served by a tower constructed on Wanzer Mountain, as opposed to Coote Hill Road.

The Intervenor acknowledges that the 2013 Cellular Communications study was done at -107 dBm. The Applicants' target is -83 dBm. The current analysis was done with that parameter. However, in discussing their coverage area, the Applicants flip flop regarding just how much of Sherman they are covering. The above analysis is for a target signal of -83 dBm.

Richard Touroonjian is the radio frequency engineer employed by the Intervenor. He is the same radio frequency engineer that was employed by the Town of Sherman in 2012 and 2013 to do the studies presented as exhibits. Mr. Touroonjian was listed as a witness and was available for questioning at the June 24<sup>th</sup>, 2021 Evidentiary Hearing. The Applicants' comments reflect their failure to address their concerns about the evidence presented by Mr. Touroonjian at the appropriate time.

The Applicants have obfuscated their Application by

1. failing to provide accurate coverage analysis for 26 Wagon Wheel Road; for

2. failing to include the New Fairfield owned tower on Tower Hill in Patterson, NY though it is within 4 miles of the Coote Hill Site. When questioned about it, they first mentioned the other tower in Patterson, NY before acknowledging the one on Tower Hill though both Verizon and T-Mobile have leased space on the tower in the past three years; for
3. failing to acknowledge that the Wanzer Mountain site brought to the attention of the Siting Council is not the same location identified by Mr. Vergati. The site identified by Allegiant Wireless is at an elevation more than 200' higher, is accessed from a different road, and would only have to be 120' in height to cover significantly more of southern Sherman than the proposed location. The Intervenor has walked that property with Mr. Pascarella and identified a potential access road path though, while longer, does not appear to cross any water courses or wetlands or have steep slopes.

The Aquarian water tank is not proposed as an alternative to Coote Hill for a wireless tower. However, the Sherman Volunteer Fire Department found it to be a satisfactory location for their equipment and for the Sherman Public Works Department. That negotiation fell through after seven months when Mr. Vergatti presented the Coote Hill cell tower as an option at no cost to the Town. The residents of Sherman have revived that negotiation and it will be the subject of a Town Meeting in the next few weeks. Mr. Pascarella has offered in writing, co-signed by his family and business partners, to permit the utility easement for \$1.00 per year over the term of the lease. The Applicant has no signed and dated agreement with the Town of Sherman to provide a location on the proposed tower for Sherman emergency services, Public Works or Litchfield County Dispatch.

Note that Mr. Vergatti's statements regarding "years wasted engaging the author of the Timber Trails letter in lease negotiations on various properties to no avail based on irrational landlord economic expectations" are completely unsupported hearsay evidence as is "the near impossible construction/access challenges at the location suggested by the Intervenor and the potential for more visibility of a tower located at the top of the mountain. 6/24/21 Tr., pgs. 203-204; 243-244." Furthermore, it was Mr. Vergatti's opinion that a tower on top of Wanzer Mountain is simply not feasible, a statement completely unsupported by facts or evidence. Mr. Vergatti demonstrated his ignorance of matters related to heavy construction when he identified an earth moving machine on the property of Peter Kuring, 5 Coote Hill Road, as a bulldozer, not an excavator (p. 74, 5/24/21 transcript), two machines that look nothing alike. In addition, it is most unlikely that you would use a bulldozer to construct an inground swimming pool, the construction site that Mr. Vergatti said that he observed. In that same statement, he mentions "crossing the bridge (Coote Hill Road) with a cement truck or asking for a bond for the bridge." The pool was a gunite pool, the materials mixed on site.

In this section of the transcript, Mr. Vergatti complains that if he were building a house he wouldn't be scrutinized to the degree that he feels he is in constructing a cell tower. In point of fact, looking at the letter written on behalf of the Sherman Planning and Zoning Commission and the Inlands and Wetlands Commission, Ron Cooper, Enforcement Officer, raises a variety of



questions that would block the construction of a house or driveway, including the location of the driveway and the cell tower. He would have the authority, with the support of the Planning and Zoning Commission, to direct the property owner to build on another part of the property or to meet far more stringent construction plans than are required for approval by the Siting Council. Time and again, the Applicants responded to questions regarding site construction by stating that the answers would be in the "D and M plan," the Development and Management plan that gets written after Siting Council approval.

