April 16, 2015

VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL

Ms. Melanie A. Bachman, Esq., Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06501

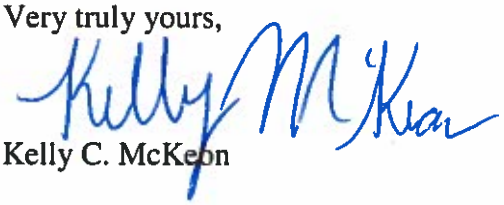
Re: Docket No. 454 – Application by Tower Holdings, LLC for a Certificate of Environmental Compatibility and Public Need for a Telecommunications Facility at 199 Brickyard Road, Farmington, Connecticut

Dear Attorney Bachman,

This office represents the Town of Farmington, a party in the above-captioned docket. In accordance with § 16-50j-31 of the Regulations of Connecticut State Agencies, the Town of Farmington respectfully submits the enclosed proposed findings of fact and brief. I have also included fifteen (15) copies in accordance with § 16-50j-12(a) of the Regulations of Connecticut State Agencies.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Kelly C. McKeon

Enclosures

cc: *Service List* (via regular mail and electronic mail)

CONNECTICUT SITING COUNCIL
DOCKET NO. 454

IN THE MATTER OF:

APPLICATION BY TOWER HOLDINGS, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY LOCATED AT 199 BRICKYARD ROAD, FARMINGTON, CONNECTICUT

TOWN OF FARMINGTON'S POST-HEARING BRIEF

Submitted by:

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April 16, 2015

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I. INTRODUCTION

The Town of Farmington ("Town"), respectfully submits this post-hearing brief in opposition to the subject application (Docket No. 454, the "Application"), submitted by Tower Holdings, LLC ("Tower Holdings" or "Applicant") for a certificate of environmental compatibility and public need for the construction, maintenance and operation of a wireless telecommunications facility ("Facility") located at 199 Brickyard Road, Farmington, Connecticut. While the Town accepts that the Connecticut Siting Council ("Council") maintains jurisdiction over the siting of commercial cellular providers, the Town submits that the Council lacks jurisdiction to consider and approve an application for a training tower facility. In an effort to avoid the appropriate municipal land use review process which would otherwise be applicable to the construction and use of this training tower, Tower Holdings' attempt to affix a New Cingular Wireless PCS, LLC ("AT&T") panel antenna array onto the proposed tower is a clear attempt to transform the training tower into a telecommunications tower. Because the Council lacks the jurisdiction to cite and approve training towers and their associated operations, this Council should disregard all elements of Tower Holdings' Application that pertain to the use of the Facility as a training tower and only consider the coverage and capacity needs of AT&T in the area when rendering its decision - which by AT&T's own admission is met with a 140 foot monopole.

II. PROCEDURAL BACKGROUND

The Application was filed with the Council on November 7, 2014 pursuant to Connecticut General Statutes ("C.G.S.") § 16-50g *et seq.* and § 16-50j-1 *et seq.* of the Regulations of Connecticut State Agencies ("R.C.S.A."). Both the Town and AT&T were granted party status in this proceeding by the Council on December 11, 2015. On February 3,

2014, the Council conducted an evidentiary hearing and an evening public hearing on the Application. (Hearing Transcript ("Tr.") 1, p. 1, 128). The Council's hearing was continued to March 17, 2015, and concluded on this date. (Tr. 3, p. 175, 299).

This post-hearing brief is filed on behalf of the Town pursuant to § 16-50j-31 of the R.C.S.A. and at the direction of the Council. (Tr. 3, p. 298). This brief evaluates the Application in light of (1) the scope of the Council's statutory jurisdiction under both the Telecommunications Act of 1996 and the Public Utility Environmental Standards Act, C.G.S. § 16-50g *et seq.*, and (2) the review criteria set forth in C.G.S. § 16-50p.

III. FACTUAL BACKGROUND

The Applicant's proposed Facility would be located on an approximately 2.49 acre parcel of land located at 199 Brickyard Road, Farmington ("Property"), and would consist of a 180-foot lattice structure with AT&T's panel antenna array mounted at approximately 140 feet above grade level ("AGL"), a Dunning Sand & Gravel ("Dunning") DB224 Dipole antenna located at 160 feet AGL, a Marcus Communications, LLC ("Marcus") RFI BA40-67 antenna located at 170 feet AGL and a radio station "Soft Rock" 106.5 WBMW ("WBMW"; together with Dunning and Marcus, collectively referred to as the "ancillary communication providers") DCR-L1 FM radio antenna located at 175 feet AGL. (Application, p. 2-3).

A. Tower Holdings is applying to the Council in the hopes that it will approve a 180-foot lattice training tower, even though training has absolutely no relevance to AT&T or AT&T's need or ability to provide reliable cellular coverage in the area.

Despite the title of its Application, Tower Holdings is not before this Council seeking a "Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility." Rather, Tower Holdings is before this Council in the hopes that it will approve a "Certificate for the Construction, Maintenance and

Operation of a Training Facility." (emphasis added). Ample evidence in the record confirms this fact.

In approximately March of 2013, Tower Holdings approached Jeff Ollendorf (Farmington's former Town Planner) and requested from him the opportunity to make an informal presentation to the Farmington Town Plan and Zoning Commission ("Commission") with regard to a potential training tower to be located at 199 Brickyard Road. (Town's Pre-Hearing Submission, 3/10/2015, Attachment A; Applicant's Genesis of the Proposed Facility and Legal Authority ("Genesis"), p. 2; Tr. 1, p. 90, lines 17-23). At the Applicant's request, the Commission placed an informal presentation by the Applicant on its agenda for the regular meeting on April 9, 2013 under "New Business." (Town's Pre-Hearing Submission, 3/10/2015, Attachment A and D). On April 8, 2013, the Applicant provided the Commission with a booklet that contained a description of the proposed 180-foot lattice tower and a series of photographs depicting the result of a balloon float designed to replicate the height of the proposed tower and its potential visibility within a certain designated radius. The booklet was prepared by All-Points Technology Corporation, P.C. *Id.*

At the time that the Applicant provided the Commission with the All-Points Technology booklet, there was no cellular component to the tower. (Tr. 1, p. 91, lines 16-22). Nevertheless, on the date of the informal presentation, the Applicant withdrew its request to meet with the Commission, claiming first that it was unable to conduct testing necessary for the presentation due to windy weather (Town's Pre-Hearing Submission, 3/10/2015, Attachment A), and second, that the meeting was a formal rather an informal meeting (Tr. 3, p. 230, lines 6-11).[1] Both

[1] Councilmember Klemens asked the Applicant: "So why did you ask to be removed from the Town of Farmington's informal meeting, was it because of the antennas, not knowing where the antennas were?" In response, Mr. Regulbuto (director of business development for Energy Site Solutions, LLC) stated: "We asked to be removed from the agenda because we had found out that it was a formal meeting, and we

explanations are, at best, suspect. First, what additional testing did the Applicant need to do in preparation for an informal meeting? The Applicant had already provided the Commission with a booklet that contained a description of the proposed 180-foot lattice training tower and a series of photographs depicting the result of a balloon float designed to replicate the height of the proposed tower and its potential visibility within a certain designated radius. Second, it was pointed out by Attorney Philip Dunn (chairman of the Farmington Town Plan & Zoning Commission) that the informal hearing request was just that – informal. (Town's Pre-Hearing Submission, 3/10/2015, Attachment A). An "informal" presentation is used to give potential applicants a chance to present ideas and concepts to the Commission in order to obtain feedback and direction so that complete and viable plans can be submitted. Specific details and plans are not required for such a discussion. *Id.* Even assuming that the Facility was still "in its infancy" (Genesis, p. 3), this fact is completely irrelevant in order to go before the Commission on an informal basis.

Thereafter, in an effort to avoid the municipal land use review process which would otherwise be applicable to the construction and use of this type of training tower, the Applicant advised the Town and the Commission that it planned to file an application with the Council rather than with the Town, claiming that the entire facility, including its crane-like equipment, and the proposed use as a training school, was within the exclusive jurisdiction of the Council based on the fact that an AT&T panel antenna array would be placed at 140 feet AGL. (Town's Pre-Hearing Submission, 3/10/2015, Attachment A; Tr. 1, p. 32, lines 21-25; Genesis, p. 4). The Applicant's decision to go before the Council instead of the Town is highly suspicious,

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had requested an informal meeting, and we were not prepared to go into a formal meeting." (Tr. 3, p. 229, lines 24-25, p. 230, lines 1-11). The Applicant never made this assertion when it withdrew its request, an indication of the Applicant's lack of credibility regarding the genesis of the proposed Facility. The only explanation the Applicant provided at the time it withdrew its request to meet was that further testing was necessary. (Town's Pre-Hearing Submission, 3/10/2015, Attachment A).

especially given the fact that the Applicant first and foremost had the goal of building a training tower (which as discussed below, falls under the Town's jurisdiction), and, thereafter, found a carrier, AT&T, to locate onto it in order to allegedly satisfy the Council's process. (Tr. 1, p. 36, lines 18-25). In the words of Councilmember Ashton: "We have a cell phone piggybacking on a – a training facility." (Tr. 1, p. 72).

The record is replete with examples demonstrating that not only is the primary purpose for this Application to cite and construct a training facility that will suit the Applicant's commercial purposes, but also, and more importantly, training has absolutely no relevance for AT&T's need or ability to provide wireless communications in the underserved area:

Example 1 (Tr. 1, p. 100, lines 12-25, p. 101, lines 1-15):

> **MR. FORSYTH**: So there – how many workers would it take to assemble this thing?
> **THE WITNESS** (Savino): Typically, we would probably have four. We would have one on—on the hoist operating it, and we would have three men that would end up climbing, working together.
> **MR. FORSYTH**: I see. So for, roughly, eight hours on a – a given day, there would be three individuals up –
> **THE WITNESS** (Savino): On the structure.
> **MR. FORSYTH**: – on the structure –
> **THE WITNESS** (Savino): Correct.
> **MR. FORSYTH**: – between 180 – up to 140 and 180 feet –
> **THE WITNESS** (Savino): Yes.
> **MR. FORSYTH**: – working on – working on this particular project?
> **THE WITNESS** (Savino): Right. Yea.
> **MR. FORSYTH**: And how is any of that relevant to AT&T's abilities to provide cellular service?
> **THE WITNESS** (Savino): No. There's no interference. It's not relevant to them whatsoever.

