

<b>FP-ATT-083-211214</b> - New Cingular Wireless PCS, LLC	}	Connecticut
(AT&T) Request to Initiate Feasibility Proceeding for shared use	}	
of an existing facility located at 499 Mile Lane, Middletown,	}	Siting
Connecticut.	}	Council

March 18, 2022

## **DRAFT Findings of Fact**

### **Introduction**

1. On September 30, 2021, New Cingular Wireless, PCS, LLC (AT&T) submitted a petition to the Connecticut Siting Council (Council) for a declaratory ruling, pursuant to Connecticut General Statutes (CGS) §4-176 and §16-50k, for the proposed construction, maintenance and operation of a new 150-foot monopole wireless telecommunications facility to be located at 499 Mile Lane in Middletown, Connecticut. (Petition 1465). (Council Administrative Notice Item No. 34 – Petition 1465 Record, Petition, p. 1; Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Tab A, p. 1)
2. AT&T withdrew Petition 1465 on October 6, 2021 and indicated its intent to convert Petition 1465 into an application for a Certificate and Environmental Compatibility and Public Need (Certificate). (Council Administrative Notice Item No. 34 - Petition 1465 Record; Council Administrative Notice Item No. 35 - Docket 506 Record – Applicant 1, Tab A, p. 1)
3. Also on October 6, 2021, AT&T submitted an application for a Certificate to the Council, pursuant to CGS §16-50k, for the construction, maintenance and operation of a new 150-foot monopole wireless telecommunications facility to be located at 499 Mile Lane, Middletown, Connecticut. (Docket 506). (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Tab A, p. 1)
4. In its October 6, 2021 correspondence related to the conversion of Petition 1465 to Docket 506, AT&T specifically noted that it was not proposing a feasibility proceeding. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Tab A, p. 2; Applicant 1, Tab B, p. 4)
5. Pursuant to CGS §16-50m, the Council held public hearings for Docket 506 on November 30, 2021, December 21, 2021 and February 3, 2022. (Council Administrative Notice Item No. 35 – Docket 506 Record)
6. On December 14, 2021, AT&T requested the Council initiate a feasibility proceeding pursuant to CGS §16-50aa(c)(2) to determine whether the proposed shared use of an existing 180-foot self-supporting lattice public safety communications facility located at 499 Mile Lane in Middletown is technically, legally, environmentally and economically feasible and meets public safety concerns. (Feasibility Request) (AT&T 1)
7. In its Feasibility Request, AT&T presented two options for shared use: reinforcement of the existing facility or construction of a replacement lattice tower. (AT&T 1)

8. The facility AT&T requests to share is owned by the City of Middletown (City). (AT&T 1, p. 1)
9. On December 14, 2021, pursuant to CGS §16-50aa(c)(2), the Council provided notice of AT&T's Feasibility Request to the City, which is both the host municipality and the facility owner. (Record)
10. The City is a public agency as defined under CGS §16-50aa(c)(2). (Record)
11. AT&T is a corporation as defined under CGS §16-50aa(c)(2) and a Delaware limited partnership licensed by the Federal Communications Commission (FCC). (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Tab B, pp. 1 and 3)
12. The party in this feasibility proceeding is AT&T. (Record)
13. The record of Docket 506 is incorporated into the record of this feasibility proceeding. (Council Administrative Notice Item No. 35 – Docket 506 Record)
14. AT&T initiated this feasibility proceeding due to structural, economic and City public safety concerns associated with the collocation of AT&T's equipment on the existing facility. (AT&T 1; Transcript 1, February 17, 2022 at 2:00 p.m. [Tr. 1], p. 9)

#### **Procedural Matters**

15. On March 10, 2020, Governor Lamont issued a Declaration of Public Health and Civil Preparedness Emergencies, proclaiming a state of emergency throughout the state as a result of the COVID-19 pandemic. (Council Administrative Notice Item No. 58)
16. On March 12, 2020, Governor Lamont issued Executive Order No. (EO) 7 ordering a prohibition of large gatherings, among other orders and directives. (Council Administrative Notice Item No. 58)
17. On March 14, 2020, and as subsequently extended, Governor Lamont issued EO 7B ordering suspension of in-person open meeting requirements of all public agencies under CGS §1-225. The Freedom of Information Act (FOIA) defines "meeting" in relevant part as "any hearing or other proceeding of a public agency." (Council Administrative Notice Item No. 58; CGS §1-200, *et seq.* (2021))
18. EO 7B expired on June 30, 2021. Special Act (SA) 21-2 took effect on July 1, 2021. Section 149 permits public agencies to hold remote meetings under FOIA and the Uniform Administrative Procedure Act until April 30, 2022. (Council Administrative Notice Item No. 58; Council Administrative Notice Item No. 59)
19. SA 21-2 allows public agencies to hold remote meetings provided that:
  - a) The public has the ability to view or listen to each meeting or proceeding in real-time, by telephone, video, or other technology;
  - b) Any such meeting or proceeding is recorded or transcribed and such recording or transcript shall be posted on the agency's website within seven (7) days of the meeting or proceeding;

- c) The required notice and agenda for each meeting or proceeding is posted on the agency's website and shall include information on how the meeting will be conducted and how the public can access it any materials relevant to matters on the agenda shall be submitted to the agency and posted on the agency's website for public inspection prior to, during and after the meeting; and
- d) All speakers taking part in any such meeting shall clearly state their name and title before speaking on each occasion they speak.

