

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

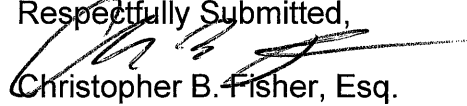
HOMELAND TOWERS LLC ("HOMELAND")  
AND NEW CINGULAR WIRELESS PCS, LLC  
("AT&T") APPLICATION FOR CERTIFICATE  
OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FOR A  
TELECOMMUNICATIONS TOWER FACILITY  
IN RIDGEFIELD, CONNECTICUT

DOCKET NO. 445

JULY 17, 2014

APPLICANTS'  
POST HEARING BRIEF

Respectfully Submitted,



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## PRELIMINARY STATEMENT

Homeland Towers, LLC (“Homeland”) and New Cingular Wireless PCS, LLC (“AT&T”) (together the “Applicants”), by their attorneys Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of their application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 445. The Application addresses the long standing public need for a new tower facility in northwestern Ridgefield so that FCC licensed wireless carriers and the Town of Ridgefield’s Police, Fire and Emergency Services Departments may provide reliable communications services for residents and visitors at homes, schools, recreational facilities and along state and local roads in the Town of Ridgefield. As set forth in detail in the Application, Homeland Towers controls by lease a 3.18 acre undeveloped parcel of property with access from Old Stagecoach Road that Insite Towers, LLC acquired and owns in fee simple (the “Site”). Throughout the proceedings in this Docket, AT&T and Town of Ridgefield officials provided data, testimony and otherwise responded to questions from the Siting Council and staff that address the public need for reliable wireless services and new tower infrastructure in this part of the state. The Applicants respectfully submit that the Site is uniquely situated for a tower facility needed to serve the public, there are no known practical or feasible alternatives and that there are no significant adverse environmental impacts associated with the project which outweigh the public need for improved wireless services in northwestern Ridgefield. As such, the Applicants submit that the project as filed meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes for approval and are requesting a

Certificate for the proposed tower facility to meet the public need for wireless services in this area of the state.

## **STATEMENT OF FACTS**

### **I. AT&T's Service Objectives & Site Search**

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, AT&T experiences gaps in coverage in Ridgefield along State Route 116 and local roads and areas in northwestern Ridgefield. Applicants' Ex. 1. pp. 6-13., Attachment 1. AT&T's RF engineers established a site search area (S1855) for Ridgefield based on its documented gaps in coverage. Applicants' Ex. 1. pp. 6-13, Attachment 1. The proposed facility in northwestern Ridgefield will provide reliable services in AT&T's network to an area that includes thousands of residents of the Town and State Route 116/North Salem Road, Ridgebury Road, Bennetts Farm Road, Old Stagecoach and other local roads in northwestern Ridgefield. The proposed Facility will also provide reliable service to several area public schools and public recreation areas including the High School, Scotts Ridge Middle School, and Barlow, Scotland and Ridgebury Elementary Schools, Tiger Hollow Fields, Seth Low Pierrepont State Park, and trails and open space areas used by the public. Town emergency communications networks and all other major wireless carriers lack reliable wireless services in this part of the community (the most northerly parts of which are also known as Ridgebury). Applicants' Ex. 1., Attachments 1 & 2. The lack of service is fundamentally due to the absence of any existing tower infrastructure or other wireless facility siting opportunities in that part of Ridgefield which has significant changes in terrain elevation.

Over the course of the past several years, numerous wireless carriers and tower companies have explored various siting options in northwestern Ridgefield, none of which have resulted in an application to the Siting Council until now. The current site search efforts date back more than six years since the time of AT&T's establishment of a search ring. Over that period of time, AT&T representatives explored various non-residential or undeveloped parcels of land for potential development of a tower facility. Locations such as the Town's Golf Course, Tiger Hollow Field at Ridgefield High School, large undeveloped properties on West Mountain and a church steeple were all evaluated and rejected by AT&T's radio frequency engineers and/or deemed to provide insufficient coverage in northwestern Ridgefield.