Example 2 (Tr. 1, p. 106, lines 11-25, p. 107, lines 1-2):

> **MR. FORSYTH**: That, in addition to the training scenarios that you've already outlined for us, you would also invite various municipalities to come have people climb the tower as well?
> **THE WITNESS** (Savino): And that would entail probably a single day activity. We probably could have a couple – a couple – three towns at once come in and – and go through training with them in a single day.

MR. FORSYTH: I see. And – and how – how is any of that relevant to AT&T's abilities or needs to provide cellular service?
THE WITNESS (Savino): It's not.

Example 3 (Tr. 1, p. 121, lines 18-25, p. 122, lines 1-25, p. 123, lines 1-7):

MR. FORSYTH: Okay. Give us an example.
THE WITNESS (Savino): Okay. We're going – we're going to set that FM antenna.
MR. FORSYTH: Okay.
THE WITNESS (Savino): They're going to go up top, they're going to climb up top, and they're going to be right alongside of the instructor as it is raised up, trollied, so that it doesn't smash into the tower, and then brought gently into the tower. Then they're going to deal with the necessary hardware to mount that antenna. They're going to compass. They're going to be setting the azimuth that's required for that particular antenna system, so there's a lot to learn. This is a lot of moving – moving parts that they're going to have to participate in.
. . . .
MR. FORSYTH: And how is any of that relevant to AT&T's need to provide reliable service?
THE WITNESS (Savino): It's not.

Example 4 (Tr. 3, p. 192, lines 21-25):

MR. FORSYTH: I see. And the outrigger has nothing to do with AT&T's ability to provide cellular service?
THE WITNESS (Savino): None whatsoever.

Example 5 (Tr. 3, p. 191, lines 1-3):

MR. FORSYTH: Sure. Is it not true that AT&T is really ancillary to the training function of the tower?
THE WITNESS (Savino): Yes.

The most powerful admission of all, however, is the fact that Tower Holdings repeatedly stated to the Council that it will not build the proposed tower unless the Council approves its design and structure to allow for training:

Example 1 (Applicant's Responses to the Towns' Interrogatories (set 2), A. 24):

Question 24: If the Siting Council grants the Applicant's application but limits the height of the tower to 140 feet and requires the tower to be of a monopole design, would the Applicant nevertheless build such a tower?

Answer 24: No. A monopole cannot be used for the type of training necessary for NET's business of constructing, modifying, reinforcing, maintaining and decommissioning towers or similar structures. NET needs a lattice tower.

Example 2 (Tr. 3, p. 203, lines 11-15):

> **MR. FORSYTH**: Mr. Savino, if the Siting Council only were to approve a monopole for 199 Brickyard Road, would you build that on your property?
> **THE WITNESS** (Savino): No.

Example 3 (Tr. 3, p. 206, lines 7-16):

> **SENATOR MURPHY**: In following up to the question about whether or not it would be constructed if it was just approved at the height that the intervenor was looking for, your answer is no that you will not build this tower just for the purposes of allowing AT&T and others to go on there; is that correct?
> **THE WITNESS** (Savino): Not a monopole. We couldn't train on a monopole.

Because the Applicant's primary goal is to construct a training facility in the hopes that it will be able to operate a training school (Tr. 1, p. 68), the Applicant had no reason to seriously consider other locations besides 199 Brickyard Road, and, in fact, did not consider other locations to site the proposed training tower:

Example 1 (Tr. 1, p. 35, lines 21-25, p. 36, lines 1-5):

> **DR. KLEMENS**: Looking at the site today, you said you searched for different areas. But I mean that was the only area that you really could do this, was the property, your headquarters property. So, in fact, the whole idea of you were searching for other places is, kind of, not correct, would you say?
> **THE WITNESS** (Savino): No. I – I wasn't searching for other properties.

Example 2 (Tr. 1, p. 92, lines 6-11):

> **MR. FORSYTH**: In your application, there is a discussion with regard to a search ring. Okay. And a search ring has no relevance for your purposes as a training tower, does it?
> **THE WITNESS** (Savino): No.

Example 3 (Tr. 3, p. 209, lines 4-10):

> **SENATOR MURPHY**: But you don't feel you could be successful at just 140 feet, but you would try it anyhow if it were approved?
> **THE WITNESS** (Savino): Absolutely. This is very important for us to be able to train on our own property.

All of these examples show that providing reliable cellular coverage from this location is of no real concern to the Applicant. The Applicant is only concerned with being able to construct and operate its training facility and operations on its own property. Because the Applicant's primary goal was to train on its own property, it is no surprise that the Applicant first determined the need for a training facility, and then, thereafter, found a carrier, AT&T, to locate onto it to allegedly satisfy the Council's process:

> **DR. KLEMENS**: So, as I read the application, you first – you determined the need for a training facility, and then you found a carrier, AT&T, to locate onto it to satisfy the CSC process, because we don't permit training towers.
> **THE WITNESS** (Savino): Correct.

(Tr. 1, p. 36, lines 18-25).[2]

B. Tower Holdings intends to engage in gin pole and other types of training at the proposed Facility, which will require equipment and persons to be temporarily affixed to the tower.

The Applicant will utilize the Facility to engage in different types of training activities, such as training to raise and lower rigging fixtures, outriggers and antennas, training to attach and dismantle antennas and tower sections, as well as training to raise antenna sector frames over and above existing ones. (Tr. 1, p. 17, lines 9-16, p. 96, lines 1-4; Applicant's Responses to Town's Interrogatories (set 2), A.9). However, the primary type of training that the Applicant will engage in is gin pole training. (Tr. 1, p. 106, lines 6-7). A gin pole is a lifting device that allows headroom above the highest fixed point of a tower used to raise (or lower) successive sections of structural steel, antennas, or equipment into position. (Applicant's Pre-Hearing Submission, 1/27/2015, Attachment C). It typically uses a steel lattice constructed boom in either a triangular shape or in a square shape, and uses wire rope for a load line driven from a

[2] The Applicant concedes that the Council has no jurisdiction over the permitting of training towers.

ground mounted hoist or winch. *Id.* Gin poles (as opposed to ground mounted cranes) are typically used to perform telecommunications work on taller towers, and their use usually becomes a consideration for towers that range in height from 250 feet to 350 feet. *Id.* The Applicant described a gin pole as a functioning crane attached to the side of a tower:

> **MR. FORSYTH**: And so, basically, this tower is functioning as a crane. Is that a fair statement?
> **THE WITNESS** (Jones): The gin pole is.

(Tr. p. 110, lines 22-25, p. 111, lines 1-8).

The equipment that the Applicant will utilize during training exercises will be temporarily affixed to the proposed lattice tower:

Example 1 (Tr. 1, p. 95, lines 16-21):

> **MR. FORSYTH**: Will this tower have training equipment associated with it?
> **THE WITNESS** (Savino): Yes, it would have temporary components that would go up and down off the structure at key times throughout the year.

Example 2 (Tr. 3, p. 188, lines 4-11):

> **MR. FORSYTH**: And as part of this training process, will any of these items be temporarily affixed to the lattice tower?
> **THE WITNESS** (Savino): Temporary in a sense that they're only going to be there for a short period of time, yes, but they will be affixed.

Example 3 (Tr. 3, p. 189, lines 2-12):

> **MR. FORSYTH**: What I was really getting at is if you affix an item, whether it's an antenna section or –
> **THE WITNESS** (Savino): Tower section.
> **MR. FORSYTH**: – tower sections, if you affix it to the tower, how long will it be affixed? Will it be a matter of hours? Will it be a few days? How long?
> **THE WITNESS** (Savino): At tops probably two days.

Example 4 (Tr. 3, p. 192, lines 11-25):

> **MR. FORSYTH**: Okay. So these outriggers are permanent appendages?
> **THE WITNESS** (Savino): In the real world, where needed, not in a training situation.

MR. FORSYTH: I see. So, with regard to a training situation, it's something that you would remove?
THE WITNESS (Savino): Yes, indeed.

The Applicant will temporarily affix a gin pole to the proposed lattice tower during training operations, which will be affixed to the tower for a single day. (Tr. 1, p. 20, lines 2-9, p. 107, lines 13-22). During training exercises, the Applicant intends to have up to six people located on the proposed tower at any one time. (Tr. 1, p. 116, lines 14-16, p. 117, lines 1-9).

C. Tower Holdings intends to operate a training school at the proposed Facility.

The Applicant will use the tower in order to operate a tower training school at the Property:

MR. ASHTON: If this is – if there's one of the training facility for your type of application in the country, why would you not make this available for across the country as a training school?
THE WITNESS (Savino): I'd be more than happy to do that.
MR. ASHTON: Are you planning to?
. . . .
THE WITNESS (Savino): Yes, I will.

(Tr. 1, p. 68, lines 2-16). The Applicant plans to open up the use of its training school to, at a minimum, the New England area:

MR. FORSYTH: Okay. And in response to somebody's question, you indicated that you certainly would like nothing better than to be a national training facility, for lack – for lack – I'm putting words in your mouth, but that was pretty much the gist of what I got sitting behind you. Would that be a fair statement?
THE WITNESS (Savino): Not that large, but I would like to service the, at minimum, the New England area.

(Tr. 1, p. 102, lines 15-25, p. 103, line 1; *see also* Applicant's Responses to Town's Interrogatories (set 2), A.9). The Applicant will charge a fee to other companies that want to use its proposed tower for training purposes, making its operation of the training school a commercial enterprise:

MR. FORSYTH: Would you, if another company wanted to train its – have your folks train their folks, would you charge them for it?

THE WITNESS (Savino): Yes, we would. Yes, we would have to charge for it, yes.
MR. FORSYTH: Okay. So that would make you a commercial enterprise, would it not?
THE WITNESS (Savino): Yes

(Tr. 3, p. 197, lines 12-25, p. 198, lines 1-3).