(Council Administrative Notice Item No. 59)

- 20. During a regular Council meeting held on January 13, 2022, the public hearing schedule for the Feasibility Request was approved by the Council. (Record)
- 21. Pursuant to SA 21-2, CGS §16-50m and CGS §16-50aa(c)(2), on January 14, 2022, the Council sent a letter to the City to provide notification of the scheduled public hearing via Zoom conferencing and to invite the municipality to participate. (Record)
- 22. Pursuant to SA 21-2, CGS §16-50m and CGS §16-50aa(c)(2), the Council published legal notice of the date and time of the remote public hearing via Zoom conferencing in The Middletown Press on January 15, 2022. (Record)
- 23. On November 23, 2021, for the record in Docket 506, AT&T submitted photographic documentation of site-specific features intended to serve as a "virtual" field review of the site. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 4, response 72)
- 24. On January 26, 2022, the Council held a pre-hearing teleconference on procedural matters for parties and intervenors to discuss the requirements for pre-filed testimony, exhibit lists, administrative notice lists, expected witness lists and filing of pre-hearing interrogatories. Procedures for the remote public hearing via Zoom conferencing were also discussed. (Council Remote Hearing Procedure Memorandum, dated January 19, 2022)
- 25. On February 1, 2022, in compliance with Regulations of Connecticut State Agencies (RCSA) § 16-50j-21, AT&T installed a four-foot by six-foot sign along Mile Lane at the entrance to the subject property. The sign presented information regarding the request for shared use of the existing facility and the Council's public hearing. (AT&T 2)
- 26. Pursuant to CGS § 16-50m and CGS §16-50aa(c)(2), after giving due notice thereof, the Council held a remote public hearing on February 17, 2022, beginning with the evidentiary session at 2:00 p.m. and continuing with the public comment session at 6:30 p.m. via Zoom conferencing. The Council provided information for video/computer access or audio only telephone access. (Council's Hearing Notice dated January 14, 2022; Tr. 1, p. 4; Transcript 2, February 17, 2022 at 6:30 p.m. [Tr. 2], p. 4)
- 27. In compliance with SA 21-2:
  - a) The public had the ability to view and listen to the remote public hearing in real-time, by computer, smartphone, tablet or telephone;
  - b) The remote public hearing was recorded and transcribed, and such recording and transcript were posted on the Council's website on February 18, 2022 and February 24, 2022, respectively;

- c) The Hearing Notice, Hearing Program, Citizens Guide for Siting Council Procedures and Instructions for Public Access to the Remote Hearing were posted on the agency's website;
- d) The record of the proceeding is available on the Council's website for public inspection prior to, during and after the remote public hearing; and
- e) The Council, parties and intervenors provided their information for identification purposes during the remote public hearing.

(Hearing Notice dated January 14, 2022; Tr. 1, p. 4; Tr. 2, p. 4; Record)

### **State Agency Comment**

- 28. During the Docket 506 proceedings, on October 26, 2021, the Connecticut Airport Authority (CAA) submitted comments requesting a Federal Aviation Administration (FAA) determination of no hazard to air navigation for the existing facility.<sup>1</sup> (Council Administrative Notice Item No. 35 – Docket 506 Record – CAA comment letter dated October 26, 2021)
- 29. Also during the Docket 506 proceedings, on October 27, 2021, the Council on Environmental Quality (CEQ) submitted comments with a recommendation for AT&T to assess the possibility of developing a tower that can accommodate multiple users, including users of the existing facility, and removing the existing facility after the equipment is transferred to the new tower.<sup>2</sup> (Council Administrative Notice Item No. 35 – Docket 506 Record – CEQ comment letter dated October 27, 2021)
- 30. Pursuant to C.G.S. § 16-50j (g), on January 14, 2022, the following state agencies were solicited by the Council to submit written comments regarding the proposed shared use of the existing facility: Department of Energy and Environmental Protection (DEEP); Department of Public Health (DPH); CEQ; Public Utilities Regulatory Authority (PURA); Office of Policy and Management (OPM); Department of Economic and Community Development (DECD); Department of Agriculture (DOAg); Department of Transportation (DOT); CAA; Department of Emergency Services and Public Protection (DESPP); and State Historic Preservation Office (SHPO). (Record)
- 31. On January 19, 2022, the Council received comments from CAA.<sup>3</sup> The CAA comments requested the Council take into account nearby navigation facilities, including Meriden-Markham Airport, which may employ navigation aids that could be affected by deployment of 5G C-Band antenna installations. (Record)
- 32. No other state agencies responded with comment on the Feasibility Request. (Record)
- 33. While the Council is obligated to consult with and solicit comments from state agencies by statute, the Council is not required to abide by the comments from state agencies. (*Corcoran v. Connecticut Siting Council*, 284 Conn. 455 (2007)).

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<sup>1</sup>Docket 506 October 26, 2021 [CAA](#) comments.

<sup>2</sup>Docket 506 October 27, 2021 [CEQ](#) comments.

<sup>3</sup>[CAA](#) comments, dated January 19, 2022.

**Public Need for Service**

34. In 1996, the United States Congress recognized a nationwide need for high quality wireless telecommunications services, including cellular telephone service. Through the Federal Telecommunications Act of 1996, Congress seeks to promote competition, encourage technical innovations, and foster lower prices for telecommunications services. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996)
35. In issuing cellular licenses, the Federal government has preempted the determination of public need for cellular service by the states and has established design standards to ensure technical integrity and nationwide compatibility among all systems. AT&T is licensed by the FCC to provide personal wireless communication service to Middlesex County, Connecticut. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996; Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab B, p. 3; AT&T 1, Tab 4 – RF Report, p. 7)
36. Section 253 of the Telecommunications Act of 1996 prohibits any state or local statute or regulation, or other state or local legal requirement from prohibiting or having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996)
37. Section 704 of the Telecommunications Act of 1996 prohibits local and state entities from discriminating among providers of functionally equivalent services and from prohibiting or having the effect of prohibiting the provision of personal wireless services. This section also requires state or local governments to act on applications within a reasonable period of time and to make any denial of an application in writing supported by substantial evidence in a written record. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996)
38. Section 704 of the Telecommunications Act of 1996 also prohibits any state or local entity from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions, which include effects on human health and wildlife, to the extent that such towers and equipment comply with FCC's regulations concerning such emissions. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996)
39. Section 706 of the Telecommunications Act of 1996 requires each state commission with regulatory jurisdiction over telecommunications services to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, including elementary and secondary schools, by utilizing regulating methods that promote competition in the local telecommunications market and remove barriers to infrastructure investment. (Council Administrative Notice Item No. 4 – Telecommunications Act of 1996)
40. In December 2009, President Barack Obama recognized cell phone towers as critical infrastructure vital to the United States. The Department of Homeland Security, in collaboration with other federal stakeholders, state, local, and tribal governments, and private sector partners, has developed the National Infrastructure Protection Plan (NIPP) to establish a framework for securing resources and maintaining resilience from all

