

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-0257-PET

Second amended petition of Rising Tide Towers II, LLC and Wireless Partners FN, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment at 127 Crow Hill Road in Pownal, Vermont	
---	--

Order entered:

I. PROPOSAL FOR DECISION

II. INTRODUCTION

In this proposal for decision, I recommend that the Vermont Public Utility Commission (“Commission”) approve the application filed by Rising Tide Towers II, LLC (“RTT”) and Wireless Partners FN, LLC (“WP”) (together the “Petitioners”), pursuant to 30 V.S.A. § 248a and the Commission’s Standards and Procedures Implementing 30 V.S.A. § 248a (“Standards and Procedures”),¹ and grants the Petitioners a certificate of public good (“CPG”) authorizing the installation of a wireless telecommunications facility in Pownal, Vermont (the proposed “Project”).

III. PROCEDURAL HISTORY

On February 3, 2025, the Petitioners 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 March 5, 2025, the Town of Pownal filed comments stating that the Project does not comply with the Town’s telecommunication bylaws due to its height above the treeline and distance from the property line.

¹ Investigation into revised standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a, Case No. 22-5122-INV, Attachment to Order 1/8/23.

On March 7, 2025, Tanya and Jesse Hart filed a motion to intervene and request for hearing.

On March 7, 2025, the Vermont Agency of Natural Resources (“ANR”) filed comments on the petition recommending a condition regarding the protection of rare, threatened, and endangered plants be included in any CPG issued for the Project.

On April 21, 2025, I issued an order granting Jesse and Tanya Hart permissive intervention with respect to aesthetics and public health and safety and granted their request for a hearing. I also noted that the Town of Pownal had filed a notice of intervention in this proceeding.

On May 21, 2025, the Petitioners filed an amended petition and prefiled testimony to address the Town of Pownal’s comments. The revision includes moving the Project further from the property line and reducing its height.

On July 9, 2025, the Town of Pownal filed comments stating that the amended Project does not comply with the Town’s telecommunication bylaws due to its height above the treeline.

On August 22, 2025, the Petitioners filed a second amended petition and prefiled testimony to address the Town of Pownal’s comments. The revision includes a further reduction in the Project height.

On August 8, 2025, the Vermont Department of Public Service (“Department”) filed comments in support of the second amended petition.

On September 4, 2025, the Harts filed a renewed request for a hearing on the second amended petition.

On October 27, 2025, I issued an order granting the Harts’ request for a hearing on the second amended petition.

On February 19, 2026, the Petitioners, with the consent of the Harts and the Department, filed a motion to amend the schedule to forgo the evidentiary hearing in lieu of legal briefs.

On February 25, 2026, I issued an order granting the motion to amend the schedule.

On May 1, 2026, the Petitioners and the Harts separately filed briefs.

On May 1, 2026, the Department filed comments in lieu of a legal brief. The Department recommends that certain conditions related to visibility mitigation be included in any CPG issued for the Project.

On May 15, 2026, the Petitioners and the Harts separately filed reply briefs.

No party has requested an evidentiary hearing or objected to the prefiled testimony and exhibits. I recommend the Commission determine that the petition and prefiled testimony have effectively addressed the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, I recommend the Commission find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required. Accordingly, the following prefiled testimony and exhibits are admitted as if presented at a hearing: revised prefiled testimony and declaration of Todd Rich and exhibits RTT-TR-01 through 22; revised prefiled testimony and declaration of Dave Archambault and exhibits RTT-DA-01 through 04, 06; revised prefiled testimony and declaration of Thomas Buckley and exhibits RTT-TB-01 through 05; revised prefiled rebuttal testimony and declarations of Todd Rich, Patrick Robinson, and David Archambault (“Joint Panel pf. reb.”) and exhibits RTT-JP-01 through 11; depositions of Thomas Buckley, Todd Rich, Patrick Robinson, David Archambault; the prefiled testimony and affidavit of Jeremy Owens and exhibits DPS-JO-1 through 8; the prefiled and surrebuttal testimony of Jesse and Tanya Hart and exhibits EX-HART-01 through 13, and the comments of ANR, the Department, and the Town of Pownal Selectboard.