## **II. Technical Consultation with Town of Ridgefield**

As part of AT&T's site search, it engaged in several discussions with Town officials dating back to 2009 as the need for a facility was widely known. As part of exploring potential properties, the Town itself identified some other Town owned parcels along Old Stagecoach Road and in the West Mountain area of Town for consideration. The Town in collaboration with AT&T determined that such properties were either deed restricted or would not meet technical and engineering requirements for reliable service in northwestern Ridgefield. Applicants' Ex. 1., Attachment 2.

Thereafter, the Town explored its own acquisition of an approximately 28 acre private parcel of land with access from Old Stagecoach Road and above Ledges Road which could have been further subdivided by the property owner for residential development ("28 Acre Parcel"). The Town's objective was to acquire the privately held 28 Acre Parcel for conservation purposes with a small portion dedicated to development

of a communications tower facility to be utilized by Town agencies and commercial wireless carriers in serving northwestern Ridgefield. The 28 Acre Parcel abuts the parcel which is the subject of this Application and shares common access from Old Stagecoach Road. Applicants' Ex. 1., Attachment 2.

The Town's initiative to acquire the 28 Acre Parcel was expected to be long-term revenue positive for the taxpayers and funded through a combination of Town Open Space funds and a long term lease for the tower portion of the parcel. Prior to proceeding to a Town vote, the Town issued a request for proposals ("RFP") for a wireless carrier or tower company to develop the tower facility and enter into a long term lease agreement with the Town. Homeland and Isotrope, a company which now represents a party opposed to this Application, were two companies that responded to the RFP. As the Council is aware, Homeland is a company that specializes in the development of tower infrastructure needed to serve a community's communications needs and works closely with commercial wireless carriers, municipal and public safety agencies. Applicants' Ex. 1, p. 4.

Residents in the neighborhood to the north along Old Stagecoach and Aspen Ledges Roads formed Ridgefielders Against the Cell Tower ("RACT") and particularly objected to the tower component of the Town's project. At a Town Meeting in 2011, the project failed to gain a majority of votes (362 voters with 254 against and 108 for the project). The Town subsequently acquired the 28 Acre Parcel as open space land to be managed by the Town's Conservation Commission.

Subsequent to the 2011 Town Meeting, Homeland investigated the potential to acquire a 3.18 acre parcel of undeveloped wooded land abutting the 28 Acre Parcel

which is the Site presented in this Application. The Site had been previously subdivided and was offered for sale as a developable lot by a bank that had foreclosed on the property. As part of its due diligence, Homeland confirmed the Site location would not be objectionable per se to the Town's Conservation Commission and further that, despite a lower elevation ground elevation, the location was suitable for Town emergency communications needs and those of FCC licensed wireless carriers such as AT&T.

The Site was subsequently acquired by Insite, a national wireless infrastructure company that Homeland often partners with on projects of this kind. Homeland entered into a long term lease with Insite Towers, LLC for development of a new tower facility on the Site. AT&T has also entered into a lease agreement with Homeland for its proposed use of the tower Facility. Homeland has also committed space on the tower and in the compound to the Town's Police and Fire Chiefs regarding Town use of the tower facility. Homeland would own, maintain and operate the tower facility subject to any Certificate the State Siting Council may issue for the project. The Town, Homeland and AT&T are not aware of any alternative location which is technically viable, can be leased and would meet Town objectives and state environmental criteria for new tower sites as set forth in Section 16-50p of the General Statutes. Applicants' Ex. 1., p. 13, Attachment 2.

Homeland and AT&T consulted with the Town of Ridgefield as part of a formal process conducted in furtherance of Section 16-50l of the Connecticut General Statutes. The municipal consultation process included a meeting with the Town's First Selectman, Town Planner, Conservation Commission Chairman and Chairman of the Emergency Communications Taskforce and a site walk by the Town's Planning & Zoning

Commission. A lightly attended public information session was held in December of 2013. As part of consultations with the Town, the Applicants received site design comments from the Planning & Zoning and Conservation Commissions and the support of the Town's Fire & Police Departments and representatives responsible for development of the Town's next generation emergency communications network. No Town official opposes the project. Applicants' Ex. 1. pp. 23-24, Attachment 7.