- hazards during an event or emergency. (Council Administrative Notice Item No. 11 – Presidential Proclamation 8460, Critical Infrastructure Protection)
41. In February 2012, Congress adopted the Middle Class Tax Relief and Job Creation Act (also referred to as the Spectrum Act) to advance wireless broadband service for both public safety and commercial users. The Act established the First Responder Network Authority (FirstNet) to oversee the construction and operation of a nationwide public safety wireless broadband network. Section 6409 of the Act contributes to the twin goals of commercial and public safety wireless broadband deployment through several measures that promote rapid deployment of the network facilities needed for the provision of broadband wireless services. (Council Administrative Notice Item No. 8 – Middle Class Tax Relief and Job Creation Act of 2012)
  42. In June 2012, President Barack Obama issued an Executive Order to accelerate broadband infrastructure deployment declaring that broadband access is a crucial resource essential to the nation’s global competitiveness, driving job creation, promoting innovation, expanding markets for American businesses and affording public safety agencies the opportunity for greater levels of effectiveness and interoperability. (Council Administrative Notice Item No. 12 – Presidential Executive Order 13616, Accelerating Broadband Infrastructure Development; Council Administrative Notice Item No. 23 – FCC Wireless Infrastructure Report and Order)
  43. Pursuant to Section 6409(a) of the Spectrum Act, a state or local government may not deny and shall approve any request for collocation, removal or replacement of equipment on an existing wireless tower provided that this does not constitute a substantial change in the physical dimensions of the tower. (Council Administrative Notice Item No. 8 – Middle Class Tax Relief and Job Creation Act of 2012; Council Administrative Notice Item No. 23 – FCC Wireless Infrastructure Report and Order)
  44. In June 2020, FCC issued a declaratory ruling that heights of existing towers located outside of the public right-of-way could increase by up to 20 feet plus the height of a new antenna without constituting a substantial change in the physical dimensions of a tower. (Council Administrative Notice Item No. 27)
  45. In November 2020, FCC issued an order that ground excavation or deployment up to 30 feet in any direction beyond the site boundary of existing towers located outside of the public right-of-way does not constitute a substantial change in the physical dimensions of a tower. (Council Administrative Notice Item No. 28)

### **Council Jurisdiction**

46. The Council has exclusive jurisdiction over telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company or a certified telecommunications provider or used in a cellular system, which may have a substantial adverse environmental effect. (CGS §16-50i(a)(6) (2021); CGS §16-50x (2021)).
47. Local zoning regulations do not apply to facilities under the exclusive jurisdiction of the Council. The Council shall consider any location preferences or criteria provided by the host municipality as the Council shall deem appropriate. (CGS §16-50x (2021))

48. According to the state tower sharing policy, if the Council finds that a request for shared use of a facility by a municipality or other person, firm, corporation or public agency is technically, legally, environmentally and economically feasible, and the Council finds that the request for shared use of a facility meets public safety concerns, the Council shall issue an order approving such shared use to avoid the unnecessary proliferation of towers in the state. (CGS §16-50aa (2021))
49. Under CGS §16-50aa(b), “facility” means a tower owned or operated for a commercial or public purpose by a person, firm, corporation or public agency which uses such tower for transmitting or receiving signals in the electromagnetic spectrum pursuant to a FCC license. (CGS §16-50aa(b) (2021))
50. The existing City-owned and operated public safety tower at 499 Mile Lane is a “facility” under CGS §16-50aa(b). The City also owns the host parcel. (AT&T 1; CGS §16-50aa(b) (2021)).
51. A feasibility proceeding under CGS §16-50aa(c)(2) is separate and distinct from a certification proceeding under CGS §16-50p. It specifically applies to the feasibility of sharing an existing “facility,” as that term is specifically defined in the tower sharing statute and generally defined in the Public Utility Environmental Standards Act (PUESA). (CGS §16-50g, *et seq.* (2021))
52. Neither “tower site sharing” nor “horizontal collocation” are defined terms in the tower sharing statute or PUESA. (CGS §16-50g, *et seq.* (2021); Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, pp. 37-40; AT&T 1, p. 2)

#### **Existing Site**

53. Pursuant to RCSA §16-50j-2a(29), “Site” means a contiguous parcel of property with specified boundaries, including, but not limited to, the leased area, right-of-way, access and easements on which a facility and associated equipment is located, shall be located or is proposed to be located. (RCSA §16-50j-2a(29)(2021))
54. The host parcel of the existing facility site is zoned R-15 Residential and consists of approximately 23.7 acres. It is owned by the City and currently serves as the City’s Emergency Operations Center, as well as a public safety training area. (AT&T 1, p. 1; Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Response 2; Transcript 3, pp. 175-176; City 2)
55. The City acquired the host parcel from the United States Army in 2012. It was used as a military training center since 1955. (Council Administrative Notice Item No. 35 – Docket 506 Record; AT&T 1, p.1)
56. The host parcel abuts Mile Lane to the north and contains developed areas, open fields, forest and wetlands. Abutting land use to the east, west and south includes residential and educational facilities. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab 8, Photo Log)
57. Middletown High School is located approximately 0.3-mile to the southeast of the facility site. Lawrence Elementary School is located approximately 0.5-mile to the northeast of