IV. PUBLIC COMMENTS

The Commission received public comments on the Project from three individuals expressing concerns related to visibility and coverage. The Town of Pownal also filed public comments but later intervened in the case as described above. I considered the concerns expressed by the public as I reviewed Project’s potential for impact under the relevant statutory criteria. As noted in the findings below, the Project will improve existing wireless coverage in the surrounding area and provide additional coverage. I also find that the Project will not have an undue adverse effect on aesthetics. As discussed below, I recommend that the Commission find that the Project satisfies the criteria of Section 248a.

V. 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.

1. The Project involves the construction of a telecommunications facility at 127 Crow Hill Road in Pownal, Vermont. The Project will be constructed by RTT with the facility equipment and antennas owned and operated by WP. WP has entered into an agreement with New Cingular Wireless PCS, LLC (“AT&T”) whereby WP will provide AT&T with access to its facilities to provide coverage. The objective of the Project is to expand and improve wireless coverage in the surrounding area. Exh. RTT-TR-02.

2. RTT and WP are registered to do business in the State of Vermont. WP was issued a CPG to provide commercial mobile radio services in Case No. 19-3689-REGCM. Robinson Deposition at 28-31; exh. RTT-TR-02, Section III.

3. The Project includes the installation of a 93-foot tower with six panel antennas mounted at a centerline height of 89 feet. The tower and antennas will be painted a dark brown color. The Project also includes the installation of a 6-foot by 12-foot equipment platform, a backup generator, and ancillary operating equipment within a 75-foot by 75-foot fenced compound. The Project will be accessed over a new 12-foot-wide gravel drive extending approximately 272 feet from Crow Hill Road to the facility compound. Exh. RTT-TR-02, Section II.

4. The Project will involve approximately 10,739 square feet of permanent earth disturbance. All Project construction will conform to the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Exh. RTT-TR-02, Section II.

State Telecommunications Policy

[30 V.S.A. § 248a(a)]

5. 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 service in this area. Exh. RTT-TR-02, Section III; Buckley pf. 3-4.

6. The First Responder Network Authority (“FirstNet”) is a federal agency charged with creating a nationwide, interoperable public safety broadband network for first responders. AT&T holds the federal contract to provide FirstNet in Vermont. The area along Route 7 running through Pownal to Williamstown, Massachusetts currently has little-to-no wireless coverage.

The primary purpose of the Project is to improve FirstNet coverage and AT&T's wireless coverage in this underserved area. Exh. RTT-TR-02, Section III.

**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 be constructed to meet industry standard relative to structural safety and will comply with Federal Communications Commission standards related to radiofrequency emissions. The Petitioners have also designed the location of the Project tower to comply with the 125% setback in the Town of Pownal telecommunications bylaws. Exhs. RTT-TR-02, Section IV; RTT-TR-03; RTT-TR-10.

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 because there are none in the Project area. Exh. RTT-TR-02, Section IV.

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. Exh. RTT-TR-02, Section IV.

12. The Project will not involve the use of water for commercial or industrial manufacturing or processing. Exh. RTT-TR-02, Section IV.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

13. The Project will meet all applicable health and Vermont Department of Environmental Conservation regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Any blasting required for Project construction will follow ANR's Best Management Practices for Blasting Activities to Avoid Environmental Contamination. Exh. RTT-TR-02, Section IV.