### **III. Certificate Application, Parties & Intervenor's & Pre-Hearing Filings**

The proposed Facility is designed as a self-supporting 150' AGL monopole tower with Town antennas extending to an overall height of approximately 161'-6" AGL. Applicants' Ex. 1., Attachment 3. AT&T would install up to twelve (12) panel antennas at a centerline height of approximately 146' AGL along with additional equipment used in providing 3G UMTS and 4G LTE services. Applicants' Ex. 1., Attachment 3. The tower will accommodate emergency/municipal communications antennas as well as those belonging to federally licensed wireless carriers. Applicants' Ex. 1., Attachment 3.

An associated AT&T equipment shelter would be installed at the tower base on a concrete pad within a compound together with provisions for a fixed diesel back-up power generator. Applicants' Ex. 1., Attachment 3. The compound will include space for equipment of other carriers as well as the Town's own Emergency Communications equipment. The compound will be enclosed by an eight (8) foot tall chain link fence. Applicants' Ex. 1., Attachment 3.

Vehicle access to the Facility would extend from the intersection of Old Stagecoach Road and Aspen Ledges Road, using an existing Town owned paper street and previously recorded rights-of-way and easements that benefit the parcel. The

current dirt/gravel driveway will be graded and improved with a new surface, along the extension of the Old Stage Coach Road right of way (R.O.W.), then across the site a distance of approximately 650' to the proposed tower compound. Approximately 260' of the access drive would be bituminous asphalt. Applicants' Ex 1., Attachment 3. Utility connections would be routed largely underground from a new utility pole at the intersection of Old Stagecoach Road and Aspen Ledges Road. Applicants' Ex 1., Attachment 3.

In response to a submitted petition, the Siting Council granted intervenor status to Ridgefielders Against the Cell Tower ("RACT"). The Applicants submitted responses to Siting Council pre-hearing interrogatories on April 1, 2014. Applicants' Ex. 4. The Applicants submitted responses to RACT pre-hearing interrogatories on April 17, 2014. Applicants' Ex. 9. Representatives for the Applicants posted a sign by the roadway at the host site noticing the public of the application and hearing date with instructions on obtaining more information. Applicants' Ex. 6 and 7, Affidavit of Sign Posting and Corrected Sign Posting. The Applicants filed a supplemental submission on April 17, 2014. Applicants' Ex. 10. (a) and (b). A field visit, balloon float and public hearing were scheduled by the Council and held at Town Hall, 400 Main Street in the Town of Ridgefield on April 24, 2014.

#### **IV. Public Hearings**

On April 24, 2014, the Applicants raised a balloon at the Site and the Siting Council conducted a viewing of the Site and surrounding area. Weather conditions were not favorable and while the balloon was aloft during the site visit it was generally not raised to its full height for much of the afternoon. Libertine, Tr. 4/24/14, 3:00pm, p.



87. At the evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the facility, lack of other reasonable alternative sites and any environmental effects associated with construction of a tower at the site.

A comprehensive presentation of the proposed facility was provided to a modestly attended 7:00pm public hearing evening session with less than 10 speakers, after which the Siting Council closed the public hearing and continued the evidentiary hearing for a date certain at the Council's chambers in New Britain, Connecticut. The Applicants thereafter responded to additional Council and RACT interrogatories and submitted a supplemental submission on May 27, 2014. Applicants' Ex. 12-14. The Applicants' filed another supplemental submission on June 11, 2014. Applicants' Ex. 15. The Siting Council held continued evidentiary hearings on June 3, 2014 and June 17, 2014 at Hearing Room 1 at 10 Franklin Square in New Britain. The evidentiary hearing was closed on June 17, 2014 after all parties and intervenors were given the opportunity to present evidence and cross-examine witnesses.