- the facility site. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab 8, Photo Log; Applicant 4, response 19)
58. Site topography at the existing facility compound area is level at approximately 109 feet above mean sea level (amsl). (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Attachment 7, Drawing C-2)
59. Two 115-kilovolt (kV) electric transmission lines are located south of the host parcel that run in an east-west direction in existing right-of-way (ROW) partially between Ridgewood Road and Newfield Street. There is access to the ROW from public roads, including Poplar Road, Ridgewood Road, Azalea Drive, Cynthia Lane and Newfield Street. Existing access to the ROW from the end of Azalea Drive and Cynthia Lane is gated. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 4, pp. 311-312; Applicant 9, Late-Filed Exhibits; Applicant Administrative Notice Item No. 4; Council Administrative Notice Item No. 37 – Sub-petition No. 1293-BMM-01; Tr. 1, pp. 19-20)
60. In July 2020, the Council approved the replacement of 80 wood electric transmission line structures with weathering steel electric transmission line structures along the Eversource ROW. One existing lattice structure located approximately 0.8-mile southeast of the existing facility site and west of Newfield Street was not replaced (Structure No. 6-325). Construction was completed in June 2021. (Council Administrative Notice Item No. 37– Sub-petition No. 1293-BMM-01; Tr. 1, pp. 19-20)
61. AT&T believes collocation on any of the electric transmission line structures is not feasible due to structural engineering challenges, access limitations to the top of the hill and general Eversource aversion to allowing new towers and collocations within its ROWs. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 9, Late Filed Exhibits; Applicant Administrative Notice Item No. 4; Council Administrative Notice Item No. 37– Sub-petition No. 1293-BMM-01)
62. Replacement H-frame electric transmission line structures (Structure Nos. 6-216 to 6-222) are located in the ROW to the south of the existing facility site at ground elevations ranging from approximately 90 feet amsl to 190 feet amsl. There is access to these structures via Ridgewood Road, Azalea Drive and Cynthia Lane. (Council Administrative Notice Item No. 37– Sub-petition No. 1293-BMM-01)
63. Feasibility of collocation on any electric transmission line structure is subject to Eversource circuit outage availability ratings that are based on impact to Bulk Power System reliability. 345-kV lines hold the maximum outage availability rating whereas 115-kV lines hold a lower outage availability rating. Eversource evaluates interruption to lines according to reliability risks and congestion charges. (Council Administrative Notice Item No. 35 – Docket 506 - Applicant Administrative Notice Item No. 4)
64. AT&T has not had discussions with Eversource about potential collocation on an electric transmission line structure as of February 17, 2022. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 4, pp. 311-312; Tr. 1, pp. 13, 37)



**Existing Facility**

65. In 2015, the City evaluated solutions to achieve 95% in-building coverage for City and Town of Portland police, fire, emergency management, public works and local government. (Council Administrative Notice Item No. 35 – Docket 506 Record - City 2)
66. In 2016, Motorola Solutions was selected in a City request for proposals to upgrade the City's entire public safety communications system. (Council Administrative Notice Item No. 35 – Docket 506 Record - City 2; AT&T 1, p. 1)
67. The location of the existing facility and its equipment compound were selected by the City. (Council Administrative Notice Item No. 35 – Docket 506 Record – City 2)
68. In 2017, prior to facility construction, AT&T expressed interest in collocation of its equipment at the Mile Lane facility, but had not established a site search at that time. (Council Administrative Notice Item No. 35 – Docket 506 Record - City 2; Tr. 1, pp. 15-16)
69. Between 2017 and 2019, the City proceeded with its public safety communications upgrade project without further discussion or participation from AT&T. (Council Administrative Notice Item No. 35 – Docket 506 Record – Transcript 1, pp. 167-168)
70. The City built the tower in 2018. AT&T had no role in the financing or construction of the tower. (Council Administrative Notice Item No. 35 – Docket 506 Record – City 2)
71. In addition to coverage for City and Town of Portland police, fire, emergency management, public works and local government, the facility provides links to statewide emergency response assets. (Council Administrative Notice Item No. 35 – Docket 506 Record - City 2)
72. The existing facility is a 180-foot self-supporting lattice tower within a 3,600 square foot fenced equipment compound. It serves as the Master Site for the City's entire public safety communications system. The areas served by this site cover a significant portion of the City. During any interruption, no state assets would be available to assist or mitigate coverage because the link to statewide assets would be lost. (Council Administrative Notice Item No. 35 – Docket 506 Record – Transcript 3, pp. 146-149; Applicant 4, Attachment 7, Drawings T-1, C-1, C-2, A-1, and A-2; Applicant 9; City 2; Tr. 1, pp. 15-16)
73. AT&T proposed implementing the tower modifications identified in the 2019 Structural Analysis to accommodate its collocation at AT&T's cost. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab B, p. 2)
74. The City expressed concerns about AT&T's collocation plans as they might impact its existing public safety communications during construction based on this tower site's integration into the citywide public safety network and importance to serving the public. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab B, p. 2)
75. The City's upgraded public safety communications system went on-line in 2019. The City has not experienced any downtime since the system went online. (Council

Administrative Notice Item No. 35 – Docket 506 Record - Transcript 3, pp. 159-160; City 2)