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

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

14. The Project will have minimal impact on water conservation measures, as the Project will not require water or sewer facilities. Exh. RTT-TR-02, Section IV.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

15. 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. Exh. RTT-TR-12 at 2-3.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

16. The Project will not have an undue adverse effect on streams because there are no streams in the Project area. Exh. RTT-TR-12 at 2.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

17. The Project will not have an undue adverse effect on any shorelines because the Project is not located on or near a shoreline. Exh. RTT-TR-12 at 2.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

18. The Project will not have an undue adverse effect on wetlands because it is not located near a wetland. Exh. RTT-TR-12 at 4.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

19. 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. Exh. RTT-TR-02, Section IV.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

20. 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. Exhs. RTT-TR-02, Section IV; RTT-TR-08.

Educational Services

[10 V.S.A. § 6086(a)(6)]

21. 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. Exh. RTT-TR-02, Section IV.

Municipal Services

[10 V.S.A. § 6806(a)(7)]

22. 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. Exh. RTT-TR-02, Section IV.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

23. 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.

Aesthetics

24. The monopole tower will be 93 feet high and located in a forested area with an average tree height of approximately 73 feet. The Project will be visible from the surrounding area. However, views of the Project will be obscured due to the relatively low tower height. The greatest chance of visibility will be from a nearby residence and at distances over one mile from the Project. The Project tower will also be visible from Pownal Village and Route 7. Given the industrial appearance of the Project and the lack of other similar facilities in the immediate 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. Exh. DPS-JO-2, Section III.

25. The Project will be visible from 187.7 acres within a two-mile radius of the tower, which represents 2.33% of the overall area. Joint Panel pf. reb. at 5; exh. RTT-JP-02.

26. In the immediately surrounding area, the Project will only be visible from a limited number of locations, with most of the visual impact being at the site property itself, as well as short stretches of Montgomery Road, B. Hill Road, and Route 7. From approximately 66 acres within a two-mile radius of the tower, only the top 25% of the tower will be visible. Exh. RTT-TR-02, Section IV.

27. Photographic simulations demonstrate that the Project tower is visible below a ridgeline from limited vantage points along Route 7, with its visibility further limited by surrounding vegetation. Joint Panel pf. reb. at 5; exhs. RTT-JP-02, RTT-DA-04, and RTT-JP-07.

28. Project visibility will be concentrated in areas to the east over a mile away, with very limited visibility from public right-of-way locations within a one-mile radius. Exh. RTT-DA-04.

29. The Project will be visible from both the interior and exterior of the Hart residence which is located approximately 673 feet northwest of the Project compound fenceline and 726 feet from the center of the Project tower. The visual proximity of the Project will be somewhat offset by the mitigating elements employed by the Petitioners. The Project tower when seen from this viewpoint will be a noticeable element in the landscape, but it will not be highly noticeable. Exh. DPS-JO-2, Section III.

30. The Project will not extend into the skyline when seen from the Hart residence and will be painted a dark brown color that will reduce color contrast and will help the Project blend with background vegetation. Exh. DPS-JO-2, Section III.

31. The Department's aesthetic witness has recommended additional mitigation intended to further reduce Project visibility from the Hart residence and the Petitioners have agreed to incorporate these measures. The measures include relocation of the Project tower 13 feet further south which would place the tower behind a large white pine tree, and evergreen plantings immediately north, northeast and east of the facility compound. Exh. DPS-JO-2, Section III; Joint Panel pf. reb. at 24.

32. The Project does not violate any clearly identified community standards contained in the town or regional plan. While there are several general provisions in the town and regional plan intended to preserve or protect scenic views, the Project location is not identified as a scenic resource or a protected scenic area. Exh. DPS-JO-2, Section III.

33. The Project may appear out of context with its forested setting. However, the Project will not highly contrast with the surrounding landscape character. Photographic simulations of the Project from the surrounding area show that distance significantly decreases the visibility of the Project. Given the Project's limited visibility, it will not reach a level of visual impact such that it could be considered offensive or shocking from public viewpoints or to the average viewer. Exh. DPS-JO-2, Section III.