At the May 25, 2021 hearing, Mr. Mercier asked Mr. Vergatti if he had an easement or access agreement for the use of Coote Hill Road in order to get to 16 Coote Hill Road. Mr. Vergatti asserted that he had an agreement with the owner of the road. He also asserted that "We did not need an agreement. We looked at the deed. We have rights like anybody else even though it is a private road. We looked at the deed. There's no restrictions that would not allow us or any of our tenants to use the road both for ingress and egress. And the letter with Mr. Jones is more or less to compensate him for our use and basically separating those stone pillars."

Mr. Jones is in the process of voiding that agreement as indicated in letters he has submitted to the Siting Council. Both stone pillars, in place for 60+ years, have been destroyed in motor vehicle collisions in the past few months. Mr. Jones was not offered compensation for the agreement, for the pillars or anything else. The funds mentioned in the agreement are for a road fund. The Applicants will only be responsible if there is negligence

The use of the road and the deeded obligations of the property owners who have a right to use the road may be a source of future litigation. At the present time, tri-axle and tandem axle trucks are not permitted on the road. Such vehicles on that road would constitute an abuse.

To be clear, Coote Hill Road doesn't meet the construction standard that the Applicants have set for their access driveway to the tower site once they are at the property. Coote Hill Road is a private driveway, 11' wide throughout most of its length. Mr. Burns, speaking for the Applicants states: "I'd like to point out, we're not constructing a road. We're constructing a 12 foot wide gravel driveway, similar to one that would be constructed -- actually probably not. At a house it may even be wider than 12 feet. So this is not a road. This is a gravel driveway (p. 49 21-06-24 Hearing Transcript)."

Coote Hill Road is a gravel driveway with a couple of roughly paved sections at the beginning and end of the driveway. Throughout most of its length, the driveway has limited or no shoulders making it not possible for two vehicles to pass, necessitating that one or the other back up onto neighboring private property. Exhibit Attachment 10, the Coote Hill traffic study done on June 15, 2021, depicts eight randomly selected locations spaced along the road that clearly show that this is a common driveway serving 9 properties with a total of 7 homes, 5 of which have driveways that come off of a small common cul d'sac at the end of the "road."

## CONCLUSION

The Intervenor agrees that there is a need for improved cellular, wireless, communication in southern Sherman. The Coote Hill location is not, in its present form, the solution to this problem. As elicited in the June 24, 2021 Evidentiary Hearing, this site does not reach several underserved areas in Sherman as the Applicants initially claimed, particularly Deer Run Shores, Orchard Rest, Timber Lake and the east end of Leach Hollow. As such, it does a relatively poor job of meeting the need for improved cellular communications in southern Sherman. It relies on the -93 dBm rather than its target strength of -83 dBm to reach a significant portion, almost half, of the people it purports to serve. Verizon and T-Mobile expanded their coverage in southern Sherman significantly in 2018 when they signed a lease with the Town of New Fairfield and placed their equipment on the Tower Hill tower, an admittedly short tower on a much higher hill. The Coote Hill site is at an AGL of 850', tower hill is at an AGL of 1330', almost 500' higher.

The Applicants have made a particularly inadequate effort to partner with other landowners as reflected in their contentious relationship with Mr. Pascarella and their inability to work with the land trust community. The Applicants presented their boiler plate formula to Mr. Pascarella, reflected in this Coote Hill application, without considering other places on his property. Their site evaluation of the surrounding land on Wanzer Mountain was particularly flawed. A tower at 120' on Wanzer Mountain at an AGL of 1150' would have minimal visual impact and much broader coverage than the Proposed Site 1600' north at an AGL of 850'. The visibility of the Proposed Site is particularly disturbing to those families that created Lake Mauweehoo in the first decade of the 1900's for its natural beauty and recreation. Many of their descendants still live on or near the lake. The Applicants moved the location of the tower site on the Subject Property to protect the slimy salamander, thereby lowering the AGL of the tower by 25'. They stated that this move had a negligible effect on their coverage area though reducing the AGL by 50' wouldn't meet their ill defined coverage requirements.