### **AT&T Wireless Coverage**

76. AT&T operates equipment on 17 existing facilities within a four-mile radius of the facility site. As a result of distances between the existing AT&T sites and geographical terrain, none of these facilities are able to provide adequate coverage to the proposed service area. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab 4 – RF Report, pp. 3, 5, 12; Applicant 4, response 39)
77. In 2017, AT&T identified a need for coverage, as well as for FirstNet public safety communications, in the northern area of Middletown along Mile Lane, Newfield Street (State Route 3), Ridgewood Road and surrounding areas. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab 4 – RF Report, pp. 3, 5, 12; Applicant 4, response 39)
78. AT&T believes the City-owned facility is the only existing **tower** structure within a 4-mile radius that could meet AT&T's coverage objectives. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 12 and Transcript 1, p. 15)
79. While the proposed site would enhance capacity, it is proposed primarily to address coverage needs. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 46)
80. FirstNet is a subscriber service available to local emergency response entities that would allow preferred wireless service on AT&T's 700 MHz system during emergencies. AT&T and FirstNet work together to determine which sites in coverage deficient areas are prioritized. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, pp. 18-19, 52-53; Transcript 3, pp. 149-152, 196-197)
81. AT&T established a search ring in August 2018. The center point of the search area radius is located within the Eversource electric transmission line ROW to the south of the host parcel. The radius of the search area is 0.25-mile. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Response 9; Applicant 9, Tab 2; Tr. 1, p. 16)
82. At the time of AT&T's submission of Docket 506 and Feasibility Request to the Council, the City had installed and currently maintains antennas at the 157, 137 and 122-foot levels of the existing facility and microwave dishes at the 130 and 95-foot levels of the existing facility. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Attachment 2; Applicant 6, Attachment 3)
83. AT&T proposes to install 9 antennas on the existing facility at a centerline height of approximately 180 feet above ground level to eliminate its coverage gap. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, p. 1; AT&T 1; Tr. 1, pp. 29-30)

84. AT&T seeks to provide voice and data services over its 5G low-band spectrum using 700 MHz, 850 MHz, 1900 MHz, 2100 MHz and 2300 MHz frequency bands. The proposed AT&T antennas would be unable to provide AT&T's 5G+ which uses 24 gigahertz to 39 gigahertz frequency bands, at this time. Use of 5G+ would require different antennas, and it would add minimal value to the system at this time. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 41, Transcript 1, p. 63)
85. Without the ability to install antennas on the existing facility at Mile Lane, AT&T would have to construct a new facility to meet its coverage needs in the area. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 6, Attachment 3)

### **Technical Feasibility**

86. AT&T rejected reinforcement of the existing facility as an option due to City public safety network concerns, economic costs to AT&T and lack of future collocation opportunities. (AT&T 1)
87. If all of the reinforcements in the 2021 Structural Analysis were implemented, AT&T believes it would not be sufficient. (Tr. 1, p. 26)
88. Reinforcement of the existing facility would not allow for future collocation of other carriers. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 3, p. 211)
89. If reinforcements to the existing facility were implemented, the City's communications system could remain operational. It would not require taking the City's antennas out of service. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 1, pp. 12-13)
90. The City maintains another existing facility at the fire station at 169 Cross Street that is at maximum capacity. If the City needed to install additional equipment or needed to offer space to a neighboring town, installation of the equipment could be accommodated at the Mile Lane facility. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 4, pp. 295-296)
91. In 2019, AT&T performed a structural analysis of the facility that concluded it was not structurally capable of supporting AT&T's proposed equipment without significant bolt and weld modifications. (2019 Structural Analysis) (Council Administrative Notice Item No. 35 – Docket 506 Record - City 2; Applicant 4, Attachment 2; Transcript 4, pp. 309-311; AT&T 1)
92. The 2019 Structural Analysis was performed on the existing facility by Fullerton Engineering Consultants on behalf of AT&T. It concluded the tower has a maximum stress ratio of about 253% and cannot be modified in accordance with the State Building Code. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Attachment 2; Tr. 1, pp. 13, 91-92)
93. The 2019 Structural Analysis did not take the foundation into account due to a lack of geotechnical information. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, Attachment 2)

94. In 2021, AT&T performed another structural analysis of the facility that concluded it was not structurally capable of supporting AT&T's proposed equipment without significant bolt and weld modifications. The required welding could cause potential damage to the legs, along with the other members and appurtenances that are in the vicinity of the modifications. (2021 Structural Analysis) (Council Administrative Notice Item No. 35 – Docket 506 Record – Transcript 4, pp. 310-311; Applicant 6, Attachment 3)
95. The 2021 Structural Analysis was performed on the existing facility by Hudson Design Group (HDG) on behalf of AT&T. It concluded the tower and foundation have a maximum stress ratio of 292% and cannot be modified in accordance with the State Building Code. HDG recommended AT&T's proposed equipment be installed elsewhere. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 6, Attachment 3)
96. Locating AT&T antennas at a lower centerline height on the existing facility would reduce stress on the tower. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 1, p. 13)
97. The City has occupied roughly the 80 foot level of the facility to the 160 foot level of the facility, and AT&T requires an antenna centerline height of at least 150 feet to meet its coverage objectives. Options for an AT&T installation at a lower antenna centerline height are limited. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, p. 13 and AT&T 4, response 42)
98. During the Docket 506 proceedings, the possibility of installing a new monopole tower to be shared by the City and AT&T was discussed. AT&T and the City have not had further discussions about the feasibility of sharing a new monopole tower as of February 17, 2022. (Tr. 1, pp. 11-12)
99. The City expressed concerns about sway of antennas, especially microwave dishes, when attached to a monopole tower design. A lattice tower design is preferable to the City for installation of their equipment. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, pp. 283-285)
100. AT&T could install its equipment on a lattice tower or a monopole tower. (Tr. 1, p. 39)
101. AT&T rejected construction of a replacement lattice tower as an option due to the City's public safety and proprietary concerns, as well as cost. (AT&T 1)
102. AT&T does not believe replacing the existing facility with a new facility that could accommodate multiple carriers and the City is technically feasible because the City has no interest in moving its equipment to a new tower. (Tr. 1, pp. 22-23)
103. A temporary tower for AT&T's equipment, such as a cell on wheels, could meet AT&T's coverage objectives in the short term while a new tower is constructed. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 1, pp. 31-33; Tr. 1, p. 47)
104. A temporary tower for the City's equipment, such as a cell on wheels, could create a disruption to the system due to height restrictions while a new tower is constructed. It would also require two cutovers – one onto the temporary tower and another onto the

new tower. Disruptions to the system and equipment cutovers are unacceptable to the City. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 1, p. 61; Transcript 4, pp. 281-283, 309-311)

105. Shared use alternatives and related requirements for structural reinforcements and/or City equipment cutovers/disruptions are indicated in the table below. See Figure 3 for cost data.

