

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-1755-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 at 160 Frog Hollow Lane in Westmore, Vermont	
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INTERVENORS' POST-HEARING BRIEF

Now come Intervenors Donna Dzugas, Elizabeth Tucker, Ronald and Kathy Holmes, Robert Fitzpatrick, Andrew Zebrowski, and Megan Peryntha Patton, *pro se*, (Intervenors) and hereby submit our Brief in support of our position that Industrial Tower and Wireless's (ITW) proposed Tower Facility on a private right-of-way known as Frog Hollow Lane will result in Undue Adverse Impacts on Aesthetics, contravenes municipal and regional plans and recommendations, and is not in the public good. Intervenors accordingly request that the Certificate of Public Good (CPG) for the proposed tower project be denied.

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I. Introduction

The Public Utility Commission (PUC) must determine, pursuant to *30 VSA §248a(c)(1)*, whether the proposed tower facility will have an undue adverse effect on, *inter alia*, aesthetics. The PUC must also assess, pursuant to *30 VSA §248a(c)(2)*, whether the proposed facility complies with municipal and regional plans, giving substantial deference to: i. the plans of the affected municipality; ii. the recommendations of the municipal legislative body and the municipal planning commission relative to the municipal plan; and iii. the recommendations of the regional planning commission regarding the regional plan.

In addition to consideration of specific review criteria, the PUC must determine, pursuant to *30 VSA §248a(a)*, if granting the CPG will promote the public good. Petitioner has the burden of proof in these proceedings.

In the present case, the proposed ITW tower has an undue adverse aesthetic impact, is inconsistent with the Westmore Town Plan and telecommunications bylaw which protect the scenic, historic, and environmental character of Lake Willoughby, a federally designated National Natural Landmark (NNL) since 1967, recognized for its glacial trough and 1,500' cliffs, and contrary to the recommendation of the Westmore Selectboard. The Westmore Selectboard's March 25, 2025, letter, voted at a duly warned meeting, recommends denial of the CPG for non-compliance with the Town Plan, ordinance, and aesthetic values, and must be given substantial deference under *30 VSA §248a(c)(2) and (n)*. The Westmore Planning Commission's March 6, 2025, testimony letter cites violations of the Town Plan, ordinance, NNL designation, Fox Hall's National Historic Register status, and Route 5A's Vermont scenic byway designation. An early June 18, 2024, Planning Commission email suggested minimal viewshed impact, but subsequent

evidence, including a March 2025 balloon float, drone footage, and Planning Commission testimony, confirms significant visibility, aligning with the Selectboard's recommendation.

Any potential societal benefits do not outweigh the undue adverse impacts of the facility. The Town Plan deems developments over 100' in height visible from the NNL area as having "substantial regional impact," and the ordinance limits tower height to 20 ft above the treeline, prohibits visibility from public roads or Lake Willoughby, requires 1,500' setbacks from residences, bans speculative construction, and mandates a five-year utilization plan – standards the tower, fails to meet. The project's limited benefit, achievable at less impactful sites, does not outweigh its harm to a nationally significant landmark, and is not in the public good. Therefore, the Petition should be denied.

II. Proposed Facility

Findings of Fact

001. Petitioner has filed two rounds of revisions on their site plans for their proposed telecommunications tower facility. According to their last filing, dated May 12, 2025, they propose to build at telecommunications tower 140' high, with antennae reaching to 153' high, at a location of Latitude 44°46'36.60" Longitude 72°05'14.29" at a base elevation of 1361'. *Exhibit LH 9 Revised*.

002. The stated address for the telecommunications facility is 160 Frog Hollow Lane, on the property of host landowner Peter and Margaret Hyslop. *Exhibit LH 9 Revised*.

003. The tower would rise 70' above the 70' treeline. *Patton Direct Prefiled Testimony p.12*.

004. A cluster of residences on Westside Lane sit as close as 650 feet from the proposed tower, and David Anderson's residence is about 1550 feet north of the proposed tower. *Exhibit LH 1 and Exhibit LH 9 Revised, C3*.

005. Westside Lane ends and becomes a Town Legal Trail 0.22 miles from its intersection with Peene Hill Road. *Exhibit MP 5*.

006. The initial testimony of Louis Hodgetts filed June 5, 2024, indicated that Frog Hollow Lane was a class 4 roadway (a town road). *Hodgetts Direct Prefiled Testimony, June 5, 2024, p.8 lines 7 through 11.*

007. Mr. Hodgetts' Supplemental Prefiled Testimony filed May 12, 2025, corrects this error and identifies Frog Hollow Lane as "a 75' wide right-of-way". *Hodgetts Supplemental Direct Prefiled Testimony, May 12, 2025, p.2(document does not have page numbers or required headings) lines 10 through 13.*

008. Construction and maintenance access to the proposed facility is exclusively over this private 75' right of way. *Exhibit LH 9 Revised*. The right of way is the access way to the property and residence of David Anderson. *Exhibit LH 9 Revised* and *Anderson Direct Prefiled Testimony, pp. 2,3.*

009. The site plan specifically refers to Frog Hollow Lane as a "private road" and "driveway". *Exhibit LH 9 Revised C6 note 3*. The site plan also indicates that permanent utility trenches would be installed within the private 75' right of way including concrete caps over the trenches, and that the "private road" or "driveway" would be resurfaced with crushed stone. *Exhibit LH 9 Revised C11.*

010. Louis Hodgetts testified, however, that no improvements would be made to Frog Hollow Lane. *TR 113, 114, 115 (Hodgetts)*. This testimony is in conflict with the indications on the site plan. *Exhibit LH 9 Revised C11.*

011. Construction will take three to four months. Construction traffic will not occur daily during this period. Construction will occur from 7 a.m. to 7 p.m. on weekdays only. *TR 116 (Hodgetts)*.

012. Petitioner indicates that "after construction, the Project will generally be visited once or twice a month by a service technician for routine inspections." *Hodgetts Direct Prefiled Testimony, June 5, 2024, p.8 lines 10-11.*

013. The site plan revisions dated May 12, 2025, were intended to demonstrate that permanent improvements related to the facility had been removed from the private 75' right of way. *Hodgetts Supplemental Direct Prefiled Testimony, May 12, 2025, p.2 (document does not have page numbers or required headings) lines 10 through 13*. Construction access will occur over the private 75' right of way, as will post construction maintenance access.

014. The tower will consist of a self-supporting lattice tower. *Delaney Direct Prefiled Testimony p.3 line 8.*

015. At the base of the tower facility, ITW proposes to construct a 50' x 50' fenced compound within a 100' x 100' leased area. *Exhibit LH 9 Revised C8*. The base compound will be fenced with an 8' high chain link fence, *Exhibit LH 9 Revised C8*, on which will be hung a variety of

warning signs, *Exhibit LH 9 Revised C12*. The fence includes a 14' wide gate, which site plans indicate will be locked. *Exhibit LH 9 Revised C10*.

016. The base compound will initially include two 12' x 12' equipment storage cabinets or sheds, one for ITW and one for the facility's sole initial telecommunications invited, non-revenue-producing tenant, Glover EMS. *Exhibit LH 9 Revised C8*. Area is reserved within the base compound for two additional storage sheds or cabinets, one 12' x 30', and one 12' x 20'. *Exhibit LH 9 Revised C8; Exhibit KD 4*.

017. Outside of the fenced compound, between the fence and the 75' private right of way, Petitioner proposes to install two surfaced vehicle turn-around areas, a transformer, and bollards. *Exhibit LH 9 Revised C8*.

018. Turn-around areas are located immediately adjacent to the 75' right of way, about 30' from the traveled portion of the right of way. *Exhibit LH 9 Revised C8*.

019. Site plans indicate that Petitioner proposes five ITW transmit antennae plus the Glover EMS antennae extended upwards from the 140' tower to a height of 153', plus a single receive ITW antenna extending downward from the 140' mounting location. *Exhibit LH 9 Revised C9; Hodgetts Direct Prefiled Testimony, June 5, 2024, p.2*.

020. ITW telecommunications services comprise a 900-megahertz two-way radio network available only to paid subscribers. *TR 27 (Delaney)*.

021. Glover EMS is the sole tenant of the proposed facility at the present time. *Delaney Direct Prefiled Testimony p. 5 lines 1-2*. No other carriers have proposed to co-locate on the structure. *Exhibit MP 09 p.2*.

022. Westmore Town annually contracts for EMS services which has included Orleans EMS, Barton EMS and Glover EMS. During their contracted service times no known issues have been reported for additional needed telecommunication options. *Holmes Direct Prefiled Testimony p.3*.

