

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 CHESHIRE, CONNECTICUT

DOCKET NO. 451

NOVEMBER 25, 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. 451. The Application addresses the long standing public need for a new tower facility in northwestern Cheshire so that FCC licensed wireless carriers and the Town of Cheshire’s Police and Fire Departments may provide reliable commercial and emergency communications services for the benefit of residents and visitors at homes, recreational facilities and along state and local roads in the Town of Cheshire. As set forth in detail in the Application, Homeland Towers secured a lease with the Town of Cheshire for a location adjacent to the municipal wastewater treatment plant accessed through the Quinnipiac Recreation area located at 1325 Cheshire Street (the “Site”). Throughout the proceedings in this Docket, AT&T and Town of Cheshire 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 Cheshire. As such, the Applicants submit that the project 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. Homeland Towers also initiated its own site search based on its understanding of the need for reliable wireless service in the area. In this case, AT&T experiences gaps in coverage in Cheshire along State Route 116 and local roads and areas in northwestern Cheshire. Applicants' Ex. 1. pp. 6-13., Attachment 1. AT&T's RF engineers established a site search area (S3459) for Cheshire based on its documented gaps in coverage. Applicants' Ex. 1. pp. 6-13, Attachment 1. The proposed facility in northeastern Cheshire will provide reliable services in AT&T's network to a section of Town that includes thousands of residents and including areas along State Highway 70, Nob Hill Road, Riverside Drive, Redstone Drive, Cheshire Street, Allen Avenue and other local roads in northeastern Cheshire. The proposed Facility will also provide reliable service to the fields at the Quinnipiac Recreation Area. In addition to AT&T, the Town of Cheshire's emergency communications networks will benefit through an increased height both in direct service to the area as well as the ability to provide point-to-point backhaul connectivity. Intervenor Town of Cheshire ("Town's") Ex. 2 and Ex. 8(a)-(e). These needs are fundamentally due to the absence of any existing tower infrastructure or other wireless facility siting opportunities in this part of Cheshire which has significant changes in terrain elevation.

Beginning over two years ago, both Homeland Towers and AT&T conducted a site searches in this area for a site suitable to provide the needed service. Subsequent discussions with the Town of Cheshire revealed a mutual need for tower infrastructure in this area of town and the Site was identified as an available and preferred location by the Town of Cheshire. Applicants' Ex. 1, p. 12.

II. Technical Consultation with Town of Cheshire

As part of Homeland's site search, it engaged in several discussions with Town officials. As part of exploring potential properties, the Town and Homeland discussed developing a tower at the Site. 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 often works closely with commercial wireless carriers and where possible municipal and public safety agencies. Applicants' Ex. 1, p. 3. See also, CSC Dockets 445 and 441. This consultation included preliminary discussions regarding both AT&T's and the Town's own Radio Frequency needs, design visits at the site and follow up communication and discussion regarding the needed height for the Town's antennas. Applicants' Ex. 1, pp. 27-28. This dialogue and collaboration culminated in a lease negotiation process including a C.G.S. § 8-24 referral to the Planning and Zoning Commission which reviewed the proposed facility and found it in keeping with Town planning priorities. Applicants' Ex. 1, pp. 27-28; Town's Ex. 8(a). Additional technical information was forwarded to the Town Manager, the Planning and Zoning Commission and the Inland Wetlands Commission on June 14, 2014 with the understanding that the next procedural step would be an application to the Siting Council for this mixed use tower. See Applicant's Ex. 1, Attachment 12; Bulk Filing.

Subsequent correspondence with the Town indicated no further consultation was required. Applicant's Ex. 1, Attachment 12.

III. Certificate Application, Parties & Intervenors & Pre-Hearing Filings

The proposed Facility is designed as a self-supporting 170' AGL monopole tower with Town antennas extending to an overall height of approximately 180' AGL. Applicants' Ex. 1., Attachment 5. AT&T would install up to twelve (12) panel antennas at a centerline height of approximately 155' AGL along with additional equipment used in providing 3G UMTS and 4G LTE services. Applicants' Ex. 1., Attachment 5. As such the tower will accommodate emergency/municipal communications antennas as well as those belonging to federally licensed wireless carriers.