34. The Petitioners have 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. The Project will be sited at the base of a ridgeline rather than at the top of the ridgeline and will not project significantly from the surrounding forested area. The Project tower height and location were adjusted to address concerns expressed by the Town of Pownal by moving the Project further from the nearest property line and road. The Project will also be painted a dark brown color to reduce contrast with surrounding vegetation. Exh. DPS-JO-2, Section III.

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?²

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

The Harts argue that views of the Project are shocking and offensive from the Harts' property. The Harts maintain that views of the Project from the "Hart residence are located in the foreground and middle ground, and represent a violent rending of an otherwise harmonious visual structure."³ The Harts argue that pursuant to the Commission's decision in *In re Petition of Tom Halnon*, "even when the adverse aesthetic impacts are concentrated into the perspective of one household, that perspective should not be sacrificed."⁴

The Petitioners do not dispute that the Project will have an adverse impact on aesthetics or that it will be visible from the Harts' residence.⁵ However, the Petitioners contend that views of the Project will not be shocking and offensive to the average viewer.

² *Amended Petition of UPC Wind*, Case No. 7156, Order of 8/8/07, at 64-65.

³ Harts' Brief at 33.

⁴ Harts' Brief at 33-34.

⁵ Petitioners' Brief at 7, 14-15.

Under the third prong in the second step of the *Quechee* test, the Commission considers whether the Facility would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. For purposes of this analysis, the “average person” is defined as a neutral party viewing the project both from public and private vantage points, applying an objective rather than a subjective standard.⁶

The Petitioners point out that the Project will be visible from a very small percentage of the area within a two-mile radius. The Petitioners also maintain that the Project will be visible to very few residences and public vantage points.⁷ The Petitioners also argue that the Project will not impact any protected scenic resources.⁸ Finally, the Petitioners maintain that the Harts reliance on *Halnon* is misplaced because that case “was denied for reasons beyond the impact on one household.”⁹

Conversely, the Harts argue that they would be shocked and offended because the Project will be visible from their residence at a relatively short distance and therefore the Project should be found to fail this portion of the *Quechee* test. I cannot conclude that the Project will be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. The Commission relies on the “perspective of the public at large when viewing proposed projects from public viewpoints, and not on the perspective of adjoining landowners with more particularized interests, as the average person . . .”¹⁰ As we have emphasized in previous orders, “[w]e recognize that scenic qualities of the area are important to its residents and there will always be some resistance to any change in the landscape. However, the *Quechee* test does not guarantee that the aesthetic qualities of an area will not change.”¹¹

As demonstrated in the findings above, Project visibility from the surrounding public viewpoints will be limited and partially screened by surrounding vegetation. The Project will not have a significant impact on views from any public vantage points. Views of the Project along

⁶ *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶¶ 21-22, 202 Vt. 59, 147 A.3d 621.

⁷ Petitioners’ Brief at 13-15.

⁸ Petitioners’ Brief at 16-17.

⁹ Petitioners’ Reply Brief at 6.

¹⁰ *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 3/11/2015 at 55.

¹¹ *UPC Vt. Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 69.

nearby roads will be intermittent and partially obstructed by trees, utility structures and houses. In addition, views of the Project tower will appear below the ridgeline from public vantage points. The nearest corner of the Harts' residence will be located approximately 673 feet northwest of the Project compound. The Project compound and tower will be visible from the exterior living spaces of the Harts' residence and the tower may also be visible from portions of the interior of the residence. The tower will not extend into the background skyline from this vantage point.¹²

I also agree with the Petitioners that the Harts' reliance on *Halnon* is misplaced. In *Halnon*, the Commission denied a CPG for a proposed wind facility because the applicant had failed to take reasonably available mitigating steps *and* because the facility would be shocking and offensive to the *average* person.¹³ The Commission has previously held that its "precedent, since both before and after the *Halnon* decision, has consistently relied on the perspective of the public at large when viewing proposed projects from public view points, and not on the perspective of adjoining landowners with more particularized interests, as the average person for purposes of aesthetics review under § 248."¹⁴ I see no reason to recommend a change to that precedent in this case. Accordingly, I recommend that the Commission find that the Petitioners have met their burden on this question.