023. ITW also proposes future panel antennae of unspecified number to be located at 122.5' and 112.5' on the tower structure. *Exhibit LH 9 Revised C9*.

Discussion of Proposed Facility

ITW proposes to construct a 153-foot facility (140-foot-tall lattice tower with 13-foot whip radio antennas) in Westmore, Vermont. The proposed location is on a wooded hillside northeast of Lake Willoughby's North Beach. The north end of the host property is the Barton town line. A cluster of residences on Westside Lane sit as close as 650 feet from the proposed

tower, and David Anderson's residence is about 1550 feet north of the proposed tower. Westside Lane ends and becomes a Town Legal Trail 0.22 miles from its intersection with Peene Hill Road. Frog Hollow Lane, a private right-of-way, extends from the Town Legal Trail to the project site.

The facility is intended to serve ITW's two-way radio network subscribers, with the potential to lease antenna space to an indeterminate number of tenants. Cell phone service is not provided by the facility, although Petitioner speculates that cell phone providers may seek to rent space on the tower after it is built. The primary beneficiaries of tower would be the leasing landowner and ITW's private business customers of which there are presently none in the Northeast Kingdom. *TR p.28 and p.36 (Delaney).*

Propagation expert Kevin Delaney testified the project will provide the needed coverage and capacity to allow ITW subscribing customers, living in, working in, or passing through Westmore area to be able to use the ITW network. On cross examination he agreed that this is the sole purpose of the proposed tower. *TR pp.35-36 (Delaney).*

Petitioner had initially incorrectly represented that the proposed telecommunications facility would be accessed over a town class 4 roadway. After correcting their evidence to reflect that access would be via a private right-of-way which serves as the driveway to David Anderson's property and residence, Petitioner did not provide supplemental or revised testimony regarding the impact of the proposed facility on highways and transportation.

Neither Petitioner's testimony nor site plans indicate how access over the private driveway known as Frog Hollow Lane would continue during construction of the underground utility trenches or resurfacing.

The proposed base compound includes structures comprising a total area of 88 square feet. No height or other description or depiction of these structures has been provided. No depiction has been provided of the transformer or bollards to be installed between the fenceline and the private right-of-way.

While Petitioner's site plan depicts a locked gate on the facility compound, Petitioner's testimony makes no mention of the locks or who will have access. Petitioner states that traffic after construction will comprise a couple maintenance trips per month by ITW, but makes no representation as to what traffic will be for the lessees for maintenance and operation including routine calibrations. While there is only one tower tenant proposed at present, site plans indicate a significant number of additional antennas to be placed on the tower. It is reasonable to assume that each antenna will entail regular maintenance and operation trips across the access right-of-way by each of the tower lessees.

III. Inconsistency with Town Plan and Bylaw, and with Regional Plan

Findings

024. In June 2024, Westmore Planning Commission Chair Robert Kennedy emailed the National Park Service regarding the proposed telecommunications facility. Having driven around Lake Willoughby on April 26, 2024 for the purpose of observing the balloon float, Mr. Kennedy concluded that the tower would have minimal impact on views. *National Park Service letter, June 18, 2024.*

025. Mr. Kennedy's email to the National Park Service also notes that the Planning Commission had not yet held its meeting to discuss the Tower. The email does not accordingly comprise a recommendation from the Westmore Planning Commission, nor is it addressed to the PUC, or indicate that it was meant to be considered by the PUC. *Email of Robert Kennedy, June 18, 2024.*

026. The National Park Service filed a public comment letter dated June 18, 2024. This letter does not make a recommendation, but calls attention to the Lake Willoughby area's status as a National Natural Landmark, and requests that "any potential impacts to views along the lake shoreline and from atop Mt. Pisgah, Mt. Hor, and other key viewpoints within the NNL be considered and evaluated." *National Park Service letter, June 18, 2024.*

027. On July 9, 2024, after meeting and consideration, the Westmore Planning Commission filed a public comment letter. This letter was filed within the deadline for filing comments requesting hearing on the project. The letter focuses on the need to provide cellular phone service in the area – a misunderstanding of the tower proposal, which does not at present include the provision of cellular phone service. *Letter of Westmore Planning Commission, July 9, 2024.*

028. The July 9, 2024 Westmore Planning Commission letter notes the competing interests of impact on views to the provision of cellular phone service for added safety to residents. They note that adverse impacts on residents' views and property would range from "annoying to devastating". *Letter of Westmore Planning Commission, July 9, 2024.*

029. The July 9, 2024 Westmore Planning Commission letter requests that the PUC seriously consider the concerns of adjoining property owners, and requests that the project comply with the Westmore Telecommunications Ordinance. Ultimately, the letter requests that the PUC hold a hearing. *Letter of Westmore Planning Commission, July 9, 2024.*

030. On March 6, 2025, the Westmore Planning Commission submitted a letter analyzing the proposed tower's noncompliance with the Town Plan and Westmore Telecommunications Ordinance. The letter notes that the proposed tower is "inherently a project of regional significance" under the Town Plan due to its visibility from Lake Willoughby, noting that the tower would "create a visual intrusion" on the landscape from the Willoughby NNL, and is thereby prohibited by the Town Plan. *Letter of Westmore Planning Commission, March 6, 2025.*

031. The March 6, 2025 Planning Commission letter states that the proposed tower does not comply with the Westmore Telecommunications Ordinance visibility and co-location requirements, and that it is speculative, as contracts with cellular phone providers have not yet been entered by ITW. *Letter of Westmore Planning Commission, March 6, 2025.*

032. The March 6, 2025 Planning Commission letter also notes that the proposed project specifically violates the Westmore Telecommunications Ordinance setback requirements. The proposed tower is considerably less than 1000 feet from the homes of Megan Patton and her neighbor Miguel Santos, while the Westmore Telecommunications Ordinance requires a setback of at least 1500 feet from any residence. *Letter of Westmore Planning Commission, March 6, 2025.* Finally, the letter notes the adverse aesthetic impact on Vermont Route 5A, a state designated scenic route.

033. By letter of March 25, 2025, the Westmore Selectboard specifically and unanimously recommended that the PUC deny the CPG for the proposed tower, on the basis of noncompliance with the Westmore Town Plan and Telecommunications Ordinance as outlined by the Planning Commission's March 6 letter. *Recommendation Letter of the Westmore Selectboard, March 25, 2025.*

034. Neither Petitioner nor DPS responded substantively to the Westmore Planning Commission analysis of the proposed facility's noncompliance with the Westmore Town Plan and Telecommunications Ordinance.

035. Neither Petitioner nor DPS responded substantively to the Westmore Selectboard's unequivocal recommendation that the CPG for the project be denied on the grounds of noncompliance with the Town Plan and Telecommunications Ordinance as set out by the Westmore Planning Commission.

036. The Westmore Town Plan prioritizes scenic preservation, stating: "Any development 100 feet or higher that can be viewed from any point in the national natural landmark designation area should be considered a development of substantial regional impact". *Exhibit MP 3 p.6.*

037. The Telecommunications Ordinance limits tower height to 20 ft above the treeline, prohibits visibility from public roads or Lake Willoughby, requires 1,500-ft setbacks from residences, encourages existing tower use, prohibits speculative construction, and mandates a five-year utilization plan. *Exhibit MP 10 p.12.*

038. Lake Willoughby, a National Natural Landmark since 1967, is protected by the Plan's viewshed map with 10 vectors to maintain the "360-degree viewshed," affirmed by a 2012 survey, with iconic views as noted by the NPS, Selectboard, Planning Commission, and abutters. *Exhibit MP 3 p.5.*

039. ITW has not provided a five-year utilization plan, as required by Article IX of the ordinance *Exhibit MP 10 p.11.*

040. ITW did not consider town-owned lands half a mile away from the proposed site. *TR pp.36–38, 44 (Delaney).*

041. The tower's speculative nature, with no co-location contracts and overbuilt design, violates the ordinance's prohibition on speculative construction. *Exhibit MP 10 p. 6; Lanier Direct Prefiled Testimony pp.5,6.*

042. David Anderson's March 2025 balloon float, conducted on his right-of-way near the site, confirms the tower's visibility from his property, driveway, and home, violating ordinance visibility restrictions. *Anderson Direct Prefiled Testimony pp.6-9.*

043. Raymond Lanier's analysis, based on drone footage and ordinance review, confirms the tower's visibility from Route 5A and Lake Willoughby, endangering the NNL's status, contradicting an early Planning Commission assessment. *Lanier Direct Prefiled Testimony p.3.*

044. The NPS urges evaluation of visual impacts on NNL viewpoints like Mt. Pisgah and Mt. Hor, supporting the Selectboard, Planning Commission, and abutter concerns. *National Park Service letter, June 18, 2024.*

045. The Regional Planning Commission did not participate in the proceedings and did not submit a letter of recommendation.

