STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-0257-PET

Second Amended Petition of Rising Tide Towers II, LLC pursuant to 30 V.S.A. § 248a requesting a Certificate of Public Good for an installation of a wireless telecommunications facility in Pownal, Vermont	

PETITIONER'S OPPOSITION TO INTERVENORS' REQUEST FOR HEARING

NOW COMES Rising Tide Towers II, LLC ("RTT"), together with Wireless Partners FN, LLC ("WP", and together with RTT, "Rising Tide" or "Petitioner"), and files its Opposition to the Harts' Request for Hearing filed September 4, 2025 (the "Hearing Request"). The Hearing Request pertains to Rising Tide's proposed telecommunications facility located at 127 Crow Hill Road in Pownal, Vermont (the "Project"). Petitioner responds to each of the "Material Facts in Dispute" that the Harts offer as the basis for their Hearing Request, as follows:

1. RF Propagation and Coverage Claims.

The Harts first claim that an alleged discrepancy in antenna centerline may affect overall coverage, and thus warrants a hearing. Yet in their March 7, 2025 motion to intervene, Intervenors never asserted, and were never granted, a right to intervene in this proceeding on the basis of radiofrequency propagation and coverage. The Hearing Officer's Order dated April 21, 2025, made clear that apart from aesthetic impacts and public health / safety, "the Harts have not demonstrated a personal, particular interest with respect to [other] issues, or explained why other parties in the case will not adequately protect these interests."[1] The Hearing Officer further

[1] *In re Petition of Rising Tide Towers II, LLC (Pownal)*, Case No. 25-0257-PET, Procedural Order Granting Motions to Intervene and Requests for Hearing (09/12/2025) at 4.

remarked that "[i]n such a situation, granting intervention risks undue delay of the proceeding."[2] As with their previous request for hearing, the Harts have not provided evidence or other allegations that would demonstrate any personal or particularized interest with respect to coverage issues, as distinct from aesthetics and public safety.

To the extent that the Harts allege that Petitioner has made inconsistent statements during a public hearing concerning the adequacy of a tower lowered to 93' to provide sufficient coverage in southern Pownal, Petitioner has addressed this very point in the Revised Prefiled Testimony of its radiofrequency engineer, Tom Buckley.[3] Mr. Buckley confirmed with AT&T that a tower at this height is adequate to provide improved service for AT&T customers and FirstNet users along VT Route 7, even though the reduced height makes collocations by other commercial users less likely. Concern over loss of collocation capacity was exactly the point Petitioner made during the Pownal Selectboard meeting referenced by the Harts, at a time prior to Rising Tide's consultation with AT&T. Given the absence of any new information or evidence from the Harts to refute Petitioner's need case, and considering support from the Department of Public Service ("Department") as set forth in its August 8th submission,[4] the Hearing Officer should not convene a hearing on the basis of radiofrequency coverage concerns.

2. Aesthetics.

The Harts also request a hearing on the basis that "[Petitioner's] revised filings state there is no view from [the Harts'] property," further claiming that "[b]oth my family and visitors can

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2 *Id*.

3 *See* Buckley revised pft. (08/22/2025) at 6-7.

4 *See* Department of Public Service Response to Petitioners Second Amended Petition (08/08/2025) at 4-5 (reviewing the statutory criteria and recommending that the Commission grant the petition).

see the proposed site." The Harts are mistaken regarding Petitioner's statement. Petitioner's expert witness, David Archambault, referencing the viewshed map prepared by Virtual Site Solutions and provided as Exhibit RTT-DA-06, stated the following in his Supplemental Prefiled Testimony included with the Second Amended Petition:

> … [I]t would appear as though portions of the tower ***may be visible from some areas of the Hart property, including to the east of their residence***. From the map, it would also appear that the Project is situated roughly 750' southwesterly of the residence, and that the residence is oriented east west. So while ***I cannot opine on the exact effect on any particular view from the Hart property***, the data we are providing indicates that ***visibility will have been substantially reduced using the Second Revised Design as compared to the original 190' lattice design***, and that foliage will likely reduce or eliminate views of the tower from areas from an overall perspective of the one mile radius and within the 1,000 foot radius of the Project.[5]

Petitioner's position is that it has taken substantial steps that a reasonable person would adopt to mitigate the visual impact of the Project from multiple properties, including reducing the Project's overall height "so that it will not appear to extend substantially higher than the surrounding trees."[6] The Harts have provided no evidence to the contrary, even though it is the Harts' burden to do so under 10 V.S.A. §6088(b). This burden allocation on a project opponent is consistent with the Commission's precedent in applying Section 248 and Section 248a. *Accord In re Acorn Energy Solar 2, LLC*, 214 Vt. 73, 103-105 (2021) (collecting cases to validate Commission's decision to prescribe burden for demonstrating alternative sites to project

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5 Archambault revised pft. (08/22/2025) at 11.

6 *Id*.

opponents). Without more evidence from the Harts, there is no basis at this juncture to justify the cost and expense of an evidentiary hearing on Rising Tide's petition.

The Harts similarly have challenged the absence of a second balloon test at the new tower location and with a substantially reduced height, thereby allegedly "depriving abutters of a fair assessment of visual impacts." However, Petitioner provided a revised set of simulations along with an explanation of why a second balloon test was unnecessary.[7] Without the Harts introducing their own evidence or even an allegation of additional mitigation measures not taken by Rising Tide in order to meet their burden of proof, there is no basis at this juncture for holding a hearing on the petition.

3. Brown / Wilkerson Notice.

The Harts also request a hearing based on the absence of an advance notice being sent to Brown / Wilkerson. Yet in light of the Hearing Officer's Procedural Order of 09/12/2025, Brown / Wilkerson will have their own opportunity to intervene and request a hearing.[8] Accordingly, the notice issue is moot, and provides no basis in and of itself for the Harts' hearing request.