The Harts maintain that the Petitioners have not employed generally available mitigation measures because the Petitioners "did not meaningfully explore alternative siting" of the Project out of the Harts' view. The Harts contend that there are a number of alternative sites on the Harts' property that would be suitable for the Project and would avoid impacting the Harts' views.¹⁵ The Harts also assert that the mitigation measures already incorporated by the Petitioners should not be considered mitigation because the Project site was chosen for the benefit of the subject property landowner and not to reduce visibility for the Harts.¹⁶

The Petitioners argue that they have undertaken several measures to mitigate Project visibility including exploring alternative locations prior to submitting the application, reducing

¹² Exhibit DPS-JO-2 at 11-12.

¹³ *Halnon*, 174 Vt. 514, 515.

¹⁴ *UPC Vt. Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 87.

¹⁵ Harts' Brief at 23-26.

¹⁶ *Id.* at 26-32.

the Project tower height from 190 feet to 93 feet, moving the Project further away from roads and property lines, and painting the Project a dark brown color. Further, the Petitioners point out that they have agreed to incorporate additional mitigation measures proposed by the Department's aesthetic expert to further reduce Project visibility from the Harts' property.¹⁷

The Harts argue that relocation of the Project to a site out of their view is a reasonable and, therefore, required mitigation measure. I disagree. As the Commission has stated with regard to this issue in a previous case, "[t]he question before us is whether [the petitioner] has engaged in all reasonable mitigation with respect to the parcel of land under its control, not whether there are other parcels of land that would allow additional mitigation for a project of similar size."¹⁸ The Petitioners also evaluated potential sites on the Harts' property that were suggested by the Harts and found that these sites would not be viable.¹⁹ The fact that the Project will be visible from the Harts' property and other viewpoints does not render the Petitioners' mitigation measures inadequate.

I recommend that the Commission find that the Petitioners have proposed to undertake reasonable steps to mitigate the visual impacts from the Project. The Petitioners have located the Project in an area with limited visibility to public and private viewpoints. The Petitioners have also reduced the height of the Project from what was originally proposed and moved the facility further away from public roads and property lines. The Petitioners have also agreed to a condition proposed by the Department's aesthetic expert to further reduce visibility from the Harts' property. Therefore, I recommend that the Commission include this condition in the CPG.

Further, the Harts maintain that the use of the "so-called third prong" of the Quechee test itself is not supported by § 248a.²⁰ I find the Harts' assertion to be unpersuasive. To the extent that the Harts are bringing a facial challenge to Section 248a, the Commission does not have jurisdiction to address constitutional challenges to a statute.²¹ Pursuant to § 248a(c)(1), the Commission is required to make a finding that a proposed telecommunications facility will not

¹⁷ Petitioners' Brief at 8-9.

¹⁸ *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 3/11/15 at 89.

¹⁹ Petitioners Joint Panel pf. reb. at 22-23.

²⁰ Harts' Reply Brief at 20-21.

²¹ See, *Westover v. Vill. of Barton Elec. Dep't*, 149 Vt. 356, 359, 543 A.2d 698, 700 (1988).

have an undue adverse effect on aesthetics as well as other criteria. Further, pursuant to § 248a(1), the Commission may issue orders implementing and interpreting this section. The means by which the Commission makes this determination is not prescribed in statute. The Commission has consistently applied the Quechee test as part of its review under § 248a. If the Harts' argument is that the Commission's use of the Quechee test violates the common benefits clause, the Harts have not explained how the Commission's use of the Quechee test has singled out a particular community for disadvantage. Accordingly, I see nothing in the statute that is inconsistent with the use of the Quechee test in this case. Conversely, failing to apply the Quechee test here would be inconsistent with Commission practice and precedent.