046. The NVDA Regional Plan for the Northeast Kingdom, *Exhibit DD 5*, states at page 99, as one of its three Telecommunications Goals, that:

Land conservation measures and protection of scenic resources identified in local and regional plans **will be give substantial deference when telecommunications projects are under review.**

047. The NVDA Regional Plan, *Exhibit DD 5*, states at page 24, as a Historic, Cultural and Scenic goal, that:

Significant historic, cultural, and scenic resources within the region should be identified and preserved.

048. The Westmore Town Plan has been submitted by the Intervenors in its entirety, *Exhibit MP 03*, as has the Westmore Telecommunications Ordinance, *Exhibit MP 10*, and the NVDA Regional Plan for the Northeast Kingdom, *Exhibit DD 5*. The content of these plans and ordinance are consistent with the assessment of the *Letter of Westmore Planning Commission, March 6, 2025* and the *Recommendation Letter of the Westmore Selectboard, March 25, 2025*.

Discussion

The PUC must assess, pursuant to *30 VSA §248a(c)(2)*, whether the proposed facility complies with municipal and regional plans, giving substantial deference to: i. the plans of the affected municipality; ii. the recommendations of the municipal legislative body and the municipal planning commission relative to the municipal plan; and iii. the recommendations of the regional planning commission regarding the regional plan.

Vermont statute *30 VSA §248a(c)* explicitly mandates that:

Before the Public Utility Commission issues a certificate of public good under this section, it shall find that:

...

(2) Unless there is good cause to find otherwise, **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. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this

subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. **A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.**

30 VSA §248a(c)(2) (emphasis added).

This is not the only location where the statute mandates that the PUC consider municipal recommendations. *30 VSA §248a(n)* states:

(n) Municipal recommendations. The Commission **shall consider the comments and recommendations submitted by the municipal legislative body and planning commission.** The Commission's decision to issue or deny a certificate of public good **shall include a detailed written response to each recommendation of the municipal legislative body and planning commission.**

30 VSA §248a(n) (emphasis added).

The June 2024 email from Robert Kennedy to the National Park Service does not comprise a recommendation from the Westmore Planning Commission, as it notes that the Planning Commission has yet to hold a meeting to consider the tower. Nor is this email addressed to the PUC, or indicate that it was meant to be considered by the PUC. *Email of Robert Kennedy, June 18, 2024.* The PUC should accordingly disregard the June 2024 email from consideration.

The Westmore Planning Commission's July 9, 2024 letter was filed in the case public comment portal within the deadline for filing comments requesting hearing on the project. The letter focuses on the need to provide cellular phone service in the area – a misunderstanding of the tower proposal, which does not at present include the provision of cellular phone service.

The July 9, 2024 Westmore Planning Commission letter notes the competing interests of impact on views to the provision of cellular phone service for added safety to residents. They note that adverse impacts on residents' views and property would range from "annoying to devastating"; that the PUC seriously consider the concerns of adjoining property owners, and requests that the project comply with the Westmore Telecommunications Ordinance. Ultimately, the letter requests that the PUC hold a hearing. The July 9, 2024 letter of the Westmore Planning Commission does not comprise a recommendation letter, but rather a timely request for hearing.

On March 6, 2025, the Westmore Planning Commission submitted a letter analyzing the proposed tower's noncompliance with the Town Plan and Westmore Telecommunications Ordinance. The Planning Commission indicated that this letter should be considered as "testimony"; however, the Planning Commission had not moved to intervene within the timeline set for the case, and, despite statutory intervenor status, and over the objections of the Town and Intervenors, the hearing officer rejected the Town's attempts to intervene and submit testimony in the case.

Section 248a requires the PUC to give substantial deference to the recommendations of town select boards and planning commissions based on their town plan, and that those recommendations can be based on their zoning/telecom by-law/ordinance. Section 248a also makes clear that if a town telecom ordinance/by-law requires a local permit, that portion of the by-law does not apply.

(2) Unless there is good cause to find otherwise, 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. **Nothing in this section or other provision of law shall prevent a**

municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

30 VSA §248a(c)(2).

Section 248a further makes it clear that the only thing that does not apply that may be part of a municipal bylaw or ordinance is the requirement to get a local permit, but goes on to say that a recommendation can be based on a local land use bylaw.

(1) An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. This exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.

30 VSA §248a(h)(1).

The PUC's Guidance document recognizes the role that telecommunications ordinances/bylaws play in the recommendations of legislative bodies and planning commissions.¹

¹ https://puc.vermont.gov/sites/psbnew/files/doc_library/wireless-communications-facilities-section-248a_2.pdf

Regarding Town Plans, and ordinances/bylaws, p. 5

Recommendations of Municipal Bodies. The legislative body and the planning commission for the municipality in which a project is proposed to be located have the right to participate in the case and to file comments and recommendations on the project and the municipal plan. A municipal body may base its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or a bylaw adopted under 24 V.S.A. chapter 117. A letter from a municipal body concerning compliance with the municipal plan creates a rebuttable presumption regarding compliance with that plan.

The March 6, 2025 Planning Commission letter was subsequently submitted to the public comment portal for the case. The letter notes that the proposed tower is “inherently a project of regional significance” under the Town Plan due to its visibility from Lake Willoughby, noting that the tower would “create a visual intrusion” on the landscape from the Willoughby NNL, and is thereby prohibited by the Town Plan. *Letter of Westmore Planning Commission, March 6, 2025.*

The March 6, 2025 Planning Commission letter goes on to specify that the proposed tower does not comply with the Westmore Telecommunications Ordinance visibility and co-location requirements, and that it is speculative, as contracts with cellular phone providers have not yet been entered by ITW. *Letter of Westmore Planning Commission, March 6, 2025.* It is also notable that the proposed tower violates the telecommunications ordinance prohibition against towers protruding more than 20' above the height of surrounding trees.

The March 6, 2025 Planning Commission letter also notes that the proposed project specifically violates the Westmore Telecommunications Ordinance setback requirements. The proposed tower is considerably less than 1000 feet from the homes of Megan Patton and her neighbor Miguel Santos, while the Westmore Telecommunications Ordinance requires a setback of at least 1500 feet from any residence. *Letter of Westmore Planning Commission, March 6, 2025.* Finally, the letter notes the adverse aesthetic impact on Vermont Route 5A, a state designated scenic byway.

By letter of March 25, 2025, the Westmore Selectboard specifically and unanimously recommended that the PUC deny the CPG for the proposed tower, on the basis of noncompliance with the Westmore Town Plan and Telecommunications Ordinance as outlined by the Planning

Commission's March 6 letter. *Recommendation Letter of the Westmore Selectboard, March 25, 2025.*

The Regional Planning commission made no comment or recommendation on the proposal. The relevant provisions of the Regional Plan defer to municipal designations of scenic resources to be protected in telecommunications siting, and state that "substantial deference" should be paid to such municipal designations. The Vermont Public Utility Commission has defined "substantial deference" in *30 VSA §248a* thusly:

(5) "Substantial deference" means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

The Westmore Selectboard's March 25, 2025 Recommendation Letter creates a rebuttable presumption that the proposed project is not in compliance with the Westmore Town Plan and Telecommunications Ordinance, and that CPG for the project should accordingly be denied. The PUC is mandated to afford this recommendation substantial deference.

Petitioner has not submitted any evidence or testimony to rebut the Town's recommendation. Petitioner's witness regarding aesthetics and town plan compliance entirely ignored the Westmore Telecommunications Ordinance, and referenced only those portions of the Regional Plan as relates to broadband and cell phone service, *Hodgetts Direct Prefiled Testimony p.10*. Neither broadband nor cell phone service are proposed to be advanced by this tower project, which at present is intended to hold only two-way radio antennae.

Petitioner's witness's scant reference to the Westmore Town Plan also relate only to aspirational statements pertaining to improved telecommunications services. *Hodgetts Direct Prefiled Testimony p.12.*

Petitioner presented no testimony or evidence whatsoever pertaining to siting, scenic resources and aesthetic values as contained in either the town or regional plans.

