

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 20-3175-PET

Petition of New Cingular Wireless PCS, LLC
d/b/a AT&T pursuant to 30 V.S.A. § 248a
requesting a Certificate of Public Good for a
wireless communications facility in Hardwick,
Vermont

MOTION TO DISMISS PETITION

Intervenor Julie Gregonis, *pro se*, hereby Moves this Commission, pursuant to PUC Rule 2.208¹, to Dismiss this Petition due to Petitioner's defective filing and failure to comply with PUC's Amended Standards and Procedures.²

AT&T filed the Petition in this case on Oct. 21, 2020. The PUC determined the application to be complete on Oct. 23, 2020. The filing of the Petition triggered the time frames described in Section 248a(f) for the Review period.³

¹2.208 Defective Filings. Substantially defective or insufficient filings may be rejected by the Commission, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Commission shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed Effective: 9/15/2018 Vermont Rule 2.200 Public Utility Commission Page 5 which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

²https://puc.vermont.gov/sites/psbnew/files/doc_library/Sixth%20Amended%20248a%20Standards%20and%20Procedures%20Order.pdf

³(f) Review period. If the Public Utility Commission determines that an application does not raise a significant issue, the Commission shall issue a final determination on an application filed pursuant to this section within 60 days of its filing or, if the original filing did not substantially comply with the Public Utility Commission's rules, within 60 days of the date on which the Clerk of the Commission notifies the applicant that the filing is complete. If the Commission rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the Public Utility Commission's rules, within 180 days of the date on which the Clerk of the Commission notifies the applicant that the filing is complete.

Intervenor Gregonis has reviewed the Petition materials and identified numerous instances whereby the Petition does not comply with the Application Filing Requirements for Projects Other than *De Minimis* Modifications as outlined in the Amended Standards and Procedures issued by the PUC on Sept. 21, 2018. Intervenor Gregonis alleges that the filing of the Petition that starts the time clock is resulting in a hardship for her as an affected party, that the Petition is defective, and the Petition does not comply with specific requirements for applications for this type of project. As a result, the filing of the Petition and the PUC's completeness determination have adversely affected her rights as a party. Therefore, the Petition should be dismissed.

DEFECTS AND LACK OF COMPLIANCE WITH APPLICATION REQUIREMENTS

B. Host Landowners. Referring to the Standards and Procedures, the Petition does not accurately identify all of the Host Landowners as required. "The application shall include the names and addresses of the landowners on whose property the proposed facilities would be built." Only one landowner was identified in the Petition filing. The Town of Hardwick is also a landowner on whose property the proposed facility would be built, as owner of the access road that Petitioner has identified is needed to obtain site access. As detailed in the Public Comment filed by Suzanna Jones on November 20, 2020 (filed within the 30 day time period for objecting to prefiled testimony and hereby incorporated into this Motion), the Town of Hardwick Select Board meeting minutes clearly show that Petitioner does not have Town approval to use the proposed access road.

As noted in Jones's public comment, Petitioner's need for Town approval was identified in the Advance Notice Site Plan. However, the Petition Site Plan contains no reference to the

need for Town approval, and instead says "Design Pending." Petitioner is misleading the PUC and the public by failing to identify the Town as a landowner of the facility whose approval has not been granted. The Petition should be dismissed because Petitioner does not have site control.

Petitioner has also not complied with the requirement to provide the Project Description.

The Standards and Procedures states:

F. Project Description. Site Plans. Petitioner is required to provide:

(d) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations of wetlands.

(e) Detailed plans for any drainage of surface and/or sub-surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.

(g) Plans of any proposed access driveway, roadway, or parking area at the facility site, including grading, drainage, and traveled width, including a cross-section of the access drive indicating the width, depth of gravel, and paving or surface materials.⁴

Rather than provide a description of the work that would have to be done to install power and upgrade the access road to gain access to the site, the Site Plan simply says "Design Pending" and fails to describe the work necessary to upgrade the town-owned trail and bury the power line which will likely require blasting. Petitioner has not provided a blasting plan or referenced blasting. The Petition should be dismissed because Petitioner failed to provide a description of the project sufficient to enable parties to evaluate the impacts to the area, which includes a trail used by the public, or to their interests.