Finally, the Harts contend that any societal benefits from the Project "do not outweigh the aesthetic impacts."²² With respect to the Harts assertion regarding societal benefits, the Commission's determination on a project's aesthetic impact is also necessarily informed by its societal benefits.²³ In this case, I conclude that the Project will have an adverse effect on aesthetics, but the effect will not be undue. I also find that the Project will result in significant benefits by providing wireless coverage for the FirstNet program and for wireless customers in the area in general.

Historic Sites

35. The Project will not have an undue adverse impact on known historic sites because there are none in the Project vicinity. Exhs. RTT-TR-02, Section IV; RTT-TR-09.

36. The Project will not have an adverse impact on rare and irreplaceable natural areas. The Project area contains suitable habitat for some species. However, the Project has been designed to avoid adverse effects on these species. The Petitioner has also proposed a CPG condition to ensure the protection of rare, threatened, and endangered plants. Exh. RTT-TR-02, Section IV.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

37. The Project will not destroy or significantly imperil endangered species, necessary wildlife habitat, or have an adverse impact on rare and irreplaceable natural areas. The Project

²² Harts' Brief at 35-37.

²³ See, *Petition New Cingular Wireless PCS, LLC*, Docket No. 7729, Final Order (6/6/2011) at 7.

area contains suitable habitat for some species. However, the Project has been designed to avoid adverse effects on these species. Exh. RTT-TR-02, Section IV.

Discussion

ANR states that the Project will be sited in an area with the potential for the presence of a threatened plant species. The Petitioner has proposed to include conditions in the CPG to ensure that the Project does not have an undue adverse effect on bat habitat in the area and any rare, threatened, or endangered plant species *Isotria verticillata*. Accordingly, ANR recommends a condition to ensure protection of these plants. ANR also states that the Petitioner has agreed to the inclusion of the condition.²⁴ I find this condition to be reasonable and recommend that the Commission include it in the CPG.

The Project will be located in the summer range of the federally-listed and state-listed northern long-eared bat as well as the tricolored bat, which is state-listed and proposed for federal listing as endangered. To protect against impacts on bats, the Petitioners have proposed that a condition be included in the CPG to ensure against any impacts. I find this condition to be reasonable and recommend the Commission include it in the CPG.

Municipal and Regional Plans

[30 V.S.A. § 248a(c)(2)]

38. Substantial deference has been given to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan. This finding is supported by the findings below.

39. The Project's siting and design supports restrictions and goals within the Pownal Town Plan and the Bennington County Regional Plan which emphasize minimizing aesthetic impacts while supporting telecommunications services in the area. Owens pf. at 8-9.

40. The Town of Pownal filed recommendations that the Project comply with the Town's land use bylaws. Specifically, the bylaws require that (1) telecommunications towers shall not exceed 20 feet above surrounding structures or trees and shall be painted a non-reflective color; and (2) the distance from the base of the telecommunications tower to the property line shall be a

²⁴ ANR comments at 1-2.

minimum of 10 feet longer than the tower height. Pownal Selectboard recommendations dated March 5, 2025 and July 9, 2025.

41. In response to the recommendations from the Town of Pownal the Petitioners modified the design of the Project to comply with the telecommunications bylaws. The Project tower will be 93 feet which is 20 feet above the surrounding treeline. The nearest property line is 135 feet away from the tower, and the tower will be painted a dark brown color. Exhs. RTT-TR-03; RTT-TR-02, Section IV.

Collocation

[30 V.S.A. § 248a(c)(3)]

42. 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. Buckley pf. at 4-6.

General Good of the State

[30 V.S.A. § 248a(a)]

43. The Project will promote the general good of the State, consistent with subsection 202c(b) of Title 30. This finding is supported by the findings above and the discussion below.