Similarly, the Department's aesthetic witness, Michael Buscher, makes scant half-page reference to the municipal and regional plans. *Buscher Report pp.13-14*. Buscher notes that the regional plan defers to towns for scenic resource identification, and notes that the Town Plan identifies Willoughby and Vermont Route 5A as a scenic resource, but concludes inexplicably that the project site itself is not a scenic resource.

The Department presented no testimony or evidence regarding the Westmore Telecommunications Ordinance, or in rebuttal to the Town's recommendation letter.

In looking to the Town Plan *Exhibit MP 3*, Telecommunications Ordinance *Exhibit MP 10*, and Regional Plan *Exhibit DD 5*, we find the following, all of which is in conformance to the analysis of the Westmore Planning Commission and the recommendation of the Westmore Selectboard:

A. Westmore Town Plan

The Westmore Town Plan was adopted in 2018 and amended in 2020. Its initial overall vision includes the following:

The unique and special character of Westmore is derived from a combination of two principal factors: the historic, rural, seasonal character of the community and the infinite magnificence of Westmore's Willoughby Lake along with its other pond, mountain and farm settings. ... The diversity of scenery, geographic location, natural beauty, natural resources and people of the Town of Westmore create an essence of the town.

The Town Plan notes Willoughby as a National Natural Landmark, one of only 600 in the country and only 12 in Vermont. Critical to the protection of the NNL "is to ensure that the

resource remains unimpaired or in a natural condition, and that the site's 'natural integrity has not been diminished.'" *Exhibit MP 3 p. 5.*

The Town Plan goes on to say that "It is impossible to evaluate the significance of the Willoughby Lake and Cliffs area without considering its dramatic backdrop of forested high elevation areas that rise from every point on the horizon surrounding it. The lake area and the village are at the bottom of a unique topographical bowl configuration that creates a spectacular 360-degree viewshed." The Town Plan notes the visitors and artists the area draws.

The Town Plan specifically states at p. 6:

While the NNL designation can and should be taken into account for all federal permitting process, it should be a critical factor in local land use decisions as well, including Act 250 and Section 248. Given the significance of this designation, the Westmore Town Plan asserts that **any development of 100 feet or higher that can be viewed from any point in the NNL designation area be considered a development of substantial regional impact.**

This is reiterated at Policy Statement #4, p. 7:

Any development 100 feet or higher that can be viewed from any point in the National Natural Landmark designation area should be considered a development of substantial regional impact.

The proposed ITW tower is 140' above ground level to the top of the tower structure, and 153' above ground level to the top of the presently-anticipated antennas. *Exhibit LH 1 C9.* Petitioner's own visibility analysis indicates that the proposed tower would be visible at numerous places throughout the NNL, including from the shores of the lake and from the lake's surface, particularly from the eastern shore. *Exhibit LH 6.* In accordance with the Westmore Town Plan, the proposed ITW tower is inherently a development of substantial regional impact.

The Town Plan places further analysis and policies regarding the Town's higher-elevation areas within the "Forests" section of the Town Plan, beginning at p. 23. At p. 24, titled "Mountaintops/Ridgelines," the Town plan states:

Due to their unique ecosystems and the potential for detrimental visual impacts by development, **the ridgelines and mountaintops are considered important areas of town and should be protected from development.**

The Willoughby Lake Area has been designated at Registered Natural Landmark under provisions of the Historic Sites Act of 1935. According to the US Department of the Interior, this site possesses "exceptional value in illustrating the natural history of the United States." **The area, which includes Willoughby Cliffs, is also surrounded by unique topography, which makes maintaining the integrity of Westmore's ridgelines especially important.** The core of the town—including the Willoughby Lake Area – are virtually enclosed on all sides by ridgelines, effectively placing the center of the community in a "bowl". All of these ridgelines, which are depicted **on the attached Viewshed Map and accompanying photos**, are highly visible from the lower elevations, leaving the town particularly vulnerable to adverse impacts of ridgeline development. Westmore maintains a vast network of recreational and hiking trails that traverse these ridgelines and afford access to **a multitude of spectacular views**. This asset is at the core of the community's identity as a tourism destination and is critical to the long-term economic health of the community. The community's ridgelines therefore must be treated as a whole, rather than as a series of viewsheds.

Continuing on with the Town Plan's discussion of Mountaintops and Ridgelines on p. 24, the Town Plan states:

5. Westmore has unique topography with many beautiful ridgelines contrasting with the valleys, lakes and ponds. These attributes are often not fully recognized until they are altered. **The ridgelines in town must be preserved and protected** when planning any new development. Any new development on the ridgelines should not

a. create a visual intrusion into the viewshed as viewed from any public right of way, body of water, or from any vantage point in the National Natural Landmark designation area.

As noted above, Petitioner's own visibility analysis indicates that the proposed tower would be visible at numerous places throughout the NNL, including from the shores of the lake

and from the lake's surface, particularly from the eastern shore. *Exhibit LH 6*. It is critical to note that the Town Plan does not allow for marginal or incremental development in these areas, but rather prohibits development that "creates a visual intrusion." The proposed ITW tower creates a visual intrusion into a specifically designated scenic resource.

The Town Plan's discussion of Scenic Feature reiterates the protection of the area's ridgelines, recommending that "The importance of the ridgelines in Westmore must be considered in evaluating the appropriateness of any commercial...development." *Exhibit MP 3 p. 30*.

B. Town of Westmore Telecommunications Ordinance

Pursuant to 24 VSA §2291(19), the Town of Westmore adopted a Telecommunications Towers and Facilities ordinance in 2004. *Exhibit MP 10*. Under this ordinance, the Selectboard appointed the ZBA as the Telecommunications Review Board, to review all applications for telecommunications towers within the town. A town permit is required under the ordinance.

The ordinance exempts many emergency and personal communication antenna uses from the ordinance, provided the antennae for them remain under 35' in height.

The Telecommunications Tower Ordinance Article VIII encourages towers to be located where they are not visible from public roads, or from Lake Willoughby. This proposed ITW tower fails on both accounts, and is visible from public roads and the lake.

Article VIII continues to mandate siting as follows – though despite the mandatory language of "will," the siting standard is equivocal:

Telecommunication facilities **will** be located so as to **minimize** the following potential impacts:

- a) Visual/aesthetic: telecommunication facilities **shall, when possible** be sited off ridgelines, and where their visual impact is least detrimental to

scenic views. In determining whether or not a telecommunication facility will have undue adverse visual impact on the scenic view or natural beauty the TRB shall consider:

- i) The period of time during which the proposed telecommunication facility would be viewed by the public on a public highway, path, or body of water;
- ii) The frequency of the view of the proposed telecommunication facility as experienced by the public;
- iii) The degree to which the view of the telecommunication facility is screened by topographical features;
- iv) Background features in the line of sight to the proposed telecommunication facility which obscure the facility or make it more conspicuous.
- v) The distance of the proposed telecommunication facility from the viewing vantage point and the proportion of the facility that is visible above skyline; the number of vehicles and/or viewers traveling on a public highway, path or waterway at or near the critical vantage point and
- vi) The sensitivity or unique value of the particular view affected by the proposed development.

Article X(H) of the Telecommunications Ordinance mandates that tower facilities, measured from the outer perimeter fence, be more than 300' from the property boundary. It also prohibits any telecommunications facility or tower located

2. Closer than 1,500 feet horizontally to any structure existing at the time of application, which is used as a primary or secondary residence, school property (both public and private), a hospital, senior center, childcare facility, building used for religious worship, or to any other building used regularly by the public. Primary or secondary residences are those dwelling units that include toilet facilities and facilities for food preparation and sleeping.

Petitioner's proposed tower here is significantly closer than 1,500 feet from a number of residences, in direct contravention of the Westmore Telecommunications Ordinance. The setback is reasonable for Westmore due to the town's development patterns.

The required site plans of Section VIII(R) are far more detailed than those submitted by ITW to the Vermont PUC, as are the requirements for visibility maps and photos of the proposed

location required by Section VIII(R)(8). Article IX of the ordinance requires submission of significant information pertaining to the need for the telecommunications tower. The data and information required by the town have not been included in the ITW PUC application.

C. Regional Plan

The NVDA Regional Plan for the Northeast Kingdom, *Exhibit DD 5*, states at page 99, as one of its three Telecommunications Goals, that:

Land conservation measures and protection of scenic resources identified in local and regional plans **will be give substantial deference when telecommunications projects are under review.**

The Vermont Public Utility Commission has defined “substantial deference” in *30 VSA §248a* thusly:

(5) “Substantial deference” means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

The NVDA Regional Plan states at page 24, as a Historic, Cultural and Scenic goal, that:

Significant historic, cultural, and scenic resources within the region should be identified and preserved.