D. Tower Holdings claims it intends to use the Facility in order train the municipal first responders of the Towns of Farmington, Avon, Canton and Simsbury, yet failed to contact, in any meaningful way, anyone from these Towns.

The Applicant asserts that it would offer training to municipal first responders from the Towns of Farmington, Avon, Canton and Simsbury. (Applicant's Responses to Town's Interrogatories (set 2), A.11-12). The Applicant further boasts the fact that it will allow these surrounding Towns to collocate on the Facility rent free in order to provide better coverage for their public safety service providers, yet the Applicant never conducted any reasonable due diligence by way of contacting anyone of import from these Towns, including: Kathleen A. Eagen (Town Manager and Chief Executive Officer in the Town of Farmington), Paul Melanson (Police Chief in the Town of Farmington), or Mary Ellen Harper (Director of Fire & Rescue Services in the Town of Farmington), (Town's Pre-Hearing Submission, 3/10/2015, Attachment B; Tr. 3, p. 193, lines 24-25, p. 194, lines 1-4); the chief executive officer or the chief administrative officer in the Town of Canton, (Tr. 3, p. 194, lines 5-14); the town administrator in the Town of Simsbury, (Tr. 3, p. 194, lines 15-23); the first selectman or the town manager in the Town of Avon, (Tr. 3, p. 194, lines 24-25, p. 195, lines 1-3).[3]

E. There is insufficient evidence in the record demonstrating that the ancillary communication providers lack coverage and/or capacity in the alleged underserved area.

[3] Given the lack of effort to have serious discussions with local municipalities, the Town views the Applicant's claim as an empty gesture in the hopes of somehow garnering favor for its Application.

The Applicant's proposed Facility would host three ancillary communications providers: a Dunning Sand & Gravel DB224 Dipole antenna located at 160 feet AGL, a Marcus Communications, LLC RFI BA40-67 antenna located at 170 feet AGL and a "Soft Rock" 106.5 WBMW DCR-L1 FM radio antenna located at 175 feet AGL.[4] Dunning, with a headquarters located adjacent to the Property at 103 Brickyard Road, provides sand, gravel and other landscaping materials to business and residents in Connecticut. Marcus is a trunked (two-way) radio network operator in Connecticut, with locations on Avon Mountain and in downtown Hartford. WBMW is a radio station that services eastern Connecticut and parts of Rhode Island, with a location on Meriden Mountain. (Application, p. 9; Applicants Responses to Council's Interrogatories, A.5).

None of these providers were particularly concerned whether the Applicant's proposed tower was approved or not, as none participated as intervenors or parties in the proceeding. (Admin. Record). At the February 3rd hearing, the Council expressed its legitimate apprehension that this was the case, as well as its concern that no evidence had been submitted on the minimum antenna heights or their flexibility (if any) of these heights. *See* Tr. 1, p. 49-51 ("We don't have any idea, right, of the height that they actually need . . . . We know what heights they want to go on or will go – would go on if the tower were permitted, but we don't have any notion at all about their flexibility. They're not a party to this matter."); Tr. 1, p. 64 ("Just for the record, I'm a little bit troubled by the claimed need for 180 feet driven by three nonparticipating users of the tower. That, I find unusual, if not irregular. . . ."); Tr. 1, p. 70-71 ("So it really

[4] The record is unclear regarding the genesis of the ancillary communication providers becoming co-locators on the proposed tower. Mr. Savino first testified that the ancillary communication providers contacted him about being proposed tenants on the tower. (Tr. 3, p. 209, lines 11-17). However, thereafter, and on cross-examination by the Town, Mr. Savino testified that he was the one that revealed to them that he was building a training facility and would like to host wireless communications providers. (Tr. 3, p. 240, lines 14-25, p. 241, lines 1-4). This is another indication of the Applicant's lack of credibility throughout this process and proceeding.

comes down to one of the three mysterious entities. . . ."). Even after the Council expressed concern, the Applicant still failed to provide sufficient evidence regarding these three "mysterious entities."

To date, Dunning has failed to submit any propagation plots evidencing its claimed coverage gap in the area. (Admin. Record). The only evidence in the record regarding Dunning's claimed height of 160 feet AGL is that "he would like to get as high as he possibly can." (Tr. 3, p. 211). When asked whether Dunning would be amenable to a lower height if the Council were only to approve a 170 foot tower, Mr. Regulbuto stated that "I'm not an RF engineer, so I really don't want to speak for their RF engineering departments. I would have to go back to them and ask them if that – if that height – the new proposed change height would be prudent to their network. . . . I would go back and talk to them about that." (Tr. 1, p. 51, lines 15-21). Likewise, WBMW has also failed to submit any propagation plots evidencing its claimed coverage gap in the area. (Admin. Record). To date, the only evidence before this Council is that Mr. Regulbuto says that WBMW says they need "100 at the top of the tower." (Tr. 3, p. 213). Marcus is the only one of the three ancillary communication providers that submitted propagation plots for 100 and 180 feet, but because Marcus was unavailable for any cross-examination, the Council is again left to credit solely the word of Mr. Regulbuto, who stated that if the Council approved the tower at 140 feet, "Mr. Marcus would have to evaluate it again." (Tr. 3, p. 212).

F. Tower Holdings disregards materially adverse environmental and aesthetic impacts of the proposed Facility.

The record confirms that the trend across the telecommunications industry, including here in Connecticut, is moving towards the construction of shorter monopole towers in lieu of taller

lattice towers because not only are shorter monopoles able to provide the needed coverage, but they are more aesthetically and environmentally pleasing than tall lattice towers:

Example 1 (Tr. 1, p. 63, lines 22-25, p. 64, lines 1-10):

> **MR. ASHTON**: I have some experience in this kind of game. And my experience is that there's a move away from lattice towers, Mr. Libertine, because visibility is perceived – perceived as being better with a monopole than a lattice tower. Are you finding that there are more lattice towers going up or that there are more monopoles going up?
> **THE WITNESS** (Savino): It depends on the area in the United States. Here in the lower Northeast, there's predominately more monopoles going up than there are lattice.

Example 2 (Tr. 3, p. 256, lines 23-25, p. 257, lines 1-25, p. 258, lines 1-8):

> **DR. KLEMENS**: Are lattice towers generally used for – lattice construction generally used for taller towers?
> **THE WITNESS** (Archambault): Typically, yes. Once you get above 200, just about everything is lattice. Whether it's guyed or self-supporting is a different story. One fifty and down for our purposes a monopole is fine.
> **DR. KLEMENS**: Is it true that the industry is moving away from these very tall towers to shorter towers and other methods more closely spaced for wireless communication?
> **THE WITNESS** (Lavin): Case by case overall the towers are getting shorter. In some cases they still need feet.
> **DR. KLEMENS**: How about in Connecticut?
> **THE WITNESS** (Lavin): In Connecticut they are certainly down from the days of analog amps and 3 watt hard-wired phones, yes.
> **DR. KLEMENS**: So possibly a training facility for – and maybe it's not the right question to ask – maybe a training for sort of a dinosaur technology that's actually going to become obsolete?
> **THE WITNESS** (Lavin): I don't think towers are going to become obsolete.
> **DR. KLEMENS**: Lattice towers?
> **THE WITNESS** (Lavin): Lattice probably not as common in our industry....

Example 3 (Tr. 3, p. 253, lines 22-25, p. 254, lines 1-3):

> **SENATOR MURPHY**: Counselor, in your years of appearing before us and filing applications as your office on behalf of AT&T or wireless AT&T, how many applications have you filed for a lattice tower?
> **MS. CHIOCCHIO**: None to my knowledge.

Example 4 (Admin. Notice of Docket Nos. 421, 425, 449):

1. In Docket No. 421 (2012), the Council approved the replacement of a 100-foot lattice tower with a 130-foot monopole tower. The lattice tower was approximately 30 years old and had limited structural capacity. The design replacement as a monopole structure was in response to an effort to reduce visual impact.
2. In Docket No. 425 (2012), the Council approved the replacement of a 110-foot guyed lattice tower with a 120-foot monopine tower. The lattice tower reached the end of its useful life and lacked the structural capacity to accommodate additional antennas. The design replacement as a monopine structure was in response to concerns about visibility expressed by neighbors and the town.
3. In Docket No. 449 (2014), the Council approved the replacement of an 80-foot self-supporting lattice tower with a 150-foot monopole tower in order to reduce visibility and minimize aesthetic and environmental impacts while providing the needed coverage.

Example 5 (Applicant's Responses to Town's Interrogatories (set 1), A3):

> **Q3**. Would AT&T be able to achieve their coverage objectives in the alleged underserved area if a monopole structure were used instead of a lattice structure at the proposed site? If not, why?
> **A3**. Yes, if a monopole location and elevation are the same as the proposed structure.

Example 6 (Tr. 3, p. 240, lines 13-18):

> **MR. FORSYTH**: Okay. Mr. Savino, could all of the I'll call them the ancillary communications systems, Marcus, et cetera, could they all be located on a monopole?
> **THE WITNESS** (Savino): Yes.

Example 7 (Tr. 3, p. 262, lines 10-25):

> **MR. FORSYTH**: Would it be fair to say, gentlemen, that a 140-foot monopole somewhere on Brickyard Road would suit your needs?
> **THE WITNESS** (Lavin): The nature of the construction of the tower is not relevant to AT&T. Either one would be fine. It's a matter of height and location.

In other words, even though AT&T is able to meet its coverage objectives with a 140-foot monopole tower, the Applicant is nevertheless proposing a 180-foot visibly intrusive lattice-style structure. The only logical conclusion, which the record confirms, is so that the Applicant can serve its own commercial purposes of operating a training business at the Property, which,

again, has no relevance to providing cellular communications. (Tr. 1, p. 83, lines 21-25; Application, p. 7); *see also* (Tr. 1, p. 40, lines 9-13; p. 84, lines 7-12; p. 85, lines 7-16; Applicant's Responses to Town's Interrogatories (set 1), A.2, (set 2), A.24).

