

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 19-3123-PET

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| Petition of New Cingular Wireless PCS, LLC<br>requesting a certificate of public good,<br>pursuant to 30 V.S.A. § 248a, authorizing the<br>installation of wireless telecommunications<br>equipment in Richford, Vermont |  |
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Order entered: 09/12/2019

**ORDER GRANTING CERTIFICATE OF PUBLIC GOOD**

**I. INTRODUCTION**

In this Order, the Vermont Public Utility Commission (“Commission”) approves the application filed by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (the “Petitioner”), pursuant to 30 V.S.A. § 248a and the Commission’s Amended Standards and Procedures Order (“Procedures Order”),<sup>1</sup> and grants the Petitioner a certificate of public good (“CPG”) authorizing the installation of wireless telecommunications equipment in Richford, Vermont (the proposed “Project”).

**II. BACKGROUND**

On July 29, 2019, 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 September 3, 2019, the Vermont Department of Public Service (“Department”) filed comments on the Project. The Department recommends that the Commission approve the petition without further hearings or investigation.

On September 3, 2019, the Vermont Agency of Natural Resources (“ANR”) filed comments on the Project. As discussed in the findings below, ANR recommends that certain conditions regarding wetlands protection be added to the CPG for the Project.

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<sup>1</sup> 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.

The Department recommends that the Commission approve the petition without further hearings or investigation. No other comments on the application were received by the Commission.

No party has requested an evidentiary hearing or objected to the project narrative and exhibits. The Commission has determined that the petition and supporting materials have effectively addressed the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required. Accordingly, the following are admitted as if presented at a hearing: the affidavit of Jeffrey DelliColli (exh. 5) and exhs. 5A-N.

### **III. FINDINGS**

Based upon the application and its accompanying documents, the Commission makes the following findings in this matter.

1. The Project involves the modification of a telecommunications facility that has not yet been fully constructed at 254 Hardwood Hill Road in Richford, Vermont. The objective of the Project is to expand and improve wireless broadband coverage in the surrounding area. Petition at exh. 5B.

2. The telecommunications facility received a CPG issued to Bell Atlantic Mobile Systems of Allentown, Inc. and Cellco Partnership on August 3, 2017 in Case No. 17-2957-PET. The facility is currently under construction. Petition at exh. 5B.

3. The Project includes a 20' extension of the facility tower to a height of 140' with 9 panel antennas of various dimensions, mounted at a centerline height of 136'. The Project also includes the installation of a 7' by 10' equipment cabinet and a generator on a new concrete pad within the facility compound, and ancillary operating equipment. Petition at exhs. 5B and C.

4. The Project will not involve additional permanent earth disturbance. All Project construction will conform to the *Low Risk Site Handbook for Erosion and Sediment Control*. Petition at exh. 5B.

5. The Project will not have an undue adverse impact on floodways, the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 6-8, below.

6. The Project involves relatively minor modifications to a telecommunications facility that is under construction. The proposed modifications will not change the overall appearance of the facility and will fit within the context of the facility. Accordingly, the Project will not have an adverse effect on aesthetics. Petition at exh. 5B.

7. The Project will have no adverse impact on rare or irreplaceable natural areas, wildlife habitat, or endangered species because the Project is not located in a rare or irreplaceable natural area and will impact wildlife habitat or endangered species. Petition at exh. 5B.

#### Discussion

ANR argues that the Project has the potential to cause an undue adverse effect on wetlands located near the Project. Therefore, ANR recommends that certain conditions that were included in the CPG for the original project in Case No. 17-2957-PET also be included in the instant CPG in order to ensure that the Project will not adversely affect wetlands. The Petitioner has agreed to the conditions. We find that ANR's proposed conditions are a reasonable safeguard against any adverse impacts and will add them to the CPG.

8. The Project, which involves minor modifications to the facility that do not involve earth disturbance and will not have an adverse effect on historic sites. Petition at exhs. 5B and 5G.

9. The Project will have no adverse effect on floodplains because there are no floodplains in the area. Petition at exh. 5B.

10. The Project is consistent with existing land use and zoning permits. Petition at exh. 5B.

11. The Project is consistent with the goals in the Richford Town Plan and the Northwest Regional Plan. Petition at exh. 5B.