CPG Should Be Denied as Noncompliant with Town Plan and Ordinance

Pursuant to *30 VSA §248a(c)(2)*, the PUC should find that the proposed facility does not comply with municipal and regional plans. Giving substantial deference to the plans of the affected municipality, and the un rebutted recommendations of the municipal legislative body and the municipal planning commission relative to the municipal plan, as well as review of the regional plan, the proposed project does not comply with municipal setbacks, scenic viewshed protections particularly those from the Lake Willoughby NNL, and the view from state-

designated scenic Route 5A. Petitioner has not overcome the presumption afforded the municipal recommendation or plan.

Neither Petitioner nor the Department has presented evidence demonstrating that good cause exists to disregard the recommendation of the Town of Westmore Selectboard, or the analysis of the Town of Westmore Planning Commission regarding noncompliance with the Town Plan. "Good cause" has been defined by the PUC as

a showing that deference to . . . the recommendations of the municipal legislative bodies and municipal and regional planning commissions regarding the municipal and regional plans, respectively, would be detrimental to the public good or the State's interest articulated in 30 V.S.A. §202c." Pursuant to §202c(3), the State's interests include supporting "the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities." The burden of proof to demonstrate "good cause" rests with the Petitioner.

Petition of Vermont RSA Limited Partnership, Docket No. 8601, Final Order Denying CPG, 09/21/2017.

In the present case, Petitioner presents only speculation that "modern mobile wireless telecommunications services" may at some unknown future date be included on this proposed tower; the tower as proposed includes two-way radio service only. One could similarly speculate that towers will no longer be necessary due to satellite "direct-to-cell" technology currently being deployed and advertised as eliminating dead zones. There is no evidence that denying this CPG would be detrimental to the public good or averse to State interests. Accordingly, there is no good cause to disregard the plan of the Town of Westmore to deny the CPG.

The CPG should accordingly be denied.

IV. Aesthetics

Findings of Fact

-Nature of the project's surroundings

049. The proposed facility's surroundings are typical of the Northeastern highlands with its granite mountains, dense forests and glacial lake. *Buscher Report p.10; Buscher Exhibit D (highlighted Town Plan pp.25,26,27)*.

050. Town of Westmore is a small rural community with a small population. *Buscher Report p.10*.

051. Lake Willoughby is designated a National Natural Landmark making it a sensitive area aesthetically. *Buscher Report p.10; Exhibit RL 2; Buscher Exhibit D (highlighted Town Plan p.23)*.

052. Lake Willoughby attracts tourists and photographers, who support the economy. *Buscher Report p.10; Buscher Exhibit D (highlighted Town Plan pp.22,24)*.

053. The proposed tower is slightly over $\frac{2}{3}$ mile from Willoughby's north beach. *Buscher Report p.10*.

054. The location is less than a mile from Willoughby Lake and the North Beach, a half mile away from the Westmore Town Forest, and less than 600 feet away from a recreational trail. *Direct Zebrowski Direct Prefiled Testimony p.3*.

055. Concentration of development, cottages and homes, is at the northern end where the terrain is more open in contrast to the dramatic steep cliffs of the mountains rising up toward the south end. *Buscher Report p.10*.

056. Within the 2 mile buffer zone of the tower the landscape is forested with a mix of open fields. *Buscher Report p.10*.

057. Route 5A is part of the Northeast Kingdom Scenic Byways. *Buscher Exhibit D (highlighted Town Plan p.28)*.

058. The exceptional beauty has been lauded repeatedly for over 150 years. *Exhibits CK 4, CK 5, CK 6, CK 7, CK 8, CK 9, CK10, CK 11*.

-Compatibility of the project's design with surroundings

059. The project will be visible from the adjacent properties. *Buscher Report p.11; Anderson Direct Prefiled Testimony pp.7-9; Exhibit DA 02*.

060. An industrial tower rising above the treeline by 70-100 feet is not compatible with the area's surrounding woodlands, rolling hills and mountains. *Kriebble Direct Prefiled Testimony pp.6,7; Anderson Direct Prefiled Testimony, pp. 7-11, 14.*

061. A radio tower is an industrial structure, not an intrinsic element in the natural landscape. *Anderson Direct Prefiled Testimony pp.7-9; Exhibit DA 02.*

062. The Westmore Town Plan states any tower over 100' that can be viewed from within the NNL area be considered to have "substantial regional impact". *Buscher Exhibit D (highlighted Town Plan p. 24).*

063. Westmore Town Plan specifically states the importance of protecting the scenic beauty of the area. *Buscher Exhibit D (highlighted Town Plan pp. 26,27,29).*

-Impact of the project on open space

064. The Regional Plan for the Northeast Kingdom defines "Open Space" as being composed of rolling hills, farmlands, lakes and rivers, forests, country roads, and compact village centers. *Buscher Report p.12.*

065. The project impacts not only the immediate site, but the "Open Space" of the entire Willoughby landscape. *Kriebble Direct Prefiled Testimony p.7.*

066. A large scale 153' high structure will by comparison diminish the scale of natural surroundings, trees, mountain ridges, land formations including the NNL glacially formed gap between Mt. Pisgah and Mt. Hor. *Kriebble Direct Prefiled Testimony p.7; Exhibit DD 4.*

067. Due to "confirmed visibility" and "high sensitivity of Lake Willoughby" the Project would result in adverse impacts to aesthetics and the natural, scenic beauty. *Buscher Report p.12; TR p.203,205 (Buscher).*

068. Because Lake Willoughby is a designated National Natural Landmark, additional attention and review are necessary to avoid potential visual impact of the project. *Buscher Report p.12,*

069. The out of scale industrial metal tower would scar the natural beauty of the so far unspoiled Willoughby area. *Kriebble Direct Prefiled Testimony p.8.*

-Suitability of project's colors and materials with immediate environment

070. Future cellular antennas were not considered in analysis. *Buscher Report p.12.*

071. While the proposed tower's materials blend with leaf-off conditions, additional contrast would occur in different times of the year and under different lighting conditions. *Buscher Report p.12.*

-Visibility of the project

072. The proposed facility would be visible from numerous places throughout the designated NNL area. *Exhibit LH 6 p.1; TR p.107 (Hodgetts).*

073. The ITW Visibility Analysis was limited to only 10 locations. *Hodgetts Direct Prefiled Testimony p.9; Exhibit LH 6.*

074. On the east side of the lake, the tower would be visible from dwellings on the waterfront, locations going up the ridges above and out on the water. *Buscher Appendix A Map 3; Exhibit LH 6 p.1.*

075. DPS aesthetics analysis only covers publicly accessible locations from the east and northeast of the tower; does not address the numbers of cottages and residences where people live. Nor does it address views from the water. *Buscher Report p.11; Buscher Appendix A Map 3.*

076. Balloon tests and drone photos show that the tower will be visible from many private residences. *Exhibits MP 4, MP 7, ET 1, DD 1, DD 2.*

077. The proposed tower will be visible from within adjacent property boundaries. *Buscher Report p.11; Exhibit AZ 2; Patton Direct Prefiled Testimony pp.4-10; Anderson Direct Prefiled Testimony pp.6-9; Exhibit DA 02; Exhibit RF 01; Fitzpatrick Direct Prefiled Testimony pp.4,5.*

-Evidence of extent of visibility

078. Petitioner conducted a balloon float on February 15, 2024. *TR p.74 (Hodgetts).* Notice of this balloon float was not provided to other parties. *TR p.75 (Hodgetts).* Petitioner's simulations were based on their February 15, 2024 balloon float, which was apparently not observed or photographed by Intervenors or the Town. *TR pp.75-76 (Hodgetts); Exhibit LH 6.*

079. Petitioner conducted a balloon float on or about April 26, 2024. The Town was notified a few days in advance of this balloon float. *Patton Direct Prefiled Testimony p.5.*

080. Megan Patton observed the April 26, 2024 balloon float from her home and that of her neighbor Miguel Santos. These homes are located approximately 650' from the proposed tower location. *Patton Direct Prefiled Testimony p.5.* As she observed the balloon test, the balloon quickly lost altitude. *Patton Direct Prefiled Testimony p.5.*

082. Photos 1 and 2 show the balloon sunken below the treeline. *Exhibit MP 7.*

082. Donna Dzugas-Smith hired a drone operator to photograph the April 26, 2024 balloon float. Video and still photos of that balloon float, before the balloon lost altitude, are submitted as *Exhibit DD 1 and Exhibit DD 2*.