## **POINT I**

### **A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY IN NORTHWESTERN RIDGEFIELD**

Pursuant to Connecticut General Statutes ("CGS") Section 16-50p, the 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". CGS §16-50p(a)(1). In this Docket, AT&T provided coverage analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable commercial wireless services to homes, schools and the traveling public in northwestern Ridgefield. Applicants' Ex. 1,

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Attachment 1. Town officials including the Police and Fire Chief provided letters and limited appearance statements at the public hearing describing the need for both commercial wireless service improvements and their own communications that are poor and unreliable in northwestern Ridgefield. Applicants' Ex. 1, Attachment 1; Tr. 4/24/14 3:00pm pp. 6-10. The Town's Chair of its Emergency Communications Taskforce, Mr. Aarons, provided sworn testimony that was the subject of cross-examination further detailing the Town's "public need" for a tower in this part of Town and the "basis for that need." Applicants' Ex. 8; Tr. 4/24/14 3:00pm pp 22-84. Even RACT's consultant, Mr. David Maxson whose company responded to the Town's RFP for a tower on the adjacent 28 Acre Parcel does not controvert, in general, the public need for new infrastructure for wireless service in northwestern Ridgefield. Tr. 6/17/14 1:05pm pp. 347, Intervenor Exhibit 3(c)(1) and 3(c)(3).

The record in Docket 445 also demonstrates that this Site is uniquely situated at an elevation and location that would allow wireless service to extend north and east into the Ridgebury area of Town and west and south to areas of the Town along Route 116 in northwestern Ridgefield. Further that a 150' AGL tower is needed to reasonably serve the public from the Site for AT&T, the Town and other wireless carriers like Verizon that have indicated their interest in the project. Applicants' Ex. 1, Attachment 1. Indeed, given the relative elevation of the Site and tower location with an immediate rise in terrain and substantial tree cover to the north on the Town's 28 Acre Parcel, AT&T and the Town's witnesses testified that a materially lower tower height (i.e. reduction of 20-30') would reduce coverage to the north and east substantially, mean less

opportunities for co-location by other carriers, and essentially guarantee the need for a second tower in Ridgebury.

The Applicants submit that the public need for a new tower facility in this area to provide both commercial wireless and public safety communication coverage where adequate and reliable coverage does not exist today is simply not contested in this Docket.

## POINT II

### **THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY**

The Applicants submitted evidence that there are no existing structures for providing reliable service to this area of Ridgefield. Of note, the search for a site included an investigation of over several years and has included a proactive approach by the Town of Ridgefield Selectmen, Planning Commission, Conservation Commission and other agencies to identify a viable candidate for the provision of wireless service to the area. Applicants' Ex.1, Tab 2. Yet, as demonstrated by the evidence and testimony in this Docket, no other viable alternatives for wireless facility siting were identified by the Applicants or Town. Applicants' Ex.1, Tab 2. In the proceedings, RACT offered its siting theories and a hypothetical two or three tower site scenario. Intervenor Exhibit 3(c)(1). Upon further examination, RACT's theory proved unsupported by any practical evidence that such a hypothetical was available and to the extent it relied on public school properties, was in fact not feasible. See *inter alia* Tr. 6/17/14 1:05pm pp. 363, 372 and 386. Moreover, RACT's tower siting theory would be inconsistent with State policy set forth in Section 16-50aa of the General Statutes in that it essentially promotes

more towers as compared to the one as proposed by the Applicants and supported by Town of Ridgefield officials.

**POINT III**  
**THE TOWER FACILITY PRESENTS**  
**NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Pursuant to CGS Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. The Applicants respectfully submit that while some impacts will be associated with the proposed facility, such impacts will have no significant environmental effects on the resources listed in Section 16-50p of the General Statutes and clearly do not outweigh the public need for the facility as proposed in this Docket.