G. Tower Holdings intends to conduct training operations above the top of the tower.

Tower Holdings is applying for a tower height of 180 feet AGL, and intends to operate a gin pole, as part of its training operations, above the top of the tower. These operations would result in the height of the tower extending to a maximum of 199 feet AGL:

Example 1 (Tr. 1, p. 19, lines 15-22; p. 21, lines 10-15):

> **THE WITNESS** (Savino): . . . Now, when I say "80 feet tall," we're cantilevered 30 feet above the top of the structure.
> **MR. MERCIER**: Okay. So the 80-foot tall gin pole would only extend 30 feet above the very top?
> **THE WITNESS** (Savino): That's correct.
> . . . .
> **THE WITNESS** (Savino): No. No. It – we would need to stay below the threshold of the FAA, so it would be below 200 feet. And if we have 180 feet of structure, we have an 80-foot gin pole, we're only going up 16 to 18 feet.

Example 2 (Tr. 1, p. 108, lines 5-18; p. 110, lines 7-14):

> **MR. FORSYTH**: Okay. And if I understood correctly, you could then extend beyond the 180-foot level, certainly, at least 19 feet –
> **THE WITNESS** (Savino): Yeah.
> **MR. FORSYTH**: – to get – to stay with – under – under the statutory 200. Is that correct?
> **THE WITNESS** (Savino): Yes, it is.
> **MR. FORSYTH**: Okay. So that takes you from 180 to 199?
> **THE WITNESS** (Savino): Correct.
> . . . .
> **MR. FORSYTH**: Okay. And that gin pole then allows you – well, with the other assemblies that are associated with it, to lift sections of lattice tower, or FM transmitters, whatever, up – up into the air?
> **THE WITNESS** (Savino): That's correct.

If the Council approved a tower height of 140 feet AGL, the Applicant would then operate a gin pole, as part of its training operations, above the top of the tower which would result in the height of the tower extending to a maximum of 180 feet AGL:

> **SENATOR MURPHY**: This is at 140 feet?
> **THE WITNESS** (Savino): At 140 feet. So just have the extension temporary, and it's on the ground.
> **SENATOR MURPHY**: How high? Does it extend higher than 140 feet for your training, is that what you're telling me?
> **THE WITNESS** (Savino): For training it would go up to a maximum 180 feet.
> **SENATOR MUPRHY**: For training purposes?
> **THE WITNESS** (Savino): For training purposes, yes.
> **SENATOR MUPRHY**: But you would need approval for 180 feet from us to do that?
> **THE WITNESS** (Savino): Yes.

(Tr. 3, p. 208, lines 10-25, p. 209, lines 1-3). In either case (*i.e.*, whether the top of the tower is 180 feet AGL or 140 feet AGL), the Applicant seeks to extend the tower's total height, on a temporary basis, while conducting training operations.

H. The Town has worked cooperatively with other cellular carriers in the past, including AT&T, and is willing to work with AT&T again in finding a suitable location for a monopole in the subject area if a need for such a tower is established.

The Town has worked cooperatively with cellular carriers in the past. In fact, there are currently four Town properties that host at least one cellular carrier. The Town has worked with AT&T in the past in looking at various options for the location of a monopole cell tower in Town, and is prepared to work with AT&T again in finding a suitable location for a monopole in the subject area if a need for such a tower is established. (Town's Pre-Hearing Submission, 3/10/2015, Attachment B). Thus, the Town has shown it has no objection to legitimate cellular communications facilities. However, the Town and its citizens have a strong objection to the Applicant's attempt to skirt the legitimate regulatory process of local zoning in an effort to get approval for something not within the jurisdiction of this Council.

IV. LEGAL ARGUMENT

A. The Siting Council has jurisdiction over AT&T and the ancillary communication providers, but lacks jurisdiction over all portions of the Application pertaining to training.

The Telecommunications Act ("TCA") of 1996 was enacted "to provide a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services . . . by opening all telecommunications markets to competition." *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 492-93 (2d Cir. 1999) (citing to H.R. Conf. Rep. No. 104-458, at 206 (1996)). In enacting the TCA, "Congress sought to strike a balance between encouraging the growth of telecommunications systems and the right of local governments to make land use decisions." *SBA Commc'n Inc. v. Zoning Comm'n of Town of Frankling*, 164 F. Supp.2d 280, 284 (D. Conn. 2001). "The TCA and the courts interpreting this statute acknowledge the legitimate local interest in such determinations." *SBA Commc'n*, 164 F. Supp.2d at 284. As the Second Circuit noted in *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999), the goals of increasing competition and "rapid deployment of new technology" do not "trump all other important considerations, including the preservation of the autonomy of states and municipalities." *Sprint Spectrum*, 176 F.3d at 639. "The legislative history of the TCA illustrates the importance of preserving local land use authority. As stated in Senate Report § 332, 'preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances' specified in that section." *SBA*, 164 F. Supp. 2d at 285 (citing Sen. Rep. No. 104-230, at 458 (1996)).

The scope of the Council's jurisdiction is specified in C.G.S. § 16-50x(a). This section reads, in pertinent part, that "the council shall have exclusive jurisdiction over the location and type of *facilities*." C.G.S. § 16-50x(a) (emphasis added). "Facility" is defined in C.G.S. § 16-

50i(a)(6) to include "such telecommunication towers, including associated telecommunications equipment, owned or operated by . . . a certified telecommunications provider or *used in a cellular system*, as defined in the Code of Federal Regulations Title 47, Part 22, as amended. . . ." (emphasis added). A "cellular system" is defined in 47 C.F.R. § 22.99 as:

> An automated high-capacity system of one or more multichannel base stations designed to provide radio telecommunication services to mobile stations over a wide area in a spectrally efficient manner. Cellular systems employ techniques such as low transmitting power and automatic hand-off between base stations of communications in progress to enable channels to be reused at relatively short distances. Cellular systems may also employ digital techniques such as voice encoding and decoding, data compression, error correction, and time or code division multiple access in order to increase system capacity.

47 C.F.R. § 22.99.

The statutory language "used in a cellular system" has been interpreted by several Connecticut courts, the first of which was our Supreme Court in *Town of Westport v. Siting Council*, 260 Conn. 266 (2002). There, the issue was whether the Council had exclusive jurisdiction over a tower with both a commercial cellular provider and other noncellular providers, all of whom participated as intervenors in the Council's proceedings. *See Town of Westport*, 260 Conn. 267-68. Located on the tower would be Cellco Partnership (a commercial cellular provider), Springwich Cellular LP (a commercial cellular provider), Sprint Spectrum (a personal service provider ("PCS")[5]), Omnipoint Communications, Inc. (a PCS provider), and Nextel Communications (an enhanced specialized mobile radio service provider). *Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 397 (2001). In interpreting the statutory language "used in a cellular system," the court stated that "[i]n the absence of a statutory definition of a term, the term should be given its common meaning as reflected in

[5] Just one day before argument in *Town of Westport*, the U.S. District Court for the Second Circuit ruled that the Council has jurisdiction over personal communications services because such services fit the statutory term "used in a cellular system." *Sprint Spectrum LLP v. Connecticut Siting Council*, 274 F.3d 674 (2d Cir. 2001).

sources such as dictionaries." *Town of Westport*, 47 Conn. Supp. at 397. The dictionary definition of "used" is "to put into action or service." *Id.* (citing Webster's Third New International Dictionary 2523 (1966)). The Supreme Court, after transferring a consolidated appeal to itself from the Appellate Court, expressly adopted the trial court's "well reasoned decision" in one of the consolidated cases, holding, *inter alia*, that "the legislature intended to give the council exclusive jurisdiction over telecommunication towers, including those that are shared by cellular and noncellular *carriers*." *Id.* at 273 (emphasis added).

The following year after *Westport*, a Connecticut superior court was tasked with deciding whether the Siting Council has exclusive jurisdiction over the location of a 190 foot monopole tower that has only cellular components to it. *See MCF Commc'n, Inc. v. Putnam Zoning Comm'n*, WL 21267466 (Cosgrove, J., 5/12/2003). Unsurprisingly, the court held that the term "used in a cellular system" encompasses those facilities used exclusively by a commercial cellular carrier. *See MCF*, WL 21267466, at *2. However, the very next year, a Connecticut court was faced with the exact opposite question as that posed in *MCF* – specifically, whether the Council has exclusive jurisdiction over the siting of a tower with no commercial cellular component to it. *See Hurley v. P&Z Comm'n*, WL 574429 (Doherty, J., 3/8/2004). In *Hurley*, the Monroe Planning and Zoning Commission approved a special permit application from the Monroe Volunteer Fire Department for a tower to be used exclusively for public safety communications. *Hurley*, WL 574429, at *2. The proposed tower had no commercial wireless carrier. *Id.* The court upheld the commission's approval, stating that "[t]he jurisdictional tug of war is inappropriate for the reason that no commercial use involving Siting Committee responsibility exists at this time. The use is exclusively public safety communications." *Id.* at

*3. Any future use of the tower by a commercial telecommunication carrier would necessarily require Council approval. *Id.*

The foregoing decisions – *Town of Westport*, *MCF* and *Hurley* – clarify the outer boundaries of the Council's jurisdiction. As they affect this proceeding, the Council has jurisdiction over (1) the portion of the Application dealing with AT&T because it is a commercial cellular carrier (*see MCF Commc'n, Inc. v. Putnam Zoning Comm'n*, WL 21267466 (Cosgrove, J., 5/12/2003); and (2) the portion of the Application dealing with the ancillary communication providers because they are noncellular carriers that are in the same application as AT&T (*see Town of Westport v. Siting Council*, 260 Conn. 266 (2002)). However, nothing in the abovementioned cases even remotely suggests that the Council has jurisdiction over the training portion of the Application. In fact, interpreting the statutory term "used in a cellular system" to include situations where a cellular carrier is, in the words of Councilmember Ashton, "piggybacking on a – a training facility," (Tr. 1, p. 72) would lead to absurd results, namely, the Council acting as a de facto planning and zoning commission without any legal authority to do so.

i. The statutory phrase "used in a cellular system" does not encompass a training school and its associated operations and equipment.