4. Alternative Tower Locations on the Hart Property.

The Harts also request a hearing by alleging that Petitioner "failed to consider [the Harts'] offered property, despite a signed Entry & Testing Agreement signed 11/21/24." On this

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7 *See* Archambault revised pft. at 4-5; Exh. RTT-DA-04 (revised photographic simulations)

8 *In re Petition of Rising Tide Towers II, LLC (Pownal)*, Case No. 25-0257-PET, Procedural Order re Motion to Intervene and Motion to Dismiss (09/12/2025) at 3-4.

basis, they claim that Petitioner's alternatives analysis "is disputed and directly relevant to aesthetics, siting, and whether the project offers the greatest societal benefit."

The Harts provide no details as to where they propose a tower on their property, nor any of the details that would be necessary for Petitioner or other parties to conduct a proper evaluation of the alternative (e.g., height, visibility, construction access, environmental impacts). Nor do the Harts offer any statement by Rising Tide to demonstrate that any agreement was ever reached for a suitable location on the Property under mutually acceptable terms. It is not enough for the Harts at this juncture to simply state that their property provides an adequate alternative while providing no details whatsoever on their proposal.[9] Petitioner has more than met its evidentiary burden through the submissions made in the Second Amended Petition regarding the absence of suitable alternatives in the area following substantial due diligence.[10] The hearing request should not be granted on the basis of an unidentified alternative on the Harts property.

5. FirstNet Public Safety Benefits.

The Harts' last basis for requesting a hearing is based on the practice of requiring certain FirstNet users to pay a usage fee, and therefore contest the FirstNet system as a public benefit. In addition to being light years beyond the limited scope of their intervention in this proceeding, the Harts fail to establish that charging user fees for a public service undermines the public benefits from shared telecommunications infrastructure as a matter of law or fact.

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9 *Cf. T-Mobile Northeast, LLC v. Town of Bedford, NH*, 2018 WL 6201717 (D.N.H. 2018) at *11 (finding that for purposes of effective prohibition under 47 U.S.C. §332(c)(7)(B)(i)(II), once a provider makes a showing that no alternative plan exists, opponent "must either demonstrate that the evidence offered is factually insufficient, or 'come forward with evidence of its own demonstrating a trialworthy dispute'") (internal citations omitted).

10 *See* Rich revised pft. (08/22/2025) at 5-6; Exh. RTT-TR-18.

Congress expressly directed that the FirstNet Authority (the federal agency overseeing AT&T's construction and expansion of the network) charge subscription fees to public safety users for FirstNet.[11] The fees are designed to make the network financially self-sustaining for operational and upgrade costs, rather than relying on taxpayer dollars. Moreover, the FirstNet Authority is obligated to fund network maintenance and improvements through fees paid by public safety agencies and users nationwide, a practice which benefits the national public safety network through continued expansion into rural areas like Pownal.

Beyond FirstNet, Vermont precedent also supports the use of user fees for development of public telecommunications infrastructure as a public benefit. In Grice v. VELCO,[12] the Vermont Supreme Court validated VELCO's authority to include excess capacity in its fiber optic cables connecting transmission infrastructure as part of a condemnation proceeding, allowing the utility to leverage its transmission-related communications investments by marketing the capacity to third parties, given the incidental burden on including excess fiber in its lines. In its ruling, the Supreme Court *sub silencio* overruled the Commission's previous prohibition against the sale, lease, exchange, or transfer of excess fiber capacity unrelated to transmission assets.[13]

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11 *See* 47 U.S.C. §1428 (establishing mechanisms for self-funding of the FirstNet Authority as well as a duty to assess and collect fees for network usage and reinvestment); *see generally* Congressional Research Service, The First Responder Network (FirstNet) and Next-Generation Communications for Public Safety: Issues for Congress, 01/26/2017 (available at https://www.everycrsreport.com/reports/R42543.html#_Toc473196427 (last visited 09/15/2025)).

12 184 Vt. 132, 147-150, *cert. denied*, 555 U.S. 888 (2008).

13 *In re Vermont Elec. Power Co., Inc. (NRP)*, Docket No 7121, Order of 12/06/2006, at 20; accord *Grice*, 184 Vt. at 148 ("In its clarification decision, the [Commission] unambiguously concluded that VELCO was authorized to install only twenty-four of the requested seventy-two fibers and could not trade any excess capacity. We conclude that the [Commission's] interpretation of the statute's requirements is overly strict.")

Thus, to the extent the Harts' seek to disqualify the Project's public benefits on the basis of FirstNet user fees undermining the public good under 30 V.S.A. §§248a(a) and 202c(b), both a federal statute and Vermont law support that user fees are a valid means of leveraging the public benefits accruing from expanded telecommunications networks. And for the same reason that natural resources, town plan, coverage and radiofrequency issues are beyond the scope of the Harts' intervention in this proceeding, the Hearing Officer should decline to hold a hearing on the basis of the Harts' "public benefit disqualification" theory.

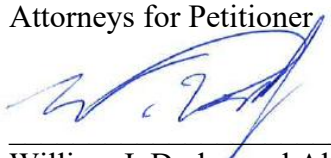
6. Conclusion

For all the foregoing reasons, the Hearing Officer should DENY the Harts' hearing request, together with their accompanying request for discovery and a Commission-ordered site visit / balloon test. Instead, the Hearing Officer should take such actions as are reasonable to issue a final decision on the Second Amended Petition, including (1) setting a schedule for final briefing in the case prior to issuing a proposal for decision to the Commission; or (2) rendering a proposal for decision based on the record once complete.

DATED at Burlington, Vermont, this 16th day of September, 2025.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC
Attorneys for Petitioner



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