SHARED USE	STRUCTURAL REINFORCEMENTS	CITY EQUIPMENT CUTOVERS/DISRUPTION
Existing Lattice Facility	Required	None
New Lattice Facility	Not applicable	Required
New Monopole Facility	Not applicable	Required

(Council Administrative Notice Item No. 35 – Docket 506 Record - AT&T 1, p. 1; AT&T 4, responses 3, 6, 14, 16, and 42)

106. If AT&T were to co-locate on the existing City tower at 180 feet or if AT&T shared a replacement tower with the City at 180 feet, the cumulative worst-case maximum power density of the radio frequency emissions from the operation of AT&T's antennas and the City's antennas would be 5.90 percent of the standard\* for the General Public/Uncontrolled Maximum Permissible Exposure, as adopted by FCC, at the base of the proposed tower.

\*This includes a 10 dB off-beam pattern loss to account for the lower relative gain below the antennas and a 20 dB off-beam pattern loss for microwave antennas due to their highly directional nature.

(Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 1, Tab B9, Calculated Radio Frequency Exposure; Applicant 4, responses 51 and 52; Council Administrative Notice Item No. 2 – FCC OET Bulletin No. 65)

### Legal Feasibility

107. In a feasibility proceeding, if the Council determines that the proposed shared use of the facility is technically, legally, environmentally and economically feasible and meets public safety concerns, the Council's decision shall include an order requiring the owner of the facility to permit the proposed shared use upon such terms, conditions or limitations the Council deems appropriate. (CGS §16-50aa(c)(2) (2021))

108. Following a feasibility proceeding, if the requesting entity and the owner of a facility agree to shared use of the facility, but cannot agree on fair compensation for such shared use, the requesting entity and the owner of the facility may submit the issue of fair compensation to arbitration or petition the Superior Court to determine the issue. (CGS §16-50aa(d)(1) (2021))
109. As part of its 2019 emergency communications upgrade, the City issued a resolution to share available space on City-owned facilities with commercial communications networks to offset costs incurred by the City to build its public safety communications network. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Attachment 1; Transcript 3, p. 118; Talias Trail 3).
110. The City expressed proprietary concerns with modifying and sharing the existing facility. AT&T does not know what those concerns are and those concerns are not documented. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1 pp. 34-37; Tr. 1, pp. 14-15)
111. The City is not in favor of sharing the existing facility. The City is also not in favor of sharing a new 180-foot self-supporting lattice tower at the existing site. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 3, pp. 173-174)
112. The Council has no authority to compel a parcel owner to sell or lease property, or portions thereof, for the purpose of siting a facility nor shall the Council be limited in any way by the applicant having already acquired land or an interest therein for the purpose of constructing a facility. (*Corcoran v. Connecticut Siting Council*, 284 Conn. 455 (2007); CGS §16-50p(g)(2021))
113. During a City Planning and Zoning Commission (PZC) review of the lease for the facility proposed in Docket 506, the PZC expressed a preference for a monopole tower design rather than a monopine tower design. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 5)
114. The lease agreement between AT&T and the City for the facility proposed in Docket 506 is not executed. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 4, Response 8, Attachment 4)
115. AT&T did not discuss an annual lease total for AT&T's collocation on the existing facility. (Tr. 1, p. 15)

#### **Environmental Feasibility**

116. The facility site is not located within the Federal Emergency Management Agency designated 100-year or 500-year flood zones. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 4, response 63)
117. The facility site is not located within a state-designated aquifer protection area. (Council Administrative Notice Item No. 79)
118. The facility site is not located within a DEEP Natural Diversity Database buffer area. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 1, Tab B6 – Natural Diversity Database Map)

119. The nearest publicly-accessible recreational resource is the Middletown Bikeway, located 1.23 miles northwest of the facility site. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 4, response 68)
120. The nearest Important Bird Area to the facility site is Meshomasic State Forest Block located 5.6 miles to the northeast. ((Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 65)
121. The host parcel contains approximately 1.2 acres of prime farmland soils. These soils are located over 500 feet from the existing compound area. (Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 4, response 64; Applicant 6, Tab 7 – Subject Property Farmland Soils)
122. Soil profiles at the existing compound area are categorized as udorthents, excessively drained to moderately well drained soils that have been altered by cutting and filling associated with previous disturbance by construction of the existing facility. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 1, Tab 7 – SHPO Letter dated June 24, 2021)
123. AT&T would utilize the City’s existing access drive that extends from Mile Lane in a southerly direction to the facility compound. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 1, Tab B, p. 3; Applicant 6, Attachment 6, Drawing A-1)
124. To supply natural gas to the site as a generator fuel source, it would require approximately 700 linear feet of new trenching in addition to potential driveway excavation and re-paving. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 9, Late Filed Exhibit c)
125. The City currently utilizes propane for its own backup generator fuel. AT&T proposes to utilize diesel for its backup generator fuel. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 4, responses 54 and 56; Applicant, Tab 1 – Generator Specification Sheet; AT&T 9, Late Filed Exhibit c)
126. The City would not share its generator with AT&T or any other collocating entities. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, p. 303)
127. A wetland is located to the south, west and east of the existing facility compound. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 6, Tab 8 – Wetland Inspection Map)
128. The distance from the existing facility compound fence to the wetland is between 0 to 30 feet. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, p. 74)
129. The location of the wetland could limit further expansion of the site for additional wireless carriers. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, pp. 89-91)