**I. Potential Visual Effects**

The Applicants respectfully submit that the evidence and testimony in this proceeding, as summarized below, demonstrates that visibility of the proposed facility will not result in an overall significant adverse visual impact. It is anticipated that the proposed facility will be visible year-round from just 199+/- acres or less than Approximately 2.5% of the 8,042 acre Study Area. Applicants' Ex.1, Attachment 5 (Visibility Analysis). As demonstrated in the Visibility Analysis, topography, vegetation, and the relative height of the tower all serve to obscure, partially or totally, views of the tower from most locations in the study area. Applicants' Ex.1, Attachment 5. The proposed Facility is not located within 250 feet of a school or commercial day-care center. Applicants' Ex. 1, Attachment 5. The principal resource associated with a

scenic quality in the viewshed area is the boat launch within Seth Low Pierrepont Park where views of a tower of any height are unavoidable. Views are otherwise limited to schools and residences generally in or across the valley to the south and west of the proposed tower site location and a small area well north of the tower near the Town's McKeon Farm open space and an equestrian facility. Of note, the neighborhood along Old Stagecoach Road and Aspen Ledges Road where RACT's members predominantly reside will not have any significant views of the tower facility Site. Applicants' Ex.1, Attachment 5 (Visibility Analysis); Ex. 16; See also Tr. 6/17/14, Libertine Testimony. The project overall presents generalized visibility from a few select vantage points of a tower and any views towards the ridge on which the Site is located already include views of homes and other manmade developments. Id. As such, while many scenic resources exist in northwestern Ridgefield, the tower facility will not have a predominant or significantly adverse visual effect in this part of the state.

## **II. Potential Impacts to the Natural Environment**

As clearly established in this Docket, impacts to the natural environment from the proposed facility are not significant.

### **a. Wetlands, Watercourses, and Floodplains**

The Site currently supports an on-site wetland that is a hillside seep forested area associated with an intermittent watercourse. Additionally, the Site has areas of steep slopes. As such, the Applicants have designed and engineered various drainage, erosion and stormwater controls for the facility to ensure no significant adverse impacts to wetlands or adjacent parcels including the Town's 28 Acre Parcel maintained as open space. Applicants' Ex. 1, Attachment 4. The Facility and associated development Site

will maintain or reduce the overall volume of runoff from the site and peak discharges will be the same or less than existing conditions. The closest disturbance is approximately 40' from the edge of the delineated wetland and 89' from the compound edge. Overall, the construction and operation of the proposed Facility will not have a significant impact on wetlands or water quality and drainage will be appropriately managed on-site. Applicants' Ex. 1, Attachment 4; See also Tr. 6/3/14, Whitcomb Testimony.

**b. Habitat Assessment and Wildlife**

As demonstrated in the record, the Applicants consultants have conducted numerous and thorough evaluations of the Site, consulted with the Connecticut Department of Energy and Environmental Protection ("DEEP") for review and responded to queries from RACT's consultants. Upon review of the Site in relation to the Natural Diversity Database, the DEEP determined that there are no federal or state threatened, endangered or special concern species known to occur within the project area or vicinity; the nearest NDDDB buffer area is located approximately 1,000' to the south. Applicants' Ex. 1, Attachment 6. The Applicants did nevertheless conduct further evaluations and developed a turtle protection plan with construction protocols similar to measures approved in other Dockets and by CTDEEP as prudent measure for any eastern box turtles that might use the area. The turtle protection plan was submitted to CTDEEP. Applicants' Ex. 1, Attachment 6. Bog turtles are not likely to be present on site. Applicants' Ex. 9, Applicants Responses to RACT interrogatories dated April 17, 2014, Applicants' Ex. 9, (response 40 and Attachment 3), Applicants' Ex. 4. No other species of note or concern were identified as part of the application process,

and the Applicants' consultants are of the opinion the project has no significant adverse impacts. See Tr. 6/3/14, Gustafson Testimony.