The Applicant's proposed training school and associated training equipment are not "used in a cellular system." The Applicant's training school will service, at a minimum, the New England area. (Tr. 1, p. 68, lines 2-16; p. 102, lines 15-25, p. 103, line 1; Applicant's Responses to Town's Interrogatories (set 2), A.9). As part of this training school, the Applicant will utilize various types of training equipment, such as gin poles and other lifting devices, and will train its trainees to operate rigging fixtures, outriggers and antennas, as well as training to raise antenna sector frames over and above existing ones, etc. (Tr. 1, p. 17, lines 9-16, p. 96, lines 1-4;

Applicant's Responses to Town's Interrogatories (set 2), A.9). Absolutely no part of the Applicant's training operations have any relevance to AT&T or AT&T's ability or need to provide cellular coverage, or to the ancillary communication providers' ability or need to provide noncellular coverage. (Tr. 1, p. 101, lines 10-15, p. 106, lines 22-25, p. 107, lines 1-2, p. 123, lines 3-7; Tr. 3, p. 192, lines 11-25). It follows then that no part of the Applicant's training operations and associated equipment can possibly be said to be "used in a cellular system," as that term has been interpreted by our courts.

"[P]rinciples of statutory construction . . . require us to construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. We must avoid a construction that fails to attain a rational and sensible result that bears directly on the result that the legislature sought to achieve." *State v. DeFrancesco*, 235 Conn. 426, 436 (1995). In construing any statute, "our fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . . In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." *Gipson v. Comm'r of Correction*, 257 Conn. 632, 639 (2001). "In the absence of a statutory definition of a term, the term should be given its common meaning as reflected in sources such as dictionaries." *Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 397 (2001) (citation omitted). Worth highlighting again is that "[t]he dictionary definition of the word 'use' is 'to put into action or service.'" *Id.* (citing Webster's Third New International Dictionary 2523 (1966)). Nothing about the ordinary, dictionary definition of "used," as it relates to the definition of a "cellular system," even remotely suggest that this phrase includes training operations and/or its associated equipment. As the Applicant

repeatedly admits, nothing about its training operations "services" anything related to a "cellular system":

Example 1 (Tr. 1, p. 22, lines 3-18):

> **MR. MERCIER**: If the AT&T array does not interfere with the use of the gin pole, why do you need the extra 80 feet above AT&T's array – excuse me – 40 feet?
> . . . .
> **THE WITNESS** (Savino): Just to create as real-world situation as we possibly can . . . . We can go through the procedures that we would do on a daily basis.

Example 2 (Tr. 1, p. 74, lines 1-9):

> **THE WITNESS** (Savino): . . . . And in – in my eyes, my purpose was to have the ability to rig this structure, either put gin poles, outriggers on, whatever, and then, in the real world scenario that we're out in every day, raise something up over around sector frames and get it to a location, which is higher, which we are confronted with doing very frequently, and/or removing.

Example 3 (Tr. 1, p. 115, lines 15-20):

> **THE WITNESS** (Jones): Yeah. That's right. But they – they would be novices with guides that – experienced people, and that's why it's better to do that on a training tower than in the real world – in the –

Example 4 (Tr. 3, p. 192, lines 11-15):

> **MR. FORSYTH**: Okay. So these outriggers are permanent appendages?
> **THE WITNESS** (Savino): In the real world, where needed, not in a training situation.

ii. The Town's Plan and Zoning Regulations regulate the use of the Facility and the Property for the Applicant's tower training business.

In contrast to the TCA, which regulates wireless telecommunications systems, local "zoning regulates the *use* of land." *Krawski v. Planning and Zoning Comm'n of Town of South Windsor*, 21 Conn. App. 667, 675 (1990) (emphasis added). "Zoning regulates the *use* of land irrespective of who may be the owner of such land at any given time and is defined as a general plan to control and direct the *use* and development of property in a municipality . . . ." *Gangemi v. Zoning Bd. of Appeals of Town of Fairfield*, 255 Conn. 143, 159 (2001) (emphasis added); R.

Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (2d Ed.1999) § 53.8, p. 581-82. The "essential purpose of zoning regulation is to stabilize property *uses*." *Builders Serv. Corp. v. Planning & Zoning Comm'n of Town of E. Hampton*, 208 Conn. 267, 286 (1988) (emphasis added).

The Town of Farmington's Regulations for Zoning, Subdivision, and Inland Wetlands (the "Regulations") were adopted "[t]o encourage the most appropriate *use* of land throughout the Town, thereby conserving the value of properties." Art. I, § 1 (emphasis added). To do this, the Town's Regulations divide the municipality into fourteen residential zones, three business zones, three industrial zones, a Unionville Center Zone, a flood protection zone, and four overriding zones. Art. I, § 5. The use of land and structures, as well as the size and location of structures in relation to the land, are regulated according to zone in order to ensure that the use of land is substantially uniform. *See Damick v. Planning and Zoning Comm'n of Town of Southington*, 158 Conn. 78, 83 (1969) ("[t]he ultimate object of zoning regulations is to confine certain classes of buildings and uses to designated localities or districts").

For example, a home office located in a residential zone is permitted as-of-right in certain residential zones so long as, among other things, the home office does not occupy more than 25 percent of the total living area of the dwelling and the outside residential appearance of the dwelling remains unchanged. Art. II, § B.21.a. Such restrictions on the use of residential properties conserve the value of the surrounding land. Besides restricting the uses of land within each zone, the Regulations also regulate the dimensional requirements for lots and buildings on certain property. For example, the maximum height of buildings in the C1 industrial zone is 40 feet, with a minimum lot size of 40,000 feet and a minimum frontage of 150 feet. Art. II, § 14.C. Of course, the Regulations recognize that there are certain other uses and features that would be

appropriate in such districts if controlled as to number, area, location or relation to the neighborhood, and therefore they allow for a change of zone and/or special permit uses. For example, if a property owner wanted to change the use of its property in order to operate a bakery, a trucking company or a medical marijuana dispensary facility in the C1 industrial zone, the owner would have to apply to the Commission for a special permit. Art. II, § 14.B. In considering such applications, the Commission is required to ensure compliance with, among other things, the character of the neighborhood in which the use is to be located, the traffic circulation, adequate road networks and access to parking, physical appearances of the proposed uses or buildings, etc. Art. IV, § 12.B. The Commission may attach conditions to an approval of a special permit in order to ensure compliance with the standards set forth in the Regulations. Art. IV, § 12.B.

Moreover, the Town's Plan of Conservation and Development (the "Plan") is a blueprint for the physical and economic development of the Town, the recommendations of which the Commission is required to take into consideration when rendering decisions. Many of the recommendations in the plan seek to preserve residential neighborhoods as stable, safe, vital and attractive living environments. It does so by recommending that neighborhoods be developed in a compatible manner, which requires consideration be given to similarity of uses (type, density, scale), traffic impacts, hours of activity, noise generation, lighting and design (setbacks and buffers), etc. In short, the Regulations regulate and the Plan recommends how land is to be used within the Town.

The nature of the Applicant's training operations certainly qualifies as a "use" of land that is subject to the Regulations. First and foremost, the Applicant freely admits that it intends to use the tower as part of a tower training "school":

MR. ASHTON: If this is – if there's one of the training facility for your type of application in the country, why would you not make this available for across the country as a training school?
THE WITNESS (Savino): I'd be more than happy to do that.
MR. ASHTON: Are you planning to?
. . .
THE WITNESS (Savino): Yes, I will.

(Tr. 1, p. 68, lines 2-16); *see also* (Tr. 1, p. 102, lines 15-25, p. 103, line 1; Applicant's Responses to Town's Interrogatories (set 2), A.9). The Applicant intends to service, at a minimum, trainees from in and around the New England area. (Tr. 1, p. 102, lines 15-25, p. 103, line 1). As the Applicant admits, the training services that it intends to offer make it a commercial enterprise, the only enterprise of its kind within the New England area. (Tr. 3, p. 197, lines 12-25, p. 198, lines 1-3; Tr. 1, p. 103, lines 18-19).

The Regulations define "school" as "[a]ny building or part thereof, excluding public and private schools as defined in these regulations, which is designed, constructed or used for education or instruction in any branch of knowledge." Art. I, § 9. Here, the record is clear that the Applicant considered only a lattice design for the proposed tower in order to satisfy its desired training operations on the subject property. (Applicant's Responses to Town's Interrogatories (set 1), A.2; Tr. 1, p. 40, lines 9-13, p. 84, lines 7-12, p. 85, lines 7-16). The record also demonstrates the multitude of ways that the Applicant will use various training equipment, none of which is relevant for providing adequate cellular service, but all of which will allow the Applicant to use the land to operate a tower training school. For instance, the Applicant plans to rig the tower and raise and lower gin poles, rigging fixtures, outriggers, multiple styles of antennas, build FM antennas in the air, etc. (Tr. 1, p. 96, lines 1-6). None of these items, or their proposed use, are within the jurisdiction of the Siting Council.

B. The Application does not satisfy the statutory criteria of C.G.S. § 16-50p for issuance of a Certificate of Environmental Compatibility and Public Need for

the Construction, Maintenance and Operation of a 180-foot lattice tower at the Property.

The introductory portion of the Public Utility Environmental Standards Act (PUESA), General Statutes § 16-50g *et seq.*, sets forth the General Assembly's legislative findings and the purpose of PUESA. In pertinent part, it states:

> The legislature finds that . . . telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such . . . towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state.

The purposes of this chapter are:

> To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of . . . transmitting and receiving . . . telecommunications with minimal damage to the environment and other values described above; . . . to promote the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and aquifers . . . .