130. AT&T has not performed a geotechnical study at the site. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 3, p. 216)
131. Two previously identified archaeological resources are located within 1 mile of the facility site. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 1, Tab 7 – SHPO Letter dated June 24, 2021; Applicant 4, response 69)
132. Pursuant to CGS §16-50p(a)(3)(F), for a telecommunications facility proposed to be installed on land near a building containing a school, the facility will not be less than 250 feet from the building containing a school unless the location is acceptable to the chief elected official of the municipality or the Council finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which such school is located. (CGS §16-50p(a)(3)(F)(2021))
133. No public schools or commercial child day care facilities are located within 250 feet of the facility site. The nearest school is Middletown High School, located approximately 0.3-mile southeast of the site. The nearest commercial daycare is the Building Blocks Early Learning Center, located approximately 0.82-mile northwest of the site. (Council Administrative Notice Item No. 35 - Docket 506 Record - Applicant 4, responses 18 and 19)
134. The City did not express any concerns about visibility of the facility from any schools, including the High School and Lawrence Elementary School. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, p. 287)
135. Residents of Talias Trail, an abutting residential cul-de-sac to the west of the host parcel, expressed concerns about the visibility of the existing facility. The residents would prefer a shared monopole tower design over a shared lattice or monopine tower design at an alternative location southeast of the existing facility on the host parcel. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, pp. 266-270, 276-277; Talias Trail 1, 3, 4 and 6)

#### **Economic Feasibility**

136. In reinforcing its network, AT&T takes into consideration whether the cost of a particular site becomes so expensive that it jeopardizes opportunities at other site locations. (Tr. 1, p. 11)
137. Costs to reinforce the existing facility, exclusive of antennas and other equipment, would be approximately \$300,000 to \$450,000. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 1, pp. 13-14, 58, 92; Transcript 3 pp. 209-210)
138. AT&T believes that reinforcement of the existing tower would not be cost prohibitive, and the costs would be borne by AT&T. These costs would include investigation of the soil and foundation. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4, response 7; Applicant 9; Tr. 1, p. 14)
139. Costs associated with the construction of a new shared lattice tower include, but are not limited to, the cost of steel, additional work associated with steel tower construction and decommissioning the existing tower. (Tr. 1, p. 39)



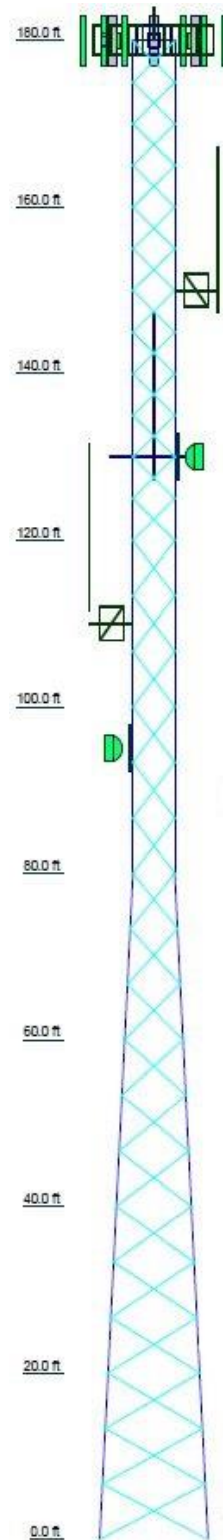
140. AT&T estimates costs for decommissioning the existing lattice tower and construction of a new lattice tower, referred to as a “drop and swap,” would be approximately \$950,000 to \$1.3 million. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 3, pp. 208-212, 219; Tr. 1, p. 28)
141. Site restoration costs for a new lattice tower in a different location would be approximately \$50,000 to \$200,000. (Tr. 1, pp. 30-31, 40)
142. It would cost approximately \$200,000 to construct an equipment compound to support a new tower at a different location on the parcel than the existing facility site. (Tr. 1, p. 40)
143. Whether a new shared tower was built at the existing facility site or at a different location on the parcel, the City **emphasized that its** existing equipment must remain operational on the existing facility while new City equipment is installed on the new shared tower. (Council Administrative Notice Item No. 35 - Docket 506 Record –Transcript 4, pp. 281-283, 309-311; Tr. 1, pp. 32-33)
144. Under any collocation or new tower construction scenario, AT&T’s equipment costs would remain the same at approximately \$110,000 to \$120,000. (Tr. 1, pp. 31, 41-42)
145. **AT&T believes** it would not be economically feasible for AT&T to spend a million dollars on a single site. (Tr. 1, p. 35)
146. AT&T believes the economic costs of constructing a new lattice tower cannot be recovered by customer use or through an agreement with the City even if 100 percent future collocation rents are collected by AT&T. (AT&T 1; Tr. 1, pp. 11; 35-36)
147. A new monopole constructed adjacent to the existing facility would cost approximately \$150,000, inclusive of labor and modifications to the existing equipment compound. AT&T’s equipment costs are not included in this total. (Tr. 1, p. 43-44)
148. The replacement costs of the City’s equipment would be approximately \$150,000. (Tr. 1, p. 40)
149. The cost to decommission the existing facility would be approximately \$200,000. (Tr. 1, pp. 40-41)
150. If the City were forced to cut its equipment over to a new shared tower, AT&T expects to incur litigation costs. (Tr. 1, p. 42)
151. AT&T has not completed a full analysis of an alternate site location on the host parcel. Tower construction at a different location would increase costs due to distance from the existing site and the City review process required for an alternate site location. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, p. 286; Tr. 1, pp. 12-13)
152. AT&T believes that the costs of a new natural gas line to fuel an emergency backup generator would not be warranted for economic reasons in light of alternatives such as diesel or propane. The new natural gas line would cost at least \$10,000. (Council

Administrative Notice Item No. 35 - Docket 506 Record - Applicant 9, Late Filed Exhibit c and Transcript 4, pp. 350-351)