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 5. 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 5.

Vehicle access to the Facility would extend from Cheshire Street largely utilizing the existing access to the wastewater treatment plant with a short 140' extension to the tower compound. Applicants' Ex 1., Attachment 5. Site utilities are proposed to extend from an existing SNET Pole #5715 located on site. Applicants' Ex 1., Attachment 3.

In response to submitted petitions, the Siting Council granted party status to the Town of Cheshire as well as intervenor status to Ms. Jennifer Arcesi and Mr. Gary

Wasserman (together “the Intervenors”). The Applicants submitted responses to Siting Council pre-hearing interrogatories on September 23, 2014. Applicants’ Ex. 2. Representatives for the Applicants posted a sign by the roadway entrance to the Quinnipiac Recreation Area (entrance to the Site) noticing the public of the application and hearing date with instructions on obtaining more information. Applicants’ Ex. 3. A field visit, balloon float and public hearing were scheduled by the Council and held at 84 South Main Street, Cheshire, CT 06410 on October 9, 2014. The hearing was ultimately continued to October 28, 2014. Prior to that the Applicants submitted a turtle protection plan and responses to pre-hearing interrogatories from the Intervenor’s on October 23, 2014. Applicants’ Ex. 6-8.

IV. Public Hearings

On October 9, 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 generally favorable and while the balloon was aloft during the site visit it was often not raised to its full height for much of the afternoon. Libertine, Tr. 10/9/14, 3:00pm, pp. 32-33. 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 presentation of the proposed facility was provided to a modestly attended 7:00pm public hearing evening session with approximately 8 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. As noted above the

Applicants thereafter responded to additional intervenor interrogatories and submitted a supplemental submission. The Siting Council held a continued evidentiary hearing on October 28, 2014 at Hearing Room 1 at 10 Franklin Square in New Britain. The evidentiary hearing was then closed after all parties and intervenors were given the opportunity to present evidence and cross-examine all witnesses.

POINT I
A PUBLIC NEED CLEARLY EXISTS
FOR A NEW TOWER FACILITY IN NORTHEASTERN CHESHIRE

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, recreational areas and the traveling public in northwestern Cheshire. Applicants’ Ex. 1, Attachment 1. Town officials including the Police and Fire Chief provided limited appearance statements at the public hearing and later sworn testimony subject to cross examination describing the need for emergency communication improvements. Tr. 10/9/14 3:00pm pp. 7-15, Town’s Ex. 8(c) and 8(d). The Town’s Manager, Engineer and communications consultant also all provided sworn testimony as to the benefits the proposed facility will have for the Town of Cheshire’s operations, communications and fiscal commitments. Town’s Ex. 8(a), 8(b) and 8(c).

The tower location provides needs service for AT&T’s network and the Town’s communications system. 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

west for AT&T and would render the tower useless for the Town's point-to-point system. Applicants' Ex. 2 (Responses to Interrogatories, Answer 12); Town's Ex. 8(e). As such 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 Cheshire. Applicants Ex. 3. Of note, the search for a site included an investigation of over several years and has directly involved various agencies, officials, boards and consultants of the Town of Cheshire. No other viable (available for leasing and technically satisfactory) alternatives for wireless facility siting were identified by the Applicants or Town and none were made part of this Docket. Applicants' Ex.1, Tab 3. Intervenors proposed siting ideas which were not technically feasible for AT&T. Applicants' Ex. 6 and Ex. 7. In response to cross examination regarding how properties to the north might serve the area of need, AT&T's Radio Frequency expert Mr. Lavin noted that "You're not moving very far north, but you end up behind the terrain feature that blocks -- once again shadows coverage into this area." Lavin, Tr. 10/28/14 1:00pm, p. 279. It should be noted that agricultural fields noted in the continued hearing on October 28, 2014 are a minimum of 2,500 feet away from the proposed tower location. Applicants' Ex. 1, Attachment 9 Visual Analysis, Viewshed Map and Photo Location 3 (located on Riverview Court which is a confirmed

0.39 miles or approximately 2,059 feet from the tower site and south of the noted open space parcels). This area to the north was confirmed to have limited coverage potential due to topographic shadowing. Lavin, Tr. 10/28/14 1:00pm, p. 280.