**c. Clearing, Grading and Drainage Assessment**

The access area which is currently a dirt/gravel driveway will be graded and improved with a new surface, along the extension of the Old Stage Coach Road right of way (R.O.W.), then across the site a distance of approximately 650' to the proposed tower compound. Approximately 260' of the access drive would be bituminous asphalt. Applicants' Ex.1, Attachment 3. Some modest grading and clearing is required for the Facility. A total area of disturbance is 35,500 SF.; 15 trees will need to be removed. The site shall require approximately 190 CY of cut for utility trenching and approximately 4,500 CY of fill for the compound and driveway construction. Applicants' Ex.1, Attachment 3. As noted, the Facility design will incorporate all appropriate sediment and erosion control measures in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Council of Soil and Water Conservation and addresses comments provided by the Town's Planning & Zoning Commission and Conservation Commission. Applicants' Ex. 1, pp. 23-24, Attachment 3. The Applicants respectfully submit that the proposed improvements at the Site along with drainage detention and other engineering features incorporated into the design will not result in any significant adverse environmental on the surrounding area and will allow for safe access to and development of the facility.

**III. Other Environmental & Neighborhood Considerations**

A tower facility at the location proposed will comply with all public health and safety requirements. Applicants Ex. 1. Additionally, since the Facility will be

unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste, or material impact on air emissions. As noted in the proceedings in this Docket, existing trees on the Town's 28 Acre Parcel and, topography will serve to limit and obscure views of the tower in the neighborhood to the north with only 2-3 abutting properties having a seasonal view through the trees. Further, consultation with both the SHPO and the office of State Archeology at UConn confirmed that the project site and adjacent area of Old Stage Coach Road have no historic, cultural or archeological significance of note. Applicants' Administrative Notice item 2, May 29, 2014 correspondence for Dr. Nicholas Bellantoni, Connecticut State Archeologist. As such, the Council should find and determine that the Facility as proposed will not have any historic, cultural or adverse visual impacts on the neighborhood and interests as expressed by RACT and its members.

### **CONCLUSION**

The Applicants and Town of Ridgefield Emergency Communications Officials have demonstrated a public need for the proposed tower Facility presented in this Docket. The public need for the proposed facility is quite significant with commercial wireless service to be provided to thousands of residents, in schools and public recreation areas and enable Town emergency communications in the field for first responders. The public need for the tower Facility is not seriously controverted by any party to the proceeding and there are no known practical or feasible alternatives to a tower at the Site in question. The Applicants and Town's evidence demonstrate the importance of this Site for a tower needed to serve the public which has experienced gaps in reliable services since the advent of modern day wireless communications.



While there are some limited environmental effects associated with the proposed Facility, principally visibility above the tree line to the south of the Site, the Applicants respectfully submit that such effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services. Moreover, the Applicants have from the outset designed the tower facility on the Site to avoid to the extent practicable any impacts on the natural environment including wetlands and the design incorporates best practices for stormwater detention and discharge. Further, the Applicants have voluntarily incorporated additional protective measures related to potential turtle habitat use of the facility Site.

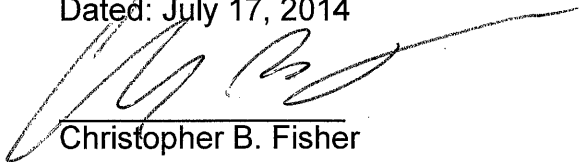
Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed facility as required by statute, the Applicants respectfully submit the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project the Council might deem significant. Moreover, we note that modifications to the project could be required by the Council as conditions to address the compound design, tower color or other features all of which could be addressed as part of Development & Management Plan for the Facility. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicants submit that the standards and criteria set forth in Section 16-50p of the General Statutes for approval of tower facilities by the Council have been met and fully warrant issuance of a Certificate for the facility as proposed in Docket 445.

**CERTIFICATE OF SERVICE**

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

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Dated: July 17, 2014



Christopher B. Fisher