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December 11, 2015

VIA ELECTRONIC MAIL & FIRST-CLASS MAIL

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05602-2701

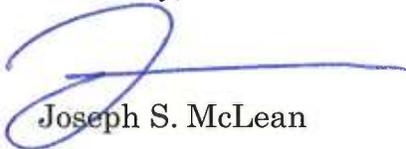
Re: *Petition of VTel Wireless, Inc., for Certificate of Public Good –
Telecommunications Facility at Bayne Comolli Road, Calais, Vermont*
Docket No. 8535

Dear Ms. Hudson:

Enclosed please find the Town of Calais' Response to Petitioner's Notice of Withdrawal of Petition, along with a Certificate of Service, regarding the above-referenced matter for filing with the Public Service Board.

Please contact me with any questions. Thank you for your assistance.

Sincerely,



Joseph S. McLean

JSM/gc
Enclosures

cc: Service List (via e-mail)

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Petition of VTel Wireless, Inc., pursuant to 30)
V.S.A. § 248a, for a Certificate of Public Good)
to install a telecommunications facility at Bayne) Docket No.8535
Comolli Road, Calais, Vermont)

CERTIFICATE OF SERVICE

I, Joseph S. McLean, Esq., of the firm Stitzel, Page & Fletcher, P.C., certify that I served the Town of Calais' Response to Petitioner's Notice of Withdrawal of Petition, in connection to the above-referenced matter, via electronic mail, this 11th day of December 2015, upon the parties of the attached Service List.

DATED at Burlington, in the County of Chittenden and State of Vermont,
this 11th day of December 2015.

STITZEL, PAGE & FLETCHER, P.C.
Attorneys for the Town of Calais

By: _____


Joseph S. McLean, Esq.
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CAS15-027 (VTEL) JSM CERT SERV 15-12-11 LIT

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Petition of VTel Wireless, Inc., pursuant to 30)
V.S.A. § 248a, for a Certificate of Public Good)
To install a telecommunications facility at Bayne) Docket No. 8535
Comolli Road, Calais, Vermont)

**TOWN OF CALAIS' RESPONSE TO PETITIONER'S
NOTICE OF WITHDRAWAL OF PETITION**

In a document entitled "Notice of Withdrawal of Petition," VTel Wireless, Inc., the Petitioner in this Docket, asks the Public Service Board to dismiss, "without prejudice but with substantial regret¹," its petition for a CPG in this Docket. In so doing, Petition provides no discussion of the legal standard governing dismissal under V.R.C.P. 41(a)(2) or of the Board's considerable discretion relative thereto. The applicable legal standard governing dismissal under Rule 41(a)(2) is set forth below, together with an explanation of why the Board should dismiss this case *with prejudice*.

Legal Standard

As noted above, VTel premises its motion on V.R.C.P. 41(a)(2)², which authorizes the dismissal of a case by order of court on such terms and conditions as

¹ Several odd statements appear in Petitioner's motion. While discussed briefly herein, they are largely immaterial and should be disregarded. In this instance, for example, it is not clear what, precisely, the Petitioner regrets. One would hope that its regrets include putting the other parties and the Board to substantial expense in pursuit of this ill-conceived project.

² Rules 41(a)(2) is made applicable to these proceedings by Public Service Board Rules 2.103 and 2.105. Since the Public Service Board Rules do not specifically address the procedures for dismissal of a petition, Rule 2.105, providing that "[p]rocedures not specifically governed herein shall be governed by the Vermont Rules of Civil Procedure, by any applicable Rule or General Order, or by any applicable statute" appears to control in this instance.

the court deems proper. Rule 41(a)(2) also provides that “[u]nless otherwise specified in the order,” such dismissal “is without prejudice.” *See* V.R.C.P. 41(a)(2). Therefore, the Board has discretion in determining the proper terms and conditions of dismissal and whether the dismissal should be with or without prejudice. V.R.C.P. 41(a)(2) – Reporter’s Notes (“[w]here dismissal is by order of court under Rule 41(a)(2), the question of res judicata is in the court’s discretion”).

Dismissal Of This Docket Should be With Prejudice

The Town of Calais (the “Town”), a party with a statutory right to appear and participate in this Docket pursuant to 30 V.S.A. § 248a(m), does not object to Petitioner’s motion to dismiss but, for the reasons discussed herein, asks that any dismissal be *with prejudice* with respect to the facility proposed at 1056 Bayne Comolli Road and subject to the reasonable terms and conditions set forth below.

As this Board has noted “a dismissal with prejudice pursuant to V.R.C.P. 41 operates as an adjudication on the merits of the legal action that is being dismissed and forecloses the case from being brought anew, whereas dismissal without prejudice leaves open the possibility that the legal action could be filed again at a later date.” *See Petition of Vermont Gas Systems, Inc.*, PSB Docket No. 8180, Order Re: Dismissal Without Prejudice (Order Entered: 6/5/15) at 9. “A dismissal with prejudice is treated as an adjudication on the merits” and “effectively would

constitute a determination that a CPG was not and never could be warranted for this Project." *Id.* at 10 ; *Littlefield v. Town of Colchester*, 150 Vt. 249, 251 (1988).

In this case, dismissal with prejudice relative to the proposed Project at 1056 Bayne Comolli Road is warranted, at least as long as a reasonable opportunity to collocate the Project on the existing Cloud Alliance tower remains feasible. In the event of changed circumstances, the Petitioner is free to move for relief from judgment pursuant to V.R.C.P. 60. Presently, however, substantial evidence exists to demonstrate that VTel cannot meet the requirements of 30 V.S.A. § 248a(c)(3) (the "reasonably cannot be collocated" criteria of Section 248a).

The Petitioner Was Facing Likely Denial on the Merits

Simply put, the substantial evidence in this case demonstrates that the proposed facility *can* be reasonably collocated on the Cloud Alliance tower. While the Petitioner would undoubtedly prefer to simply abandon this Project without an adjudication from the Board, such action (coming a mere three business days before the scheduled technical hearing) would permit it to escape the logical consequences of that evidence (i.e., denial), leaving it free to propose virtually the same project on the same site in the future.

For example, the substantial evidence in this case, which would have been presented during the technical hearing³, shows that:

° VTel was aware of the Cloud Alliance site in Woodbury at least as early as February 2014 and expressed interest in potentially purchasing that tower. *See* Exhibit A (Deposition of Gordon Mathews at pp. 115-118), attached.

° On April 15, 2015, VTel's own RF expert, Ronnie Jemmott, found that collocