

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2120-PET

Petition of Industrial Tower and Wireless, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment off of Bordoville Road in Enosburgh, Vermont	
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Order entered:

PROPOSAL FOR DECISION

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Vermont Public Utility Commission (“Commission”) approve the application filed by Industrial Tower and Wireless, LLC (the “Petitioner”), pursuant to 30 V.S.A. § 248a and the Commission’s Amended Standards and Procedures Order (“Procedures Order”),¹ and grants the Petitioner a certificate of public good (“CPG”) authorizing the installation of a wireless telecommunications facility in Enosburgh, Vermont (the proposed “Project”).

II. PROCEDURAL HISTORY

On June 6, 2022, the Petitioner filed a petition and prefiled testimony requesting that the Commission issue a CPG. A copy of the petition was filed with all required State agencies and the host municipality pursuant to § 248a(e). Notice of the filing of the petition was provided to all adjoining landowners of record.

On July 26, 2022, Cyrus House and Tara Lombardi, Sandra Bruhn, Charles Hungerford and Philippa Dorfman, Colleen Sheppard and Derek Jones, and the Bordoville SDA Church (together the “Neighbors”) filed motions to intervene and requests for a hearing to be held in this proceeding.

¹ *Sixth amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order issued September 21, 2018.

On July 26, 2022, the Vermont Department of Public Service (“Department”) filed comments on the Project and requested additional information regarding the future collocation of other carriers on the Project.

On July 26, 2022, the Northwest Regional Planning Commission (“NRPC”) filed public comments on the Project expressing concerns regarding the height of the Project given lack of identified collocaters on the Project. The NRPC also states that the Project will not have a substantial regional impact.

On August 12, 2022, the Petitioner filed a response to the Department’s request for additional information on the Project and to the NRPC’s comments.

On August 19, 2022, I issued an Order granting permissive intervention to the Neighbors.

On August 26, 2022, the Department filed comments stating that it would be retaining a consultant to perform an independent aesthetic evaluation of the Project.

On October 6, 2022, I conducted a scheduling conference in this matter.

On January 12, 2023, an evidentiary hearing was held in this proceeding.

No other comments on the application were received by the Commission.

III. PUBLIC COMMENTS

The Commission has received several public comments in this case. While many of the comments are opposed to the Project on aesthetic and other grounds, many of the commenters express support for the Project because it will expand wireless coverage in the area. Of the commenters opposed to the Project a large portion of those were comprised of the Neighbors who were later granted permissive intervention in the case on aesthetic and orderly development grounds.² I address the concerns expressed by the Neighbors regarding the Project’s impacts on aesthetics and orderly development below and conclude that the Project will not violate these criteria, or any of the other applicable criteria under § 248a.

IV. FINDINGS

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following proposed findings of fact to the Commission.

² See Order of October 14, 2022.

1. The Project involves the construction of a telecommunications facility at Bordoville Road in Enosburgh, Vermont. The objective of the Project is to expand and improve wireless broadband coverage in the surrounding area. Delaney pf. at 2.

2. The Petitioner provides Enhanced Specialized Mobile Radio service. This service includes voice calling, text messaging, and GPS integration for vehicle tracking for commercial businesses, schools, municipalities, utilities, and public safety entities. The proposed facility will also provide collocation opportunities for up to five additional carriers. In addition, the St. Albans Police Department has committed to collocating its communications equipment on the Project. Delaney supp. pf. at 1-3.

3. The Project includes the installation of a 140' lattice tower with six whip antennas mounted at the top of the tower and extending to a height of 153', and one whip antenna reaching downward from the top of the tower approximately 13'. The Project also includes the installation of an equipment cabinet on a 10' by 10' concrete pad, underground utilities, and ancillary operating equipment within an 80' by 80' fenced compound. The Project will be accessed over an improved existing drive and trail from Bordoville Road. Voci pf. at 2-3.

4. The existing driveway currently traverses a portion of the buffer area of a Class II wetland. Hodgetts pf. at 5-6.

5. The Project will involve approximately 6,724 square feet of permanent earth disturbance. All Project construction will conform to the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Voci pf.. at 3.

State Telecommunications Policy

[30 V.S.A. § 248a(a)]

6. The Project is consistent with the goal of directing the benefits of improved telecommunications technology to all Vermonters pursuant to 30 V.S.A. § 202c(b). The Project will provide new service and improve existing wireless broadband service in this area. Delaney pf. at 2.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment, and Public Health and Safety**

[30 V.S.A. § 248a(c)(1)]

7. The Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety. This finding is supported by the additional findings below.

Public Health and Safety

[30 V.S.A. § 248a(c)(1)]

8. The Project will not have an undue adverse impact on public health and safety because it will comply with Federal Communications Commission standards related to radiofrequency emissions. Delaney pf. at 4; exhs. KD-4, 5, and 6.

Outstanding Resource Waters, Headwaters

[10 V.S.A. §§ 1424a(d), 6086(a)(1)(A)]

9. The Project will have no impact on outstanding resource waters or headwaters. The Project area may be classified as a headwaters area due to steep slopes, shallow soils and limited drainage area. However, the proposed improvements are located on a flat portion of the property. Runoff from the installation of the proposed access road and compound will be dispersed into crushed stone working surface and then drain into the surrounding terrain resulting in a negligible change to the drainage patterns. Further, there is no water supply or wastewater discharge from the site, and stormwater discharges will be affectively unchanged. Therefore, there would be no impact to the ability of a headwaters area to contribute to the downgradient potential for water supply and stream habitat. Hodgetts pf. at 3.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

10. The Project will not result in undue water or air pollution. This finding is supported by the additional findings below and by the findings under the criteria of waste disposal through soils, below.

11. Sound associated with construction activities will be short-term and will have a minimal impact on the area. Typical hours of construction will be from 7:00 AM to 5:00 PM, Monday through Friday, although occasional evening work may be required. Hodgetts pf. at 2-3.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

12. Following construction, the proposed Project will not generate any waste. Construction waste generated during construction of the Project will be removed from the site and recycled or disposed of at approved waste processing facilities. Hodgetts pf. at 3.

Water Conservation, Sufficiency of Water, and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(1)(C), (a)(2) and (3)]

13. The Project will have minimal impact on water conservation measures, as the Project will not require water or sewer facilities. Hodgetts pf. at 3.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

14. The Project is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Hodgetts pf. at 4.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

15. The Project will not have an undue adverse effect on streams because there are no streams in the Project area. Hodgetts pf. at 4.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

16. The Project will not have an undue adverse effect on any shorelines because the Project is not located on or near a shoreline. Hodgetts pf. at 4.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

17. The Project will not have an undue adverse effect on wetlands. The Project access road improvements will occur within the buffer area of a Class II wetland. The Petitioner will obtain and comply with a Vermont wetland permit prior to Project construction. Silt fencing and

other erosion prevention and sediment control devices will be installed to prevent sediment laden runoff from entering the wetlands. Hodgetts pf. at 5-6; exh. LH-2.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

18. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. All construction work will comply with Vermont standards and specifications for erosion and sediment control. Hodgetts pf. at 6-7.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

19. The Project will not cause undue congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports, airways, or other means of transportation, whether existing or proposed. Traffic to the unstaffed site will be limited following construction. Hodgetts pf. at 7.

Educational Services

[10 V.S.A. § 6086(a)(6)]

20. The Project will not cause an unreasonable burden on the ability of a municipality to provide educational services. Educational services will not be affected by the Project. Hodgetts pf. at 7-8.

Municipal Services

[10 V.S.A. § 6806(a)(7)]

21. The Project will not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. The Project will not require any additional municipal or governmental services. Hodgetts pf. at 7-8.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

22. The Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by the additional findings below.

23. The monopole tower will be 140' high and located in a forested area. Given the industrial appearance of the Project and the lack of other similar facilities in the area, it will not fit within the context of the wooded area. Accordingly, the Project will have an adverse impact on aesthetics. However, based on the findings below, that impact will not be undue. Perkins pf. at 2; exh. NI-SB-2 at 11-12.