Discussion

The Harts argue that the Project will not promote the general good of the State because (1) the Petitioners are not registered to do business in Vermont, (2) the Petitioners have not applied for, or received, a CPG under 30 V.S.A. § 102, and (3) the Petitioners do not retain ownership of the facilities that they construct.²⁵ I address each of these arguments in turn.²⁶

The Harts assert that Section 1626 of Title 11 prohibits the Petitioners from “maintain[ing] an action or proceeding or raise a counterclaim, crossclaim, or affirmative defense in this State until the person, successor, or assignee registers with the Secretary [of State].” Therefore, according to the Harts, the Project is not in the public good because the Petitioners lack standing to file an application.

²⁵ Harts’ Brief at 4.

²⁶ Harts’ Brief at 5-7.

This argument fails because Section 1626 (Chapter 15) only applies to the registration of “[a]n individual doing business under an assumed business name, or a partnership or unincorporated nonprofit association.”²⁷ The Petitioners are limited liability companies (“LLC”). The registration of LLCs is governed by Chapter 25 of Title 11. The Harts have not demonstrated that the Petitioners have failed to comply with any applicable statute that would impair the Petitioners’ ability to file an application under Section 248a. Accordingly, I recommend that the Commission reject the Harts’ assertion that the Project is not in the public good because the Petitioners were not registered to do business in the State of Vermont at the time the petition was filed.²⁸

The Harts also contend that the Petitioners must obtain a CPG under Section 102 of Title 30. Pursuant to 30 V.S.A. §§ 102 and 231, all companies intending to offer telecommunications services in Vermont are required to obtain a CPG from the Commission.²⁹ In this case, RTT will be building the Project while WP will attach telecommunications equipment to the Project tower. WP has entered into an agreement with AT&T whereby WP will provide AT&T with access to its facilities to provide coverage. WP was issued a CPG pursuant to §§ 102 and 231 to provide commercial mobile radio services in Case No. 19-3689-REGCM. Therefore, the only question is whether RTT should be required to obtain a Section 102 CPG.

Section 102 only applies to “public service corporations” that conduct “the kinds of business” that are “subject to regulation by” the Commission. Section 203 of Title 30 describes the kinds of businesses that are subject to the Commission’s jurisdiction. As would be expected, Section 203 describes companies that are commonly called utilities — companies that provide electric, gas, or telecommunications services. Section 203 confers jurisdiction over any “company offering telecommunications service to the public on a common carrier basis.” Section 203 defines “telecommunications service” as “the transmission of any interactive two-way electromagnetic communications, including voice, image, data, and information.” The record in this case shows that RTT does not engage in this kind of business because RTT will

²⁷ 11 V.S.A. § 1621.

²⁸ The Petitioners also assert that this argument should be rejected on procedural grounds because affirmative defenses, such as a lack of standing, must be raised in a timely fashion. I have not addressed this argument because the Commission’s rules of practice do not contain an analog to Rule 12 of the Vermont Rules of Civil Procedure that would govern the timing of raising specific affirmative defenses.

²⁹ Section 102 applies to newly formed Vermont corporations, while § 231 applies to all others.

only be involved in the construction of the Project, as opposed to the operation of equipment that transmits communications.³⁰ Therefore, there is no basis to require RTT to obtain a Section 102 CPG.

Finally, the Harts argue that the Project is not in the public good because the Petitioners will not own the Project after it is constructed. The Harts have not cited any statutory requirement that the Petitioners own the Project once it is constructed and have not persuasively explained why the Petitioners must do so for the Project to be in the public good. The Petitioners have demonstrated that the Project will comply with the criteria of Section 248a, including consistency with State telecommunications policy as described in Section 202c(b) of Title 30. Therefore, I recommend that the Commission find that the Project is in the public good and issue a CPG to the Petitioners.

VI. 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: June 17, 2026



Gregg Faber
Hearing Officer

³⁰ Exh. RTT-TR-02 at 5 (“RTT [will] construct a new tower facility in order to support wireless telecommunications antennas and equipment owned and operated by WP.”) *See also* Harts’ Reply Brief at 4 (“Rising Tide does not retain ownership of the telecommunications tower projects it constructs.”).