C.G.S § 16-50g. PUESA also establishes the Siting Council and sets forth the Council's duties as well as the procedures for the Council and applicants regarding applications for certificates of environmental compatibility and public need. Section 16-50p of PUESA sets forth the criteria for Council decisions in certificate proceedings. The Applicant must satisfy two key criteria in order for the Application to be granted and for a certificate to issue. First, the Council must find and determine that there is a need for the facility and the basis for that need. C.G.S. § 16-50p(a)(3)(A). Second, the Council must identify "the nature of the probable environmental impact" of the proposed facility through review of the numerous elements specified in C.G.S. §

16-50p(a)(3)(B), and that these impacts "are not [a] sufficient reason to deny the application." C.G.S. § 16-50p(a)(3)(C). PUESA, therefore, sets policy and procedures for the process by which the state responds to efforts by utility companies to provide services within the state. In doing so, the "legislation attempts to strike a balance between the need for the availability of cost effective and technologically efficient utility services and protection of the environment and the ecology." *Citizens Against Overhead Power Line Const., v. Connecticut Siting Council*, 139 Conn. App. 565, 586 (2012).

i. The primary factor prompting this Application is the Applicant's desire to build a training facility on its own Property, making it highly questionable whether a public need truly exists.

Prior to issuing a certificate for a telecommunications tower, the Council is required to find and determine the "public need for the facility and the basis of the need." C.G.S. § 16-50p(a)(3)(A). Whether a public need truly exists given the factual circumstances on how this proposed training facility came into being is, at best, highly questionable. The fact that the Applicant first determined the need for a training facility, and, thereafter, found a carrier, AT&T, to locate onto it in an attempt to satisfy the Council's process is evidence of this fact. (Tr. 1, p. 36, lines 18-25). As the Applicant repeatedly admits, providing coverage in the alleged underserved area is not the primary factor prompting this Application. (Tr. 3, p. 190, line 25, p. 191, lines 103). This Application, first and foremost, has always been about Tower Holdings building a training facility on its own property. (Tr. 3, p. 209, lines 4-10). This is why the Applicant never searched for or considered any other potential properties besides 199 Brickyard Road to locate and construct the proposed tower. (Tr. 1, p. 36, lines 11-12). This is also evidenced by the fact that the Applicant will not build the tower unless the Council allows for a lattice design that suits its training purposes. (Applicant's Responses to Towns' Interrogatories (set 2), A. 24; Tr. 3, p. 203, lines 11-15, p. 206, lines 7-16).

Given these facts, whether AT&T has established a public need that the facility be located precisely on this Property is also highly uncertain. AT&T established a search ring for this area based on its knowledge that the Applicant was proposing to build a tower at 199 Brickyard Road. In a departure from what the Council usually sees, AT&T did not search for other potential locations to cite a tower within the search ring other than the proposed site. (AT&T's Responses to Council's Interrogatories (set 1), A.2; Tr. 3, p. 259, lines 10-25, p. 260, lines 1-6, p. 265, lines 10-14, p. 267, lines 22-25, p. 268, 1-4). This is why, if the Council denies the Application in its entirety, AT&T has no plans for a proposed facility to serve this area of Farmington other than the location at 199 Brickyard Road. (AT&T's Responses to Town's Interrogatories (set 2), A.17).[6]

ii. Tower Holdings disregards materially adverse environmental and aesthetic impacts of the proposed Facility, which outweigh any public need that may exist.

The Council is mandated, under C.G.S. § 16-50p(b)(1)(D), to examine and make a determination regarding "the latest facility design options intended to minimize aesthetic and environmental impacts." Under C.G.S. § 16-50p(b)(1)(iii), the Council may deny an application if "the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location."

As the record confirms, the trend across the telecommunications industry, especially here in Connecticut, is towards the construction of shorter monopole towers in lieu of taller lattice towers, primarily as a result of the mitigated environmental and aesthetic concerns associated with monopole towers. (Tr. 1, p. 64, lines 6-10; Tr. 3, p. 218, lines 22-24; p. 253, lines 22-25, p.

[6] Testimony given in the evening session of the February 3rd hearing, and letters submitted to the Council from residents of the area, indicated that service was adequate and questioned the need for an additional wireless communications antenna in the area.

254, lines 1-3; p. 256, lines 23-25; p. 257, lines 1-25, p. 258, lines 1-6, 18-21). In a prime example, Attorney Chiocchio, who has represented AT&T before the Council for many years, stated that she has never filed an application on behalf of AT&T for the construction of a lattice tower. (Tr. 3, p. 254, lines 2-3). The reason for this is that the design of the tower has absolutely no relevance for a commercial cellular carrier such as AT&T, or even noncellular carriers such as Marcus, Dunning or WBMW. (Tr. 3, p. 253, lines 22-25, p. 254, lines 1-3; p. 240, lines 14-18; p. 262, lines 10-25). These carriers are able to provide the necessary coverage using monopole designs, which are more environmentally and aesthetically attractive as compared to lattice designs.[7]

On numerous occasions, the Council has validated the fact that the siting of a monopole structure for telecommunications purposes is far preferable to a lattice-style structure because it minimizes environmental and aesthetic impacts under C.G.S. § 16-50p(b)(1)(D). In Docket No. 421 (2012), the Council approved the replacement of a 100-foot lattice tower with a 130-foot monopole tower, as the lattice tower was approximately 30 years old and had limited structural capacity. Even though the Applicant had applied to the Council for approval of a 150-foot monopole tower, the Council limited the height of the tower to 130 feet, as this was the minimum antenna height that T-Mobile could achieve its coverage objectives. Similarly, in Docket No. 425 (2012), the Council approved the replacement of a 110-foot guyed lattice tower with a 120-foot monopine tower (the lowest height at which T-Mobile would be able to fulfill its coverage objectives). The lattice tower reached the end of its useful life and lacked the structural

[7] The Applicant's suggestion that whether a monopole or a lattice tower is more visually intrusive depends on "atmospheric conditions" is simply disingenuous. (Tr. 1, p. 40, lines 19-25, p. 41, lines 1-10). As Councilmember Klemens remarked: "From the way I look at it, [a lattice tower] certainly looks more intrusive." (Tr. 1, p. 40, lines 17-18). As Councilmember Ashton remarked: "I have some experience in this kind of game. And my experience is that there's a move away from lattice towers, Mr. Libertine, because visibility is perceived – perceived as being better with a monopole than a lattice tower." (Tr. 1, p. 63, lines 22-25, p. 64, lines 1-2).

capacity to accommodate additional antennas. The design replacement as a monopine structure was in response to concerns about visibility expressed by neighbors and the town. Lastly, in Docket No. 449 (2014), the Council approved the replacement of an 80-foot self-supporting lattice tower with a 150-foot monopole tower in order to reduce visibility and minimize aesthetic and environmental impacts while providing the needed coverage. AT&T's minimum height at which it could achieve its coverage objectives was 150 feet.

Even though it is well-settled that monopole as opposed to lattice designs are far preferable environmentally and aesthetically, and that the trend in the telecommunications industry is towards the use of monopole towers, the Applicant nevertheless only considered a lattice-style tower as a design option, the sole reason being that only this design would suit its desired training operations. (Applicant's Responses to Town's Interrogatories (set 1), A.2; Tr. 1, p. 40, lines 9-13, p. 84, lines 7-12, p. 85, lines 7-16). For the reasons already stated herein, the Council lacks the jurisdiction to make its decision based on the Applicant's desire to construct a training facility on the Property. The Council only has jurisdiction over AT&T and the ancillary communication providers. AT&T has stated that it can achieve its coverage objectives from the proposed site using a monopole tower with a panel antenna array at 140 feet AGL. (AT&T's Responses to Council's Interrogatories (set 1), A.9; Tr. 3, p. 262, lines 13-25). Therefore, if the Council decides to approve anything at the proposed site, it should approve no more than a 140-foot monopole tower.[8]

[8] The Council should not grant a height higher than 140 feet based the fact that the Applicant proposed to cite Dunning at 160 feet AGL, Marcus at 170 feet AGL and WBMW at 175 feet AGL. As the Applicant states, the ancillary communication providers is not what is "driving the need to go to 180 feet." (Tr. 1, p. 73, lines 22-24). The driving force behind the Applicant's desire for a 180-foot tower (40 feet above AT&T's minimum height requirement of 140 feet AGL), is the Applicant's desire to conduct certain training exercises. (Tr. 1, p. 73, lines 22-25, p. 74, lines 1-9). Moreover, there is absolutely no legitimate evidence in the record regarding the minimum height requirements required by any of the ancillary communication providers, or their specific need for placement on the proposed tower (primarily because

The Applicant has stated that regardless of any lattice tower height granted by the Council, it will conduct training operations above the top of the tower, which would extend the total height of the tower. For example, if the Council approves a lattice tower height of 140 feet AGL, it would then operate a gin pole, as part of its training operations, above the top of the tower, which would result in the height of the tower extending to a maximum of 180 feet AGL. (Tr. 3, p. 208, lines 10-25, p. 209, lines 1-3). Similarly, if the Council approves a lattice tower height of 180 feet AGL, it would then operate a gin pole, as part of its training operations, above the top of the tower, which would result in the height of the tower extending to a maximum of 199 feet AGL. (Tr. 1, p. 19, lines 15-22; p. 21, lines 10-15; p. 180, lines 5-18, p. 110, lines 7-14). For the reasons already stated herein, the Council lacks the jurisdiction to make its decision based on the Applicant's desire to conduct training exercises on the proposed tower.

The Applicant attempts to cite Docket No. 391 for the proposition that this Council has the authority to approve an expandable tower. There, the original proposal submitted by the applicant was for a 100-foot monopole tower. The First Selectman of the town and the Board of Selectman wanted to improve cell reception in the area where the tower was proposed for its emergency services, so the town requested tower space for its emergency service communications on the proposed tower. The town said that its equipment would require a height of approximately 160 feet. At the time, the town had not yet allocated the funds necessary to procure its equipment for the proposed facility. However, the applicant was willing to install a tower that was designed to be expandable to 160 feet, and allow the town space on the tower free of charge. The Council found that this option would be "prudent on behalf of public safety, and will order a tower with the capability for such expansion." *See* Opinion, p. 2.

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none of the ancillary communication providers participated in this proceeding or were available for cross-examination).