The crane tower simulation done on May 21, 2021, due to the lack of available weather balloons, found that the visibility of the tower in the summer was significantly reduced from the Route 37 area but would be very visible from November to April. It was also highly visible from Route 39 south of Leach Hollow. The tree canopy that would screen the tower has grown enough in the .5 to .7 mile radius to seasonally screen the tower, an improvement from 2013. The purportedly scientific methods utilized to do the Visual Impact Study are very flawed. It is not possible to ascertain what a pinpoint balloon in the sky signifies with respect to any reasonable measuring device unless one is put into the frame.

The environmental impact of this Proposed Facility is very significant to the 250 acre core forest on Wanzer Mountain. This has been commented upon by the Sherman Inlands and Wetlands Commission, the Planning and Zoning Commission and the Conservation Commission.

The Willoth Standard ought to apply to this Application. The Federal Pe-emption of Zoning Authority was established in a landmark Second Circuit case followed by most subsequent courts: *Sprint Spectrum v. Willoth*, 176 F.ed 630 (1999)

Second Circuit Court of Appeals:

established a two-step test for determining whether denial of a land use application constituted an “effective prohibition” ---

1. Whether a significant gap in coverage exists and
2. Whether the wireless service provider has provided sufficient evidence of the absence of alternatives to fill that significant gap.

FIRST PRONG OF WILLOTH TEST: Whether a Significant Gap in Coverage Exists

- A. The Willoth court established a “single provider rule” – if any wireless provider already served the locality in which a tower was proposed, no “significant gap.”
- B. In the First Circuit, however, a line of cases developed establishing a “multiple provider rule” – the “significant gap” to be filled no longer applied to any wireless service provider; instead, a provider was entitled to fill a “significant gap” in its own network. That is the contention in this Application.

SECOND PRONG OF WILLOTH TEST: Absence of Alternatives to Fill Significant Gap

- A. Second, Third, Sixth, and Ninth Circuits: If proposed tower site is the least intrusive on the values the denial sought to serve, the denial will be reversed on appeal under the TCA.
- B. First and Seventh Circuits: To reverse a denial of a tower site application, must show “that there are no other potential solutions to the purported problem.” (no viable alternatives)
  1. Require a tower applicant to provide detailed information on the process used to select the subject property for a tower. (Apply the “Least Intrusive Means” test.)
  2. Impose conditions of approval that address specific concerns. For example, require “stealth” installations, greater setbacks, or limit height.

It is the contention of the Intervenor that this Application fails the second prong of the Willoth Test. The Applicant is relying on the prima facie rejection of the 26 Wagon Wheel Road site based on the NCLC rejection of an overture for a cell tower on their property though it is the Intervenor’s contention that the membership of the organization might have different feelings about siting a tower on NCLC property given the adverse environmental conditions on the Proposed Site. In addition, the Applicant has failed to answer questions regarding the failure of that site to meet the radio frequency needs of the Applicant when it was deemed satisfactory in 2013.

The Applicant is also relying on statements by Ray Vergatti, Vice President of Homeland Towers, LLC, that the Wanzer Mountain site is untenable though, in fact, that is not the site off Long Meadow Trail that he proposed to Mr. Pascarella. Mr. Vergatti has made several statements that are either misleading or incorrect in pursuit of another opportunity to revisit the Coote Hill Site after AT&T put it on their deferred action list. Mr. Vergatti is not a believer in the “Least Intrusive Means test” in Willoth.

Based on all of the forgoing, and upon balancing of the probable environmental effects associated with the proposed Facility as required by statute, the Intervenor respectfully submits that the public need for the tower facility for reliable communications as it is presently configured and proposed fails to outweigh the adverse environmental and community 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 Intervenor submits that the standards and criteria as set forth in Connecticut General Statutes Section 16-50p for the approval of tower facilities by the Connecticut Siting Council have not been met and do not warrant the issuance of a Certificate for this proposed Facility as presently configured on the Coote Hill Site.

## CERTIFICATE OF SERVICE

I hereby certify that on this day one electronic copy of the foregoing was sent electronically to the Connecticut Siting Council with one electronic copy sent to the list below, hard copy to follow.

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July 24, 2021

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