H. Environmental Criteria. Petitioner is required to comply with the following:

1. The applicant must address each of the criteria set forth in 10 V.S.A. §§ 6086(a)(1) through (8) and (9)(k) and 1424a(d). To the extent that the proposal will create an adverse

⁴https://puc.vermont.gov/sites/psbnew/files/doc_library/Sixth%20Amended%20248a%20Standards%20and%20Procedures%20Order.pdf, page 9

impact affecting any of these criteria, the applicant shall describe what measures, if any, will be taken to minimize such impact.

Petitioner has failed to identify the need to alter the environment by the use of blasting, nor has Petitioner disclosed the extent of the potential impacts from blasting. As an affected party, Intervenor Gregonis is unable to evaluate the potential impacts from this proposal due to the defective filing that does not comply with the requirements of the Standards and Procedures and therefore the Petition should be dismissed.

I. Local and Regional Plans. Petitioner is required to provide the following:

The applicant shall provide copies of the relevant sections of any town plan and regional plan in effect in the community in which the proposed facility will be located and describe how the project meets or complies with the land conservation measures in those plans. If the project does not so comply with a plan, the applicant shall explain why not and demonstrate how the applicant has nevertheless given substantial deference to those measures or explain why there is good cause not to give substantial deference to those measures.

Glaringly absent from Petitioner's filing is any reference to the proposed project site's designation as a Scenic Resource in Hardwick's Town Plan. Petitioner failed to mention it, and has not complied with the requirement to explain why not or explain why there is good cause not to give substantial deference to those measures.

Further hampering Intervenor Gregonis' ability to evaluate the proposed project, there was little public notice prior to the balloon test the Petitioner conducted in August, 2019.

Intervenor Gregonis reviewed the Petitioner's aesthetics filings and identified numerous areas in the Town of Hardwick that were not included in the Viewshed Analysis and Photo Simulations, including but not limited to these streets.

Slapp Hill
Hazen Union Drive
North Main Street
South Main Street

The Swinging Bridge
Memorial Park
Vermont Avenue
Putnam Avenue
Pearl Street
High Street
Wakefield Street
W. Church Street
Church Street
Glenside Ave.
Riverside Terrace
Brush Street
Upper Cherry
Marshall Street

Petitioner's Viewshed Analysis and Photo Simulations are deficient and accordingly affected parties are not able to adequately evaluate the proposed project based on the materials submitted by Petitioner which downplay the aesthetic impact to the Town of Hardwick's Scenic Resource.

Curing Deficiencies Rather than Dismissal Adversely Affects Intervenor Gregonis'

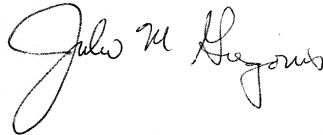
Rights. Petitioner chose to file a deficient Petition. Filing of the Petition started the time clock as outlined in statute. Petitioner's decision to file an incomplete Petition has adversely affected the rights of Intervenor Gregonis and her ability to fully participate in this proceeding. Allowing Petitioner to cure the deficiencies at this stage is not an acceptable alternative to dismissing the Petition due to the time frames the PUC is required to follow once a Petition is filed. Any delay in Petitioner's proposal is entirely due to Petitioner's failure to include details of the project and comply with the Standards and Procedures required by the PUC. Petitioner does not have site control, has not disclosed site plans that include blasting, and has not accurately or adequately addressed the Town Plan's designation of the proposed site as a Scenic Resource or the visual impacts of the project through accurate simulations. Petitioner should not be rewarded by a

continuation of this Petition when it contains so many glaring deficiencies that adversely affect Intervenor Gregonis' rights.

For all of the above reasons, Intervenor Gregonis moves the PUC to dismiss this Petition.

Dated at Hardwick, Vermont this 4th day of December 2020,

Respectfully Submitted by:

A handwritten signature in black ink that reads "Julie M. Gregonis". The signature is written in a cursive style with a large initial 'J'.

Julie Gregonis, *pro se*
68 Dewey Street
Hardwick, Vermont 05843
(802) 473-8929
jgregoni@gmail.com