While the Town agrees that it is within this Council's jurisdiction to issue a decision allowing for future expansions in tower height, the Applicant's request for an "expandable tower" under the facts in this proceeding demonstrate that such a request is solely to accommodate its training desires. In contrast, the "expandable tower" in Docket No. 391 was for the town's emergency service communications.[9] This, certainly, is within the Council's jurisdiction. Furthermore, the expansion of the tower in Docket No. 391 was a one-time deal. In other words, if and when the town was able to obtain the necessary funds to locate their emergency service communications on the tower, they would have to go back to the Council and petition the Council for the added height. *See* Opinion, p. 2. Here, the Applicant proposes to allow the height of the tower to change based on the training exercises being performed with the use of its gin pole. (Tr. 1, p. 19, lines 15-22; p. 21, lines 10-15). This type of expandable tower is not within the Council's jurisdiction. Under the facts in this proceeding, the Council only has the jurisdiction to approve a 140 monopole tower.

V. CONCLUSION

While the Town accepts that the Council maintains jurisdiction over the siting of AT&T and the ancillary communication providers, the Town submits that the Council lacks jurisdiction to consider and approve an application for a training tower facility. In an effort to avoid the appropriate municipal land use review process which would otherwise be applicable to the construction and use of this training tower, Tower Holdings' attempt to affix an AT&T antenna onto the proposed tower is a clear attempt to transform the training tower into a telecommunications tower, and thus a total sham. The Council should disregard all elements of Tower Holdings' Application that pertain to the use of the Facility as a training tower and only

[9] Here, the Town has no need to locate any of its municipal communications equipment on the proposed tower. (Tr. 2, p. 147, lines 5-12).

consider the coverage and capacity needs of AT&T in the area when rendering its decision - which by AT&T's own admission is met with a 140 foot monopole.

Respectfully Submitted,

TOWN OF FARMINGTON

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CERTIFICATION

I certify that on this 16th day of April, 2015, fifteen copies of the foregoing were sent by regular and electronic mail to all parties and intervenors of record, as follows:

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ATTACHMENT 1

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

APPLICATION BY TOWER HOLDINGS, LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY LOCATED AT 199 BRICKYARD ROAD, FARMINGTON, CONNECTICUT

DOCKET NO. 454

APRIL 16, 2015

TOWN OF FARMINGTON'S PROPOSED FINDINGS OF FACT

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, the Town of Farmington, a Party in the above-captioned docket, respectfully submits these proposed findings of fact.

Introduction

1. On November 7, 2014, pursuant to Connecticut General Statutes ("C.G.S.") § 16-50g *et seq.* and § 16-50j-1 *et seq.* of the Regulations of Connecticut State Agencies ("R.C.S.A."), Tower Holdings, LLC ("Tower Holdings" or "Applicant") filed with the Connecticut Siting Council ("Council") an Application for a Certificate of Environmental Compatibility and Public Need ("Application") for the construction, maintenance and operation of a 180-foot lattice wireless telecommunications facility ("Facility") at 199 Brickyard Road, Farmington, Connecticut ("Property"). (Application, p. 1).

2. Farmington River Properties, LLC, a Connecticut limited liability company, is the owner of the Property. (Application, Attachment 21). The Property currently hosts a commercial building, which is the headquarters of Northeast Towers, Inc. ("NET"), as well as storage of equipment and tools associated with NET's business of constructing, modifying, reinforcing, maintaining and decommissioning towers. (Application, p. 3).

3. Tower Holdings, a limited liability company organized under the laws of the State of Connecticut, with a business address of 199 Brickyard Road, Farmington, Connecticut, is affiliated with NET. (Application, p. 3, 6).

4. AT&T is a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, Georgia 30324. (Application, Attachment 21). AT&T is not proposing

construction or ownership of the Facility. (AT&T's Responses to Town's Interrogatories (set 1), A.7).

5. The Town of Farmington ("Town") is a party in this proceeding. (Council Decision on the Town's Party Request, dated 12/12/2015).

6. The Town has never participated as a party or intervenor in any application before the Council. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment B).

7. Pursuant to C.G.S. § 16-50m, the Council held a public hearing on February 3, 2015, beginning at 3:00 p.m. and continuing at 7:00 p.m. at the Farmington Town Hall, Council Chambers, 1 Monteith Drive, Farmington, Connecticut. (Hearing Notice). The hearing was continued to March 17, 2015, in Hearing Room One, Ten Franklin Square, New Britain, Connecticut. (Continuation Memo; Tr. 3, p.175). The hearing closed on March 17, 2015. (Tr. 3, p. 299).

8. The Council and its staff conducted a public field review of the proposed Site on February 3, 2015, at 2:00 p.m. (Hearing Notice).

Municipal Consultation

9. In approximately March of 2013, the Applicant approached Jeff Ollendorf (Farmington's former Town Planner) and asked for the opportunity to make an informal presentation to the Farmington Town Plan and Zoning Commission ("Commission") with regard to a potential training tower to be located at 199 Brickyard Road. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A; Applicants Genesis of the Proposed Facility and Legal Authority, p. 2; Tr. 1, p. 90, lines 17-23).

10. The Commission placed an informal presentation by the Applicant on its agenda for the regular meeting on April 9, 2013 under "New Business." (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A and D).

11. An "informal" presentation is used to give potential applicants a chance to present ideas and concepts to the Commission in order to obtain feedback and direction so that complete and viable plans can be submitted. Specific details and plans are not required to make an informal presentation before the Commission. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A).

12. On April 8, 2013, the Applicant provided the Commission with a booklet that contained a description of the proposed 180 foot lattice tower and a series of photographs depicting the result of a balloon float designed to replicate the height of the proposed tower and its potential visibility within a certain designated radius. The booklet was prepared by All-Points Technology Corporation, P.C. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A and C).

13. At the time that the Applicant provided the Commission with the All-Points Technology booklet, there was no cellular component to the tower. (Tr. 1, p. 91, lines 16-22).

14. On the date of the informal presentation, the Applicant withdrew its request to meet, claiming that it was not able to conduct testing necessary for the presentation due to windy weather. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A; Tr. 1, p. 90, lines 24-25, p. 91, lines 1-4).

15. A public information session on the proposed tower took place at the Farmington Town Hall on April 15, 2014. A second public information session on the proposed tower took place at the Farmington Town Hall on July 15, 2014. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A). No one from the public that spoke at either information session spoke favorably of the proposed tower. (Tr. 3, p. 200).

16. After the Applicant determined the need for a training facility, it then found a carrier, AT&T, to locate onto it in an attempt to satisfy the Council's process. (Tr. 1, p. 36, lines 18-25). Sometime after July 15, 2014, the Applicant advised the Town and the Commission that it planned to file an application with the Council. (Town's Pre-Hearing Submission, dated 3/10/2015, Attachment A; Tr. 1, p. 32, lines 21-25).

17. The Applicant contacted Marcus, Dunning and WBMW about locating on the proposed tower. (Tr. 3, p. 240, lines 19-25, p. 241, lines 1-14).

18. The Applicant never contacted Kathleen A. Eagen (Town Manager and Chief Executive Officer in the Town of Farmington), Paul Melanson (Police Chief in the Town of Farmington), or Mary Ellen Harper (Director of Fire & Rescue Services in the Town of Farmington), about using the proposed tower for training purposes. (Town's Pre-Hearing Submission, Attachment B; Tr. 3, p. 193, lines 24-25, p. 194, lines 1-4).

19. The Applicant never contacted the chief executive officer or the chief administrative officer in the Town of Canton about using the proposed tower for training purposes. (Tr. 3, p. 194, lines 5-14). The Applicant never contacted the town manager or the town administrator in the Town of Simsbury about using the proposed tower for training purposes. (Tr. 3, p. 194, lines 15-23). The Applicant never contacted the first selectman or the town manager in the Town of Avon about using the proposed tower for training purposes. (Tr. 3, p. 194, lines 24-25, p. 195, lines 1-3).

Site Selection

20. AT&T established a formal search ring for this area in January 2013. AT&T developed the search ring based on its knowledge that the Applicant was proposing to build a tower at 199 Brickyard Road, Farmington. AT&T did not search for other potential locations to cite a tower within the search ring other than the proposed site. (AT&T's Responses to Council's Interrogatories (set 1), A.2; Tr. 3, p. 259, lines 10-25, p. 260, lines 1-6, p. 265, lines 10-14, p. 267, lines 22-25, p. 268, lines 1-4).

21. AT&T's coverage needs would be satisfied with a 140 foot monopole tower located on the subject site or on a different, yet suitable location on Brickyard Road in Farmington. (Tr. 3, p. 262, lines 10-25).

22. A search ring has no relevance for the siting of a training tower. (Tr. 1, p. 92, lines 6-11).

23. The Applicant never searched for any other potential properties besides 199 Brickyard Road to locate and construct its proposed tower. (Tr. 1, p. 36, lines 11-12).

24. There are currently four Town properties that host at least one cellular carrier. (Town's Pre-Hearing Submission, Attachment B).

25. The Town has worked with AT&T in the past in looking at various options for the location of a monopole cell tower in the Town, and is prepared to work with AT&T again in finding a suitable location for a monopole in the subject area. (Town's Pre-Hearing Submission, Attachment B; Tr. 3, p. 263, lines 1-5).

Facility Description

26. The proposed Facility would be located on an approximately 2.49 acre parcel at the Property, and would consist of a 180 foot lattice structure with New Cingular Wireless PCS, LLC's ("AT&T") panel antenna array mounted at approximately 140 feet above grade level ("AGL"), a Dunning Sand & Gravel ("Dunning") DB224 Dipole antenna located at 160 feet AGL, a Marcus Communications, LLC ("Marcus") RFI BA40-67 antenna located at 170 feet AGL and a radio station "Soft Rock" 106.5 WBMW ("WBMW") DCR-L1 FM radio antenna located at 175 feet AGL. (Application, p. 2-3).

27. Dunning, with a headquarters located adjacent to the Property at 103 Brickyard Road, provides sand, gravel and other landscaping materials to business and residents in Connecticut. Marcus is a trunked (two-way) radio network operator in Connecticut, with locations on Avon Mountain and in downtown Hartford. WBMW is a radio station that services eastern Connecticut and parts of Rhode Island, with a location on Meriden Mountain. (Application, p. 9; Applicants Responses to Council's Interrogatories, A.5).