083. Dzugas-Smith also attested to observing the balloon dropping below 140 feet during the April 26, 2024 test. *Dzugas-Smith Direct Prefiled Testimony p.6*.

084. The Scheduling Hearing on November 21, 2024, includes discussion stating that the Department had not yet hired an aesthetic expert, and would require more time to do so. *Scheduling Hearing TR p.9*. The Department's expert had accordingly not been engaged until long after the Petitioner's two balloon floats had been undertaken.

085. David Anderson, an adjoining landowner and lifelong mechanical engineer, would be driving by the tower base compound, in close proximity, each time he entered or left his property, as the compound is within feet of his deeded right-of-way. *Exhibit LH 9*. The area is presently dense woodlands. *Anderson Direct Prefiled Testimony p.5*.

086. On March 3, 2025, Mr. Anderson conducted a balloon float from his right-of-way in proximity to the tower site. *Anderson Direct Prefiled Testimony pp.5-6*.

087. The proposed tower would be plainly visible on Mr. Anderson's drive to and from his home, from the meadow and property surrounding his home on which he walks and engages in winter recreation, and from inside and around his home and garage. *Anderson Direct Prefiled Testimony pp.6*.

088. ITW's witness Louis Hodgetts did not review the ridgeline maps and viewshed maps associated with the Westmore Town Plan. *TR 137 (Hodgetts)*. He attested that he did not find the Town Plan protection of mountaintops and ridgelines, at Town Plan page 24, to be relevant to his analysis. *TR pp.138,140 (Hodgetts)*.

089. Petitioner's evidence pertaining to aesthetics, compliance with municipal and regional plans, and natural resources was submitted by Louis Hodgetts. Petitioner admits that Mr. Hodgetts is not a landscape architect or land use planner, nor is he a biologist or ecologist. *Exhibit MP 9*.

090. Mr. Hodgetts attested that the proposed facility will not generate significant noise, *Hodgetts Direct Prefiled Testimony p. 4 lines 4-6*, but Petitioner did not provide any sound pressure level models for either the construction or operation phases of the project. Petitioner did not list the equipment necessary for construction, though indicated that tree clearing and earth-moving would be required. *TR pp.116-117 (Hodgetts)*.

091. Petitioner submitted a natural resources report *Exhibit LH 04*, a FEMA flood map *Exhibit LH 03*, a historic resources letter *Exhibit LH 05*, a short excerpt from the Town Plan pertaining to

telecommunications *Exhibit LH 07*, and a brief portion of the Regional Plan pertaining to telecommunications *Exhibit LH 08*.

092. Mr. Hodgett's testimony indicates that a visibility analysis was conducted to review the potential visibility of the proposed installation and an unannounced balloon float was conducted on February 15, 2024, to confirm the visual impact of the proposed Tower on the surrounding community. He describes that balloon float as follows:

A 3 'diameter red balloon was inflated, connected to a 140 'long string, and tethered at the proposed site location. While the balloon was in the air at the proposed height, our staff drove the primary public roads within a two-mile radius of the project location to determine the visibility of the proposed installation. Views of the proposed installation were limited to Cook Road and VT Route 5A and from more limited spots of short duration due to the steep terrain and foreground vegetation. Photographs were taken from ten (10) different viewpoints, identified in Exhibit LH-6. Of those, the balloon was visible from four (4) viewpoint and simulations were developed of the proposed installation. The photosimulations are submitted as Exhibit LH-6.

Hodgetts Direct Prefiled Testimony p.4 lines 4-6

093. Despite submitting a probable visibility map and series of photosimulations, *Exhibit LH 06*, Petitioner submitted no testimony or evidence pertaining to aesthetics analysis, the Quechee test, or portions of the Town and Regional plans pertaining to scenic resources and aesthetic qualities.

094. Louis Hodgetts admitted the shading on his probable visibility map *Exhibit LH-6*, showed probable, potential and possible visibility of the proposed tower at 140 feet omitting the full height of 153 with the antenna ITW requires for their radio service. *TR p.81 (Hodgetts)*.

095. The photographs submitted by both Petitioner and the Department's witness are all from locations over 1 mile from the tower location. *Patton Direct Prefiled Testimony p.7; Exhibit LH 6*. However, the tower will be visible from numerous residences and public roadways within 1 mile. *Exhibit LH 6*.

096. Petitioner admits that Lake Willoughby and its environs are a federally-designated National Natural Landmark. *Exhibit MP 9*.

097. The proposed telecommunications facility exceeds 100' in height, and if constructed will be viewed from numerous places within the National Natural Landmark, including from the lake itself and from several locations on its shores. *Exhibit MP 9; TR pp.96-97 (Hodgetts)*.

098. Despite the knowledge of the unique National Natural Landmark Federal Designation Louis Hodgetts did not reach out to US Dept of the Interior nor Vermont Agency of Natural Resources who oversees the NNL. *TR p.101 (Hodgetts)*.

099. Even though the tower would loom over a federally designated historic landmark Fox Hall off Peene Hill Road, as depicted in *Exhibit ET 1*, petitioner failed to acknowledge any historic places in their petition. *Exhibit LH 5; TR pp.74-75 (Hodgetts)*.

100. The Department of Public Service submitted an aesthetic report and exhibits by landscape architect Michael Buscher. In contravention of PUC Rule 2.212, no testimony or affidavit was submitted by Mr. Buscher, and his exhibits were not labeled as required by PUC rule. The Department submitted Mr. Buscher's viewshed analysis, unlabeled exhibits Appendix A1, A2 and A3, and a photographic inventory, which was also unlabeled as an exhibit, and mislabeled as Appendix A rather than B. His photo simulations are labeled Appendix C, simulations 1, 2 and 3.

101. The out of scale industrial metal tower would scar the natural beauty of the so far unspoiled Willoughby area. *Krieble Direct Prefiled Testimony p.8*.

-Clear written community standard

102. Westmore Town Plan cites NNL stating critical to protection of the NNL "is to insure that the resource remains unimpaired or in natural condition, and that the site's natural integrity has not been diminished." *Krieble Direct Prefiled Testimony p.9; Lanier Direct Prefiled Testimony p.3; Exhibit RL 2; Exhibit MP 3 p.6*.

103. Any development 100 feet or higher that can be viewed from any point in the National Natural Landmark designation area should be considered a development of substantial regional impact. *Krieble Direct Prefiled Testimony p.9; Buscher Appendix D p.24 (highlighted Town Plan)*.

104. Town plan states clearly that the visual impact of commercial construction on ridgelines in Westmore must be considered. *Buscher Appendix D p.29 (highlighted Town Plan p.63)*.

105. The Westmore Planning Commission in March 6, 2025 testimonial letter addresses the need for the entire Willoughby area to be considered a natural resource as a whole, not a series of viewsheds. *Krieble Direct Prefiled Testimony p.9; Exhibit MP 3 pp.5,6; TR p.208 (Buscher); Buscher Appendix D p.24*.

106. Significant historic, cultural, and scenic resources within the region should be identified and preserved. Assist communities to preserve and maintain historic downtowns, village centers, buildings, and rural and scenic landscape. *Buscher Appendix D p.6 (Highlighted Regional Plan for the NEK p.24)*.

107. Land conservation measures and protection of scenic resources identified in local and regional plans will be given deference when telecommunications projects are under review. *Buscher Appendix D p.10 (Highlighted Regional Plan for the NEK p.99).*

108. The Northeast Kingdom is fortunate to have communities that have already identified some of their assets and protected... areas of natural or scenic beauty. *Buscher Appendix D p.3 (Highlighted Regional Plan for the NEK pp.124,129).*

109. The Project will likely impact look-outs from the hiking trails on Wheeler Mountain, contrary to ITW testimony: Criterion 9(K) – Development Affecting Public Investments: *Kriebble Direct Prefiled Testimony p.8; Exhibit CK 12.*

-Offending the sensibilities of the average person

110. The Westmore Planning Commission's testimony on March 6th, individual residents registering their public comments, and intervenors and witnesses giving PFT all give offensiveness to their sensibilities as a main reason for rejecting the proposed industrial tower. *Anderson Direct Prefiled Testimony p.12; Fitzpatrick Direct Prefiled Testimony, p.6; Holmes Direct Prefiled Testimony pp.7,8; Kriebble Direct Prefiled Testimony pp.10,11; Lanier Direct Prefiled Testimony p.6; Patton Direct Prefiled Testimony pp. 20,21; Tucker Direct Prefiled Testimony p.2; Zebrowski Direct Prefiled Testimony p.8; Westmore Planning Commission Letter, March 6, 2025.*