24. The overall visibility of the Project tower will be very limited due to the screening provided by existing topography and vegetation. Viewshed analysis of the area within a two-mile radius indicates that the tower will be visible from only 3.0% of the viewshed area. Visibility of the tower is predominately from a narrow corridor at the base of the valley near the Project. Views of the tower within a half-mile radius will be discrete and short in duration. Perkins pf. at 2; exh. GP-2.

25. The Project does not violate any clearly identified community standards contained in the Enosburgh Town Plan. While there are several general provisions in the Town Plan intended to preserve or protect scenic views, they are not specific and are not applicable to the proposed Project site. The Town Plan does not identify incompatible land use or development practices that would result in adverse impacts on identified scenic areas. Perkins pf. at 2; exh. GP-2.

26. The Project is consistent with goals regarding the improvement of access to wireless telecommunications services contained in the Northwest Regional Plan. The regional plan contains goals supporting universal access to and improvement of telecommunications facilities. The plan also supports the collocation of facilities and the location of new facilities in the least obstructive areas possible. Hodgetts pf. 8-11; exhs. LH-6, LH-7, GP-2.

27. The Project may appear out of context with its forested setting. However, given its limited visibility and the presence of other telecommunication facilities in the general area, it will not appear unusual or reach a level of visual impact such that it could be considered offensive or shocking. Perkins pf. at 3-4; exh. GP-2.

28. The Petitioner has taken generally available mitigating steps to improve the harmony of the Project with its surroundings by siting the Project in an area of limited visibility. Siting of the tower on the downslope of a hill minimizes its visual effect on ridgelines and long-distance views. While camouflaging could further reduce any glare reflected by the steel tower, the natural weathering process will achieve commensurate results in as little as six months after the tower is installed. Perkins pf. at 4; exh. GP-2.

29. The Project will not have an undue adverse impact on known historic sites as there are none in the Project vicinity. Hodgetts pf. at 8; exh. LH-3.

30. The Project will not have an adverse impact on rare and irreplaceable natural areas as there are none in the Project vicinity. Hodgetts pf. at 9; exh. LH-5.

31. The Project will not destroy or significantly imperil endangered species or necessary wildlife habitat as there are none in the Project vicinity. Hodgetts pf. at 9; exh. LH-5.

Discussion

In determining whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Commission applies the so-called “Quechee test.”

The first step of the two-part test is to determine whether a project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. Specific factors used in making this evaluation include the nature of the project’s surroundings, the compatibility of the project’s design with those surroundings, the suitability of the project’s colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space. If the Project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

If a project would have an adverse effect on aesthetics, such adverse impact will be found to be undue if any one of the three following questions is answered affirmatively: (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Would the project offend the sensibilities of the average person?

(c) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?³

The Neighbors argue that the Project will have an undue adverse effect on the aesthetics. While I agree with the Neighbors that the Project will be out of context with its surroundings and thus have an adverse impact on aesthetics, I conclude that, based upon the findings above the impact will not be undue.

The Neighbors point to language in the town and regional plans that expresses the preservation of scenic resources as a general goal. However, the Neighbors fail to cite to any specific language that would limit much less prohibit this type of development in the area. The Neighbors also contend that the sight of a telecommunications tower in this area would be offensive and shocking to the average viewer. I find this unpersuasive given the tower's limited visibility and the presence of other similar towers throughout the state. Further, the Neighbors maintain that additional mitigation measures such as lowering the height of the tower or finding an alternative site would be reasonable. I conclude that lowering the tower height would curtail the Project's goal of allowing collocation of additional carriers in the future and could lead to a further proliferation of towers in this area should carriers choose to provide service in this area in the future. Further, as shown in the above findings, the proposed Project site will have very limited visibility.

The Neighbors also argue that the Project will not promote the orderly development of the region due to its lack of compliance with the Enosburgh Town Plan and because it will only provide two-way radio service. I find this argument unpersuasive. As discussed above the Neighbors have not shown that the Project will violate any specific portion of the town or regional plans. The Neighbors also fail to acknowledge that, while the Project will accommodate the Petitioner's two-way radio service, it is also designed to allow for the future collocation of additional carriers that provide cellular and other telecommunications services. The opportunity to collocate at this facility will also forestall the need to build additional facilities in this area, which may in turn lead to lesser aesthetic impacts in this vicinity in the future. The Northwest Regional Planning Commission ("NRPC") filed a public comment on the Project stating that the Project appeared to be taller and more obtrusive than necessary given that the Petitioner had not

³ *Amended Petition of UPC Wind*, Case No. 7156, Order of 8/8/07, at 64-65.

provided evidence of collocation of other providers. However, the NRPC also states that the Project will not have a substantial regional impact. In response to these comments, the Petitioners provided evidence showing a commitment from the St Albans Police Department to collocate on the Project. The NRPC did not file any further comments or participate in the evidentiary hearing in this proceeding.

The Commission is required to give substantial deference to the recommendations of the NRPC pursuant to Section 248a(c)(2). In this case, I have given substantial deference to the NRPC's recommendations. The NRPC concluded, as do I, that the Project will not have a substantial regional impact. Further, the Petitioners have provided evidence of collocation on the Project as requested by the NRPC.

Collocation

[30 V.S.A. § 248a(c)(3)]

32. The Project cannot be located on or at an existing telecommunications facility. There are no existing facilities in the area that would allow the Petitioner to satisfy its coverage objectives. The Project area presents challenges to wireless signal propagation due to its mountainous terrain. The intervening terrain causes a sharp drop off in coverage from the existing facilities in the area. Delaney pf. at 3-4; exhs. KD-1, KD-3.


33. The existing facilities within the Town of Enosburgh and the surrounding towns within a ten-mile radius do not provide adequate coverage to the Project area. The closest existing facility is five miles away. Delaney pf. at 3-4; exh KD-3

V. CONCLUSION

Based upon all of the above evidence, I recommend the Commission conclude that the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Date: February 28, 2023



Gregg Faber
Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are hereby adopted. All findings proposed by parties that were not adopted in this Order are expressly rejected.

2. The installation and operation of a wireless telecommunications facility at the location specified in the above findings, by Industrial Tower and Wireless, LLC, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

3. As a condition of this Order, the Petitioner shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

Dated at Montpelier, Vermont, this _____.

_____)	
Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	
_____)	COMMISSION
Margaret Cheney)	
)	
)	OF VERMONT
_____)	
J. Riley Allen)	

OFFICE OF THE CLERK

Filed:

Attest: _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2120-PET

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Order entered:

CERTIFICATE OF PUBLIC GOOD ISSUED
PURSUANT TO 30 V.S.A. SECTION 248a

IT IS HEREBY CERTIFIED that the Vermont Public Utility Commission (“Commission”) this day found and adjudged that the proposed site preparation, construction, operation, and maintenance of telecommunications equipment (the “Project”) by Industrial Tower and Wireless, LLC (“CPG Holder”) at Bordoville Road in Enosburgh, Vermont, will promote the general good of the State, subject to the following conditions:

1. Site preparation, construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation or substantial change in the Project is prohibited without prior Commission approval. Failure to obtain advance approval from the Commission for a material deviation or substantial change from the approved plans may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.
2. The Project shall comply with applicable existing and future statutory requirements and Commission Rules and Orders.
3. The CPG Holder shall pay all invoices (if any) from any State agency that (a) are related to this proceeding and (b) are not still under review by the Commission.
4. This Certificate of Public Good shall not be transferred without prior approval of the Commission.

Dated at Montpelier, Vermont, this _____.

_____)	
Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	
_____)	COMMISSION
Margaret Cheney)	
)	
)	OF VERMONT
_____)	
J. Riley Allen)	

OFFICE OF THE CLERK

Filed:

Attest: _____
Clerk of the Commission

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PUC Case No. 22-2120-PET - SERVICE LIST

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