**Public Safety Concerns**

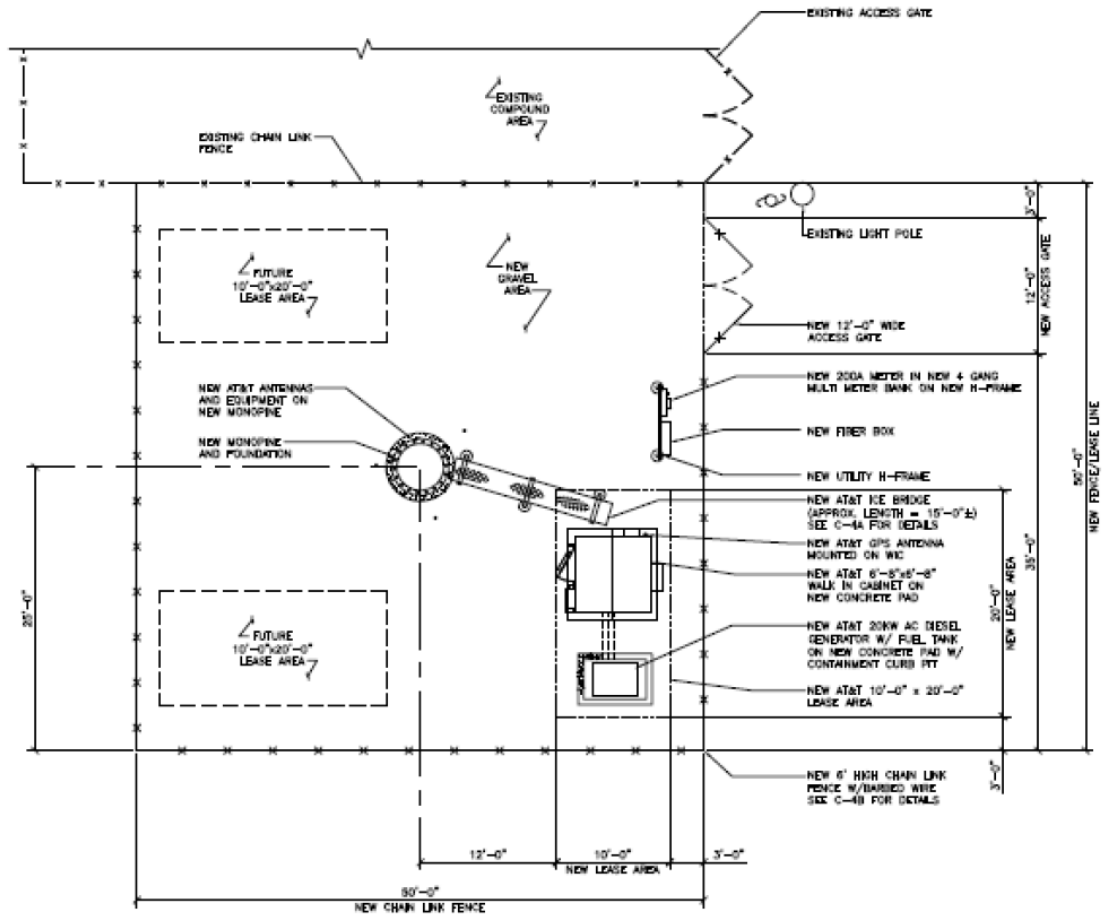
153. AT&T's proposed installation on the existing facility would provide Enhanced 911 services and would be capable of supporting text-to-911 service. It would also support FirstNet public safety services. (Council Administrative Notice Item No. 35 – Docket 506 Record)
154. FirstNet is independent of the City's public safety communications system that is installed on the existing facility. The City is not a subscriber of FirstNet. (Council Administrative Notice Item No. 35 – Docket 506 Record - Transcript 1, pp. 70-71, Transcript 3, pp. 149-151, 196-197)
155. FirstNet and AT&T determined this area in Middletown is a priority for FirstNet public safety services. AT&T could provide FirstNet services through collocation on the existing facility. (Council Administrative Notice Item No. 35 – Docket 506 Record – Transcript 1, pp. 18-19; 52)
156. The City expressed concerns that modifications to the existing facility would impact its public safety communications. It is the master site for the City's network and must maintain continuity of service. (Council Administrative Notice Item No. 35 – Docket 506 Record – Transcript 3, pp. 163-164)
157. The amount of welding required to reinforce the existing facility for collocation of AT&T's equipment could weaken rather than strengthen the structural integrity. (Council Administrative Notice Item No. 35 - Docket 506 Record - Transcript 4, pp. 310-311)
158. On August 15, 2017, FAA issued a Determination of No Hazard to Air Navigation for the existing facility. (Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 6, Tab 2 – FAA No Hazard Determination and FAA Summary Report)
159. AT&T would ensure deployment of 5G services under any tower scenario at the host parcel would comply with FCC and FAA guidance related to air navigation. (Council Administrative Notice Item No. 35 - Docket 506 Record – Transcript 1, pp. 64-65; Tr. 1, p. 14)

**Figure 1 – Existing City Tower Profile w/ AT&T collocated at 180 feet**



(Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4a)

**Figure 2 – Existing City Tower Compound w/ AT&T collocated**



(Council Administrative Notice Item No. 35 – Docket 506 Record - Applicant 4b)

**Figure 3 – Tower Configuration Cost Data Table**

<b>COSTS</b>	<b>REINFORCEMENT OF EXISTING FACILITY</b>	<b>CONSTRUCT REPLACEMENT LATTICE TOWER</b>	<b>CONSTRUCT REPLACEMENT MONOPOLE TOWER</b>
<b>Tower cost</b>	\$300,000 - \$450,000	\$1,000,000	\$500,000
<b>AT&amp;T Equipment Cost</b>	\$110,000 - \$120,000	\$110,000 - \$120,000	\$110,000 - \$120,000
<b>Cutover Cost for City Equipment</b>	N/A	\$150,000 - \$300,000	\$150,000 - \$300,000
<b>Replacement cost of City equipment</b>	N/A	\$150,000	\$150,000
<b>Site development and restoration costs</b>	N/A	N/A	N/A
<b>Decommissioning cost for existing facility</b>	N/A	\$200,000	\$200,000
<b>Total Costs</b>	<b>\$410,000 - \$570,000</b>	<b>\$1,610,000 - \$1,770,000</b>	<b>\$1,110,000 - \$1,270,000</b>

(Council Administrative Notice Item No. 35 – Docket 506 Record – Applicant 9; Tr. 1, pp. 11-46)