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 above the trees from just 53+/- acres or less than Approximately 1.0% of the 8,042 acre Study Area. Applicants' Ex.1, Attachment 9 (Visibility Analysis). Leaf off seasonal views between the trees will be approximately 735 acres or approximately 9% of the study area. As witnessed at the field review the compound location is surrounded by trees, vegetation and the existing wastewater

treatment plant. 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 9. The proposed Facility is not located within 250 feet of a school or commercial day-care center. Applicants' Ex. 1, Attachment 9. The project overall presents generalized visibility from a few select vantage points of a tower most of which are partial and/or obscured. Id. As such, 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. The Council received testimony that the proposed Facility would not result in impacts to the identified vernal pool or the pool's Vernal Pool Envelope zone (within 100 feet of the vernal pool edge; "VPE"), noting that approximately 11.8% of the VPE is currently developed in association with the nearby waste water treatment plant. Applicants' Ex. 2, Answer 17. Indeed all activity proposed by the Applicants would be outside the VPE and limited to locations within the Critical Terrestrial Habitat ("CTH") zone associated with the vernal pool (within 100-750 feet of the VPE), would be only 0.39% of the pool's total CTH which is used by the sewer and recreational departments for materials storage (conditions akin to development). Id. 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 3.

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 as well. Upon review of the Site in relation to the Natural Diversity Database, it was determined that a potential for impacts to herptofauna exists. As such Homeland developed and is prepared to implement protection measures as per the protection plan submitted as part of this Docket. Applicants' Ex. 8. See also Applicants' Ex. 2, Answer 17. Through this plan Homeland will implement protective measures to avoid mortality to eastern box turtle (*Terrapene c. carolina*) or wood turtle (*Glyptemys insculpta*) during proposed construction activities. This plan also includes Best Management Practices ("BMPs") that are equally protective of any vernal pool species also encountered. These practices include: education of contractors prior to construction on the environmentally sensitive work zone; installation of silt fence isolation barriers of the proposed work zone; herptofauna sweeps following installation of isolation barriers and prior to earthwork activities; and periodic inspections and maintenance of the isolation barriers. Applicants' Ex. 8. See also Applicants' Ex. 2, Answer 17. As such the project will have no significant adverse impacts to wildlife or wildlife habitat.

c. Clearing, Grading and Drainage Assessment

The access area which is currently a dirt/gravel driveway will be used in addition to approximately 140' of new gravel access drive. Applicants' Ex.1, Attachment 5.

Some minimal grading and clearing is required for the Facility. A total area of disturbance is 13,500 SF. and no trees 6" DBH or larger will need to be removed. The site shall require approximately 250 CY of cut for utility trenching and approximately 160 CY of fill for the compound and driveway construction. Applicants' Ex.1, Attachment 4. 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 Applicants' Ex. 1, p. 27, and Attachments 4 and 5. The Applicants respectfully submit that the proposed improvements at the Site and 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. 8. 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 property and topography will serve to limit and obscure views of the compound and bottom portions of the tower in the neighborhood with nearby properties largely having partial seasonal views of the tower through trees. Further, consultation with SHPO confirmed that the project site has no historic, cultural or archeological significance of note. Applicants' Ex. 1, Attachment 11. 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.

CONCLUSION

The Applicants and Town of Cheshire have demonstrated a public need for the proposed tower Facility presented in this Docket. The public need for the proposed tower is quite significant supporting commercial wireless service for thousands of residents and enabling a considerable upgrade to Town emergency communications in the field for first responders and other officials. 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, 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. Further, the Applicants have 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. 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 451.

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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