111. Many people who come to the Willoughby area for its extraordinary beauty and the feeling of the natural surroundings being left "untouched", "unspoiled", "pristine", and "undisturbed" are "interested" in keeping it that way. *Kriebble Direct Prefiled Testimony pp.4-6,8; Exhibit CK 4; Exhibit CK 5; Exhibit CK 6; Exhibit CK 7; Exhibit CK 8; Exhibit CK 9; Exhibit CK 10; Exhibit CK 11; Zebrowski Direct Prefiled Testimony p.5.*

112. East shore rentals, watercraft on the lake, the north beach are all locations which the DPS aesthetic expert does not include in his inventory of public accessible locations with a view of the proposed tower. *TR. pp.210,211 (Buscher); Exhibit LH 6; Buscher Appendix A Map 3.*

113. A large scale 153' high structure will by comparison significantly diminish the scale of natural surroundings, trees, mountain ridges, land formations including the NNL glacially formed gap between Mt. Pisgah and Mt. Hor. *Kriebble Direct Prefiled Testimony p.7; Exhibit DD 4.*

114. An industrial tower is man-made, not a natural phenomenon. *Zebrowski Direct Prefiled Testimony p.8.*

115. The aesthetic experience of being in the landscape itself can be equated with the aesthetic experience of viewing a landscape painting. A man made industrial structure situated in the landscape makes it no longer an experience of the natural world, but the natural world

diminished by the encroachments of industrialization and commercialization. *Kriebel Direct Prefiled Testimony*, p.8.

116. The massive industrial tower is out of character with the entirely natural, rural landscape. *Anderson Direct Prefiled Testimony* pp.7-9; *Holmes Direct Prefiled Testimony* p.7; *Patton Direct Prefiled Testimony* p.21; *Zebrowski Direct Prefiled Testimony* p.8.

117. The tower would be a daily shocking intrusion into abutters' lives. *Anderson Direct Prefiled Testimony* pp.13,14; *Patton Direct Prefiled Testimony* p.21; *Fitzpatrick Direct Prefiled Testimony* p.5.

118. Accessible natural areas may be vital for mental health in our rapidly urbanizing world. *Patton Direct Prefiled Testimony*, p.9; *Exhibit MP 8*.

-Mitigation and co-location

119. Petitioner has not presented any evidence or testimony pertaining to mitigating the aesthetic impacts of the proposed facility.

120. No known efforts have been taken to improve harmony of the project with its surroundings. *Tucker Direct Prefiled Testimony* p.3; *Anderson Direct Prefiled Testimony* p.11; *Patton Direct Prefiled Testimony* p.19; *Holmes Direct Prefiled Testimony* p.6; *Dzugas-Smith Direct Prefiled Testimony* p.9; *Kriebel Direct Prefiled Testimony* p.10; *Fitzpatrick Direct Prefiled Testimony* p.5; *Zebrowski Direct Prefiled Testimony* p.8; *Lanier Direct Prefiled Testimony* p.4.

121. VTel has a tower in Westmore, located at the property of Elizabeth Tucker at 319 LaCrosse Lane. Ms. Tucker communicated with Petitioner and Petitioner's counsel to encourage co-location at this facility. *Tucker Direct Prefiled Testimony* p.3.

122. Kevin Delaney confirmed he did not reach out to VTel for possible co-location on the existing tower. *TR* p.50 (*Delaney*).

123. The Westmore Telecommunications Ordinance advises use of existing tower sites rather than construction of new facilities. *Lanier Direct Prefiled Testimony* p.7.

124. Petitioner did not present testimony or evidence pertaining to potential co-location at any of the 10 towers in the 10 mile radius. *TR* p.28 (*Delaney*).

125. Petitioner admitted their site acquisition team did not consider town owned lands. Petitioner does not know how many town owned parcels there are or where they are located. *TR* p.36 (*Delaney*).

126. Petitioner admitted they were not aware that there is a town parcel 1/2 mile away at the same elevation. *TR p.44 (Delaney)*.

127. Petitioner's vice president of site acquisition and propagation expert admits the proposed tower site was selected just for ITW radio service coverage needs. *TR p.38 (Delaney)*.

128. Petitioner did not hire Louis Hodgetts to evaluate any other possible sites in the area for possible mitigation needs. *TR p.73 (Hodgetts)*.

129. To meet ITW propagation needs, ITW only considered the Northwest of the lake. They did not consider any other area in Westmore. *TR p.38 (Delaney)*.

Legal Standard

Under 30 V.S.A. § 248a(c)(2) and the *Quechee* Analysis (*In re Quechee Lakes Corp.*, 154 Vt. 543, 580 A.2d 957 (1990)), a telecommunications facility must not have an undue adverse aesthetic effect. An effect is undue if it: (1) violates a clear, written community standard; (2) offends the sensibilities of the average person; or (3) lacks reasonable mitigation. The PUC balances aesthetic impacts against societal benefits.

Discussion

Where a proposed §248a facility plainly contravenes a municipal recommendation and thus fails to comply with 30 VSA §248a(c)(2), that determination is dispositive and there is no need to make additional findings on other criteria. *Petition of Industrial Tower and Wireless LLC, Case No. 22-2120-PET, Final Order 08/03/2023*. Intervenors urge here that the PUC need not proceed beyond a finding that the proposed facility should be denied a CPG pursuant to 30 VSA §248a(c)(2). Should the PUC decline to deny the CPG on those grounds, Intervenors herein set out the basis for denial on the grounds of aesthetics.

Under section 248a(c)(1) the Vermont Utility Commission must find that the proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of

the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to *19 VSA §2501*, with due consideration having been given to the relevant criteria specified in *10 VSA §§1424a(d) and 6086(a)(1) through (8) and (9)(K)*.

To determine a proposal's conformance with the requirement of aesthetics, the PUC applies the *Quechee* analysis, set out in telecommunications siting cases as follows:

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?

Petition of Industrial Tower and Wireless, Case No. 22-2242-PET Final Order April 20, 2023 (Citing Sixth amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 VSA §248a, Order issued September 21, 2018.)

An affirmative answer to any one of these three questions means the project would have an undue adverse impact.

Turning to the first step of the *Quechee* analysis, the proposed commercial telecommunications tower exceeding 140' in height --approximately 70' above the height of surrounding trees -- and its base compound comprising storage buildings and chain link fence

with related electrical equipment components is incompatible with the immediate surroundings of a woodland with small clusters of rural housing. These close-proximity views were ignored by Petitioner and the Department's witness. The compound and the tower will be viewed regularly by residents of the surrounding rural community. The tower will be viewed by numerous residents and from public roadways at a distance of less than 1 mile. These near views were also ignored by Petitioner and the Department's witness.

The tower and compound materials – metal, chain link fence – are incompatible with the surroundings. The tower will be visible over a large distance, including from state-designated scenic byway Route 5A, and from numerous locations within the NNL. The tower will present a jarring contrast and unwanted focal point to the extraordinary scenic views of the NNL.

The proposed facility accordingly has an adverse aesthetic impact. Quechee analysis therefore proceeds to the second step, starting with whether the project would violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area. As set out in Part II above pertaining to nonconformance with the Town Plan, this query is answered in the affirmative. The proposed ITW tower creates a visual intrusion into a specifically designated scenic resource, the NNL. As set out above, the Town Plan repeatedly emphasizes the protection of the views from the NNL.

Proceeding to the question of whether the project would offend the sensibilities of the average person, near neighbor Megan Patton attested:

...the tower would be plainly visible from our property. ... we can say with absolute certainty that the tower will be visible from all of our front windows, inundating our daily life with an unwelcome symbol of urbanization and negatively impacting our mental health. Indeed it will loom over our views and comprise an inescapable, undesirable new element of our landscape.
Patton Direct Prefiled Testimony p.9.

Other intervenors attested to the fact that the tower will degrade the otherwise spectacular views within the Lake Willoughby NNL. Robert Fitzpatrick, who resides less than 1500 feet down slope from the proposed tower site and would have unobstructed views of the tower from his property, attested “A tower placed in my backyard, literally, is a direct daily undue adverse aesthetic impact.” *Fitzpatrick Direct Prefiled Testimony p.6*. David Anderson, whose property is also in close proximity to the proposed tower, attested,

The tower being proposed will stick out like a sore thumb from numerous vantage points on the property but the biggest eye sore for me will be the bottom portion and base of the tower with its enormous lattice structure and the 8' high chain link fence along with other structures that simply don't belong in any forest.

Anderson Direct Prefiled Testimony p.6.