28. No other telecommunication carriers are interested in collocating at the site. (Letter from Robinson & Cole, dated 12/17/2014; Letter from Cohen and Wolf, dated 12/23/2014).

29. There is a trend across the telecommunications industry, as well as in Connecticut, towards the construction of shorter monopole towers in lieu of taller lattice towers. (Tr. 1, p. 64, lines 6-10; Tr. 3, p. 218, lines 22-24; p. 253, lines 22-25, p. 254, lines 1-3, p. 256, lines 23-25, 257, lines 1-25, p. 258, lines 1-6, 18-21; Admin. Notice of Docket Nos. 421, 425, 449).

30. Attorney Chiocchio has been representing AT&T before the Council for many years, yet has never filed an application on behalf of AT&T for the construction of a lattice tower. (Tr. 3, p. 253, lines 22-25, p. 254, lines 1-3).

31. The Applicant considered only a lattice design for the proposed tower because a monopole tower is not suitable for the Applicant's desired training operations. (Applicant's Responses to Town's Interrogatories (set 1), A.2; Tr. 1, p. 40, lines 9-13, p. 84, lines 7-12, p. 85,

lines 7-16). AT&T did not consider any tower design options. (AT&T's Responses to Town's Interrogatories (set 1), A.1).

32. The design of the tower has no relevance for AT&T's need or ability to provide reliable cellular coverage. (Tr. 3, p. 262, lines 10-25). AT&T could achieve its coverage objectives from the proposed site with a monopole tower. (AT&T's Responses to Town's Interrogatories (set 1), A.3). A lattice tower would not better serve the public need for reliable cellular service coverage in comparison to a monopole. (Tr. 1, p. 85, lines 1-6).

33. AT&T could achieve its coverage objectives from the proposed site with antennas at 140 feet AGL. (AT&T's Responses to Council's Interrogatories (set 1), A.9).

34. The extra 40 feet in tower height (from 140 feet AGL to 180 feet AGL) is solely for the Applicant's training purposes. (Tr. 1, p. 23, lines 1-4, p. 84, lines 19-25; Application, p. 8).

35. The Applicant is applying for a lattice tower height of 180 feet AGL, and intends to operate a gin pole, as part of its training operations, above the top of the tower. These proposed operations would result in the height of the lattice tower extending to a maximum of 199 feet AGL. (Tr. 1, p. 19, lines 15-22; p. 21, lines 10-15; Tr. 1, p. 180, lines 5-18, p. 110, lines 7-14). If the Council approved a lattice tower height of 140 feet AGL, the Applicant would then operate a gin pole, as part of its training operations, above the top of the tower, which would result in the height of the tower extending to a maximum of 180 feet AGL. (Tr. 3, p. 208, lines 10-25, p. 209, lines 1-3). In either case, the Applicant intends to extend the total height of the tower during training exercises.

36. If the Council grants the Applicant's application but requires the tower to be of a monopole design, the Applicant will not build the tower because a monopole will not serve the Applicant's desired training operations. (Applicant's Responses to Towns' Interrogatories (set 2), A. 24; Tr. 3, p. 203, lines 11-15, p. 206, lines 7-16).

Training Operations

37. The Applicant will utilize the Facility to engage in different types of training activities, such as training to raise and lower gin poles, rigging fixtures, outriggers and antennas, training to dismantle antennas and tower sections, as well as training to raise antenna sector frames over and above existing ones. (Tr. 1, p. 17, lines 9-16, p. 96, lines 1-4; Applicant's Responses to Town's Interrogatories (set 2), A.9).

38. The Applicant will utilize equipment during training exercises that will be temporarily affixed to the proposed lattice tower. (Tr. 1, p. 95, lines 16-21; Tr. 3, p. 188, lines 4-25, p. 189, lines 1-12, p. 192, lines 11-25). During one such training exercise, the Applicant will build FM antennas, which would require trainees to be located on and attached to the tower above AT&T's antenna. (Tr. 1, p. 96, lines 4-16, p. 99, lines 10-25).

39. The Applicant will use the tower as part of a tower training school that it hopes to operate at the Property. The Applicant plans to service, at a minimum, the New England area. (Tr. 1, p. 68, lines 2-16; p. 102, lines 15-25, p. 103, line 1; Applicant's Responses to Town's

Interrogatories (set 2), A.9). The Applicant will charge a fee to other companies that want to use its proposed tower for training purposes. (Tr. 3, p. 197, lines 12-25, p. 198, lines 1-3).

40. The Applicant's training operations at the proposed Facility have no relevance to AT&T or AT&T's ability or need to provide cellular coverage in the area. (Tr. 1, p. 101, lines 10-15, p. 106, lines 22-25, p. 107, lines 1-2, p. 123, lines 3-7; Tr. 3, p. 192, lines 11-25).

41. A gin pole is a lifting device that allows headroom above the highest fixed point of a tower used to raise (or lower) successive sections of structural steel, antennas, or equipment into position. It typically uses a steel lattice constructed boom in either a triangular shape or in a square shape, and uses wire rope for a loan line driven from a ground mounted hoist or winch. A gin pole is usually used in a vertical position but can be used in a vertical configuration. (Applicant's Pre-Hearing Submission, dated 1/27/2015, Attachment C).

42. The gin pole that the Applicant will use during its training operations is a functioning crane attached to the side of the tower. (Tr. p. 110, lines 22-25, p. 111, lines 1-8).

43. Gin poles (as opposed to ground mounted cranes) are typically used to perform telecommunications work on taller towers. The use of gin poles usually becomes a consideration for towers that range in height from 250 feet to 350 feet. Economics and site area restrictions usually eliminate the use of ground mounted cranes for top tower work for towers with a height of over 350 feet, and ground mounted cranes are no choice at all for tower lifts at the top of towers much above 500 feet. (Applicants Pre-Hearing Submission, dated 1/27/2015, Attachment C).

44. Shorter structures, such as structures ranging from 20 to 40 feet, are not suitable for gin pole training. (Applicants Pre-Hearing Submission, dated 1/27/2015, Attachment C).

45. The Applicant intends to offer gin pole training at the proposed Facility. (Tr. 1, p. 106, lines 6-7).

46. The Applicant would be the only company in the New England area that would offer gin pole training. (Tr. 1, p. 103, lines 15-19).

47. The Applicant intends to have up to six people located on the proposed tower at any one time during training operations. (Tr. 1, p. 116, lines 14-16, p. 117, lines 1-9).

48. The Applicant will temporarily affix a gin pole to the proposed lattice tower during training operations. A gin pole will be affixed to the tower for a single day. (Tr. p. 107, lines 13-22, p. 20, lines 2-9).

49. The Applicant will use a gin pole during training operations in order to extend beyond the Applicant's proposed tower height of 180 feet AGL. (Tr. p. 108, lines 5-19). The amount of gin pole extending beyond the Applicant's proposed tower height of 180 feet AGL can reach up to 19 feet, bringing the total height of the tower and gin pole to 199 feet AGL. (Applicant's Pre-Hearing Submission, dated 1/27/2015, Attachment C).

Co-Locators

50. Dunning, Marcus and WBMW did not participate as intervenors or parties in Docket No. 454. (Admin. Record).

51. During the February 3, 2015 evidentiary hearing, the Council expressed apprehension that Dunning, Marcus and WBMW did not participate in the proceeding and were not available for cross-examination. (Tr. 1, p. 49, lines 6-25, p. 50-51, p. 52, lines 1-9; p. 64, lines 21-25, p. 65, lines 1-2, p. 70, line 25, p. 71, lines 1-4, 19-25, p. 72, 1-8; p. 75-76, p. 77, lines 1-4).

52. There is no evidence in the record regarding the minimum height requirements required by Dunning, Marcus and WBMW, or their specific need for placement on the proposed lattice tower. (Admin. Record).

53. If the Council approved a 140 foot tower, Marcus would need to re-evaluate whether it would co-locate on the Facility. (Tr. 3, p. 212).

54. Dunning, Marcus and WBMW could all be located on a monopole tower. (Tr. 3, p. 240).

55. The Applicant is currently in discussions with Dunning, Marcus and WBMW concerning their collocation on the Facility. (Applicant's Responses to Town's Interrogatories (set 2), A.18-20).

56. Marcus, Dunning and WBMW could achieve their desired coverage objectives if the Council approves a monopole as opposed to a lattice tower. (Tr. 3, p. 240, lines 14-18).

57. Tower Holdings has previously serviced facilities for Marcus. (Applicant's Responses to Town's Interrogatories (set 3), A.25-26).

Town's Plan and Zoning Regulations

58. The Farmington Town Planning and Zoning Commission regulates the "use" of property. (Tr. 3, p. 286, lines 17-20).

59. The subject Property is located in the C1 industrial zone and the current use of the Property is allowed: "Any establishment, the principal use of which is manufacturing, fabricating, processing, producing, assembling, cleaning, servicing, testing or repairing of materials." (Town's Pre-Hearing Submission, Attachment A; Attachment E, p. 50).

60. All uses in the C1 industrial zone require special permit approval. (Tr. 1, p. 283, lines 10-16). The highest structure in the C1 industrial zone where the proposed tower is to be located is a smokestack at roughly 60-70 feet. (Tr. 1, p. 284, lines 11-19).

61. Neither a training school, nor a 180 foot training tower would be permitted as of right in the C1 zone. (Town's Pre-Hearing Submission, Attachment A; Attachment E, p. 50).

62. The Applicant could follow one of two routes to secure approval for the proposed 180 lattice tower and proposed training school at the Property before the Town: (1) Apply to the Commission for approval of a zoning text amendment to allow training schools, including training towers as high as 180 feet as a permitted use in the C1 zone subject to special permit approval and then file an application for the appropriate special permit approval; or (2) Obtain a variance for a 180 foot lattice tower and then seek special permit approval from the Commission for the tower as well as the training school. (Town's Pre-Hearing Submission, Attachment A; Attachment E).