VII. PROPOSED 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 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 Rising Tide Towers II, LLC and Wireless Partners FN, 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 Petitioners shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-0257-PET

Petition of Rising Tide Towers II, LLC and Wireless Partners FN, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment at 127 Crow Hill Road in Pownal, Vermont	
--	--

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 Rising Tide Towers II, LLC and Wireless Partners FN, LLC (“CPG Holders”) at 127 Crow Hill Road in Pownal, Vermont, will promote the general good of the State, subject to the following conditions:

1. Site preparation, construction, operation, and maintenance of the Project must 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 must comply with applicable existing and future statutory requirements and Commission Rules and Orders.
3. The CPG Holders must 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 may not be transferred without prior approval of the Commission.
5. Prior to any site preparation or construction activities, including any tree clearing or cutting, the CPG Holders must conduct an inventory of Rare, Threatened, and Endangered (“RTE”) plants. The inventory must be conducted by a qualified botanist between June 15 and

August 15 and must include a buffer of at least 50 feet beyond the Project limits of disturbance. The inventory report must be submitted to the Agency of Natural Resources (“ANR”) for review, field verification if necessary, and comment. ANR shall review the report and provide comment within 30 days of receipt. If the CPG Holders detect any RTE plants within the Project limits of disturbance, they must indicate those areas on the site plan and mark them in the field. The Project must be designed to avoid and minimize impact to those areas. Prior to site preparation and construction the CPG Holders must obtain approval from ANR for a vegetation management plan that includes measures for avoiding impacts to RTE plant species. If the Project impacts result in the taking of any threatened or endangered plant species, the CPG Holders must obtain a takings permit, pursuant to 10 V.S.A. § 5408.

6. The CPG Holders shall cut or trim trees measuring five inches or greater in diameter at breast height on the Project parcel only during winter months, from November 1 to March 31, or with prior approval from the Vermont Fish and Wildlife Department.

7. The Project, including any future colocations, must be painted a dark brown color and that color must be maintained for the life of the Project.

8. The Project tower must be relocated at least 13 feet south and behind a large white pine tree visible to the right of the currently proposed tower location depicted in exhibit DPS-JO-3.

9. The CPG Holders shall incorporate evergreen plantings immediately north, northeast and east of the Project compound and parking area. The plantings must include 8-foot-tall evergreen plantings on the proposed slope and 10-to-12 foot-tall evergreen plantings in close proximity to the compound fence.

PUC Case No. 25-0257-PET - SERVICE LIST

Parties:

Matthew Bakerpoole
Vermont Department of Public Service
112 State Street
2nd Floor
Montpelier, VT 05620
matthew.bakerpoole@vermont.gov

(for Vermont
Department of Public
Service)

Andrew Cliburn
DesMeules Olmstead & Ostler
2 Beaver Meadow Road
PO Box 1090
Norwich, VT 05055
acliburn@doolaw.com

(for Jesse Hart) (for
Tanya Hart)

Alexis Peters Corseri, Esq.
Downs Rachlin Martin PLLC
199 Main Street
PO Box 190
Burlington, VT 05402
acorseri@drm.com

(for Rising Tide Towers
II, LLC)

*Catherine Gjessing, General Counsel
Vermont Agency of Natural Resources
anr.notice@vermont.gov

(for Vermont Agency of
Natural Resources)

Hannah Cecelia Darling
Town of Pownal
511 Center Street
Pownal, VT 05261
admin.assistant@townofpownal.org

(for Town of Pownal)

William J. Dodge, Esq.
Downs Rachlin Martin PLLC
199 Main Street
PO Box 190
Burlington, VT 05402
wdodge@drm.com

(for Rising Tide Towers
II, LLC)

Cindy Hill
Hill Attorney PLLC
144 Mead Lane
Middlebury, VT 05753
lawyerhill@yahoo.com

(for Jesse Hart) (for
Tanya Hart)

*Notice of appearance to be filed.