The proposed facility would offend the sensibilities of the average person. The category of “average person” must include neighbors and abutting property owners. “In determining whether there has been an undue adverse impact, considering the sensibilities of the average person, the Board can and should consider all vantage points, including from private property.”

In re Petition of Rutland Renewable Energy, LLC, 2016 VT 50 p.10.

As Intervenors' witness, artist Cynthia Krieble attested,

The offensiveness of an unnatural structure like this intruding into a place where people come to experience the joy and relaxation of being in a natural environment is similar to the offensiveness you would feel if you were listening to a harmonious, soothing piece of instrumental music and it was suddenly interrupted with a loud screeching noise.

Krieble Direct Prefiled Testimony pp.9-10.

Moving to the final question of the *Quechee* analysis, Petitioners have failed to take any available mitigating steps including consideration of co-location of the facility with an existing telecommunications tower.

It is notable here that Petitioner's witness, who is not an aesthetic expert, did not conduct a *Quechee* analysis.

The analysis of the Department of Public Service witness, who could not observe any of the balloon floats and did not conduct one himself, ignored private views and near views, and concluded in regard to adverse impact that additional attention and review are necessary to avoid potential visual impact of the project on the Lake Willoughby NNL. Petitioner's evidence, even bolstered by the Department's witness's Report and exhibits, does not demonstrate that the requirements of the *Quechee* analysis have been met.

The National Park Service stated:

we request that any potential impacts to views along the lake shoreline and from atop Mt. Pisgah, Mt. Hor, and other key viewpoints within the NNL be considered and evaluated. If visual impacts are unavoidable and no other location is shown to be suitable for the tower, we request consideration of measures to minimize and mitigate impacts in the form of tower height, type of tower, color and lighting. It is also recommended to ensure consultation and sharing of balloon test and photo simulation results with the Vermont Agency of Natural Resources, owner and manager of the NNL.

National Park Service letter, June 18, 2024.

Despite the fact that the Department's expert said more review and analysis was needed to ensure that no negative impacts occurred on the NNL, and despite the National Park Service stating that these critical views should be considered, evaluated, and mitigated, ANR did not participate in these proceeding, submitting no comment or analysis, and neither DPS's aesthetic witness nor Petitioner evaluated views from atop Mt. Pisgah, Mt. Hor, and other key viewpoints within the NNL, other than submitting a viewshed map demonstrating substantial visibility of the project from the lakeshore. Nor did ANR, DPS or the Petitioner submit evidence to the effect that no

other location for the tower was suitable, or that its characteristics including height could not be modified.

NPS stated in its letter that “NPS staff are available to help identify potential impacts and ways to avoid, minimize or mitigate those impacts.” There is no evidence that either DPS or ANR reached out to them.

The Westmore Planning Commission stated that the tower would “create a visual intrusion” on the landscape from the Willoughby NNL. *Letter of Westmore Planning Commission, March 6, 2025.*

The Project will likely impact look-outs from the hiking trails on Wheeler Mountain, contrary to ITW testimony. *Kriebel Direct Prefiled Testimony p.8; Exhibit CK 12.*

In short, the Department's expert's recommendation for further review and analysis, and the NPS's specific requests for evaluation, consideration, and mitigation, went wholly ignored by Petitioner and by ANR. The record does not, therefore, contain sufficient evidence for this Commission to make an affirmative finding regarding aesthetics or the public's use of scenic roads, particularly in light of the prominence that protection of the NNL views holds in the Town Plan, municipal telecommunications ordinance, and analysis and recommendations of the municipal Selectboard and Planning Commission.

CPG Should be Denied as Project Creates an Undue Adverse Aesthetic Impact

For the reasons set out in this section, the CPG for the proposed telecommunications facility should be denied, as the project creates an undue adverse aesthetic impact.

V. Public Good and Societal Benefits

Findings of Fact

130. Petition presented no evidence or testimony that they have interested customers yearning for their two-way radio service. Kevin Delaney admitted presently they have no customers. *TR p.28 (Delaney)*.

131. Free space for antennas was offered by ITW only to Glover EMS, *Exhibit KD 4*, even though no documented history that such a need exists. *Hodgetts Direct Prefiled Testimony p.3*.

132. The petitioner did not poll community groups or hiking clubs who enjoy the area to find out their opinion of the proposed tower. *TR pp.101-102 (Hodgetts)*.

133. Westmore's tourism economy which relies on Lake Willoughby's scenic beauty, including Route 5A's scenic byway, would be harmed by the tower's visibility. *Patton Direct Prefiled Testimony p.20*. Tourism is critical to the community's economy and identity as a tourism destination; the scenic views from Lake Willoughby are particularly vulnerable to the impacts of ridgeline development. *Westmore Town Plan, Exhibit MP 3 p.24,35*.

134. Lake Willoughby is one of Vermont's top ten tourist attractions, contributing to the \$4 billion in tourism revenue to the state annually. *Patton Direct Prefiled Testimony pp.19-20*.

135. The Lake Willoughby area has been noted in press for over 100 years as a stunning place to visit. A 1912 article in the now-defunct magazine *The Vermonter* noted the "dignity of mountains" and the "severe grandeur" of the Lake and its immediate surroundings. *Exhibit CK 8*. An online article recounts the Lake's inspiration to poet Robert Frost, and states: Vermont is home to some of the most picturesque and tranquil lakes in the United States. One of the most stunning of these is Lake Willoughby, located in the heart of Vermont's Northeast Kingdom. *Exhibit CK 4*.

136. A 1999 Burlington Free Press article states: Lake Willoughby...The scenery is breathtaking and like most of the Northeast Kingdom, there is little to detract from the beauty. "It's the best of both worlds because there are all the amenities but it's still largely undisturbed". *Exhibit CK 11*.

Legal Standard

Under 30 V.S.A. § 248a(b)(1), a telecommunications facility must serve the public good by providing needed service. The PUC may deny a CPG if impacts outweigh benefits and alternative sites are feasible.

Discussion

A careful, objective read of the proposal leads to an important conclusion in the clamor for public service: Industrial's proposed 153-foot private radio facility offers no cellular phone service, nor broadband service, beyond noting the allure of such future possibilities. Its two-way radio service is a private venture, with service to a limited and circumscribed area.

Industrial's proposed 153-foot private radio facility provides primarily private customer benefits, and has not respected the sensitive siting goals, principles, and policies of the Westmore Town Plan and telecommunications ordinance. Sensitive siting principles should inform the siting, visibility, and design of the Tower. Ignoring them results in the proposed Tower being obtrusively sited, with high and broad visibility, near families, and with devastating incompatibility with the quiet rural scenic beauty and spectacular views of the Lake Willoughby National Natural Landmark. It would intrude on public and private views from one of the prime aesthetic resources in the region, the Lake Willoughby NNL, described as one of the most picturesque lakes in the United States with little to detract from its beauty because it is largely undisturbed. No mitigation efforts have been documented.

The ITW tower's limited public benefit does not justify its undue impacts. The 900-MHz service has no current customers, and no carriers have co-location contracts or a five-year utilization plan, suggesting speculative construction prohibited by the ordinance. Glover Ambulance's use is beneficial, but ITW failed to justify why VTel's tower on LaCross Lane or town-owned land cannot meet this unverified need, violating ordinance requirements. The Town Plan prioritizes Lake Willoughby's NNL status, threatened by the tower's visibility and endangering views along Route 5A's scenic byway.

Given the undocumented and limited overall societal benefits, and the extensive evidence of undue adverse aesthetic impacts and noncompliance with the municipal and regional plan and telecommunication ordinance as evidenced by Findings 001 through 136 above, the applicant has failed to show that the overall societal benefits outweigh its undue adverse aesthetic effects and harm to a nationally significant landmark.

VI. Conclusion and Requested Order

For the foregoing reasons, the CPG for Petitioner's proposed telecommunications facility at 160 Frog Hollow Lane, Westmore, Vermont, should be denied. Intervenors request that the PUC issue a Final Order denying the CPG in conformance with the reasons stated herein.

Dated at Westmore this 9th day of June, 2025.

Respectfully submitted on behalf of Intervenors Ronald and Kathy Holmes, Elizabeth Tucker, Donna Dzugas-Smith, Andrew Zebrowski, Megan Patton, and Robert Fitzpatrick by:

/s/ Donna Dzugas-Smith

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Certificate of Service

I, Donna Dzugas-Smith, do hereby certify that on June 9, 2025 the Intervenors' Brief was filed in ePUC thus effecting service on all parties of record.

Donna Dzugas-Smith