#### **IV. DISCUSSION**

The procedures governing Commission approval of telecommunications facilities are set forth in 30 V.S.A. § 248a. Section 248a(l) provides that the Commission:

may issue rules or orders implementing and interpreting this section. In developing such rules or orders, the Commission shall seek to simplify the application and review process as appropriate . . . .

In order to implement the statute the Commission adopted the Procedures Order. In accordance with § 248a(b)(4), the Procedures Order, at Section II, defines a project of “limited size and scope” as:

a new telecommunications facility, including ancillary improvements, that does not exceed 140 feet in height; or an addition, modification, replacement, or removal of equipment at an existing telecommunications facility or support structure, and ancillary improvements, that would result in a total facility height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet. In order to qualify as a project of limited size and scope, construction of the project shall not result in earth disturbance of more than 10,000 square feet of earth, excluding temporary earth disturbance associated with construction activities.

As required by § 248a(c)(1) and set forth in Section IV(H) of the Procedures Order, in reviewing projects of limited size and scope the Commission conditionally waives:

all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. §§ 6086(a)(1)(D) (floodways) and 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas, endangered species, necessary wildlife).

The Project will not exceed 200' in height, will not increase the width of the facility, and will result in less than 10,000 square feet of additional permanent earth disturbance. Therefore, the Project qualifies as a project of limited size and scope.

Accordingly, based upon all of the above evidence, the Commission has concluded 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.

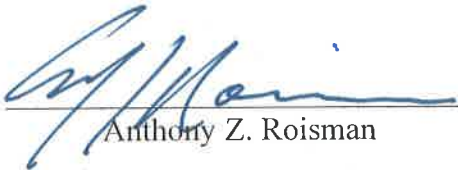
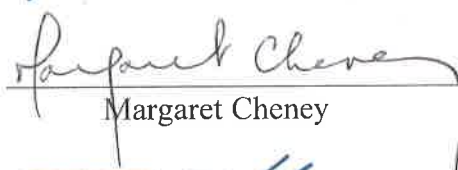
## **V. ORDER**

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

1. The installation and operation of a wireless telecommunications facility at the location specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, 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.

2. 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 12th day of September, 2019.

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|------------------------------------------------------------------------------------|---|----------------|
|  | ) |                |
| Anthony Z. Roisman                                                                 | ) | PUBLIC UTILITY |
|                                                                                    | ) |                |
|  | ) | COMMISSION     |
| Margaret Cheney                                                                    | ) |                |
|                                                                                    | ) |                |
|  | ) | OF VERMONT     |
| Sarah Hofmann                                                                      | ) |                |

OFFICE OF THE CLERK

Filed: September 12, 2019

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](mailto: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.*

PUC Case No. 19-3123-PET - SERVICE LIST

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STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 19-3123-PET

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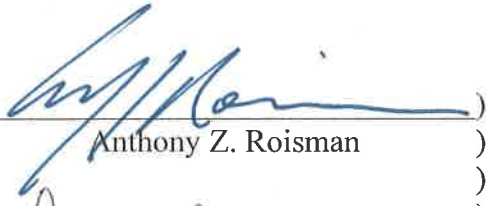
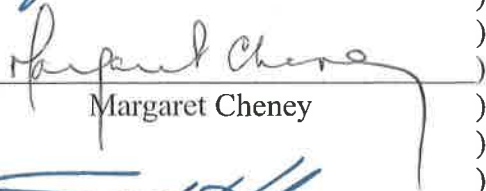
Order entered: 09/12/2019

**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 and construction and operation and maintenance of telecommunications equipment (the “Project”) by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility (the “CPG Holder”) at 254 Hardwood Hill Road in Richford, 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. This Certificate of Public Good shall not be transferred without prior approval of the Commission.
4. The Project shall avoid impacts on Class II wetlands and buffer areas, or the CPG Holder shall obtain and comply with the provisions of a Vermont Wetland Permit.
5. Where the Project is within 100’ of a Class II wetlands buffer zone, prior to site preparation, construction, or any activity involving earth disturbance, the CPG Holder shall install a continuous line of flagging tape inside the Project limits to identify the wetlands and buffer zone as protected areas.

Dated at Montpelier, Vermont, this 12th day of September, 2019

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|  | ) |                |
| Anthony Z. Roisman                                                                 | ) | PUBLIC UTILITY |
|  | ) |                |
| Margaret Cheney                                                                    | ) | COMMISSION     |
|  | ) |                |
| Sarah Hofmann                                                                      | ) | OF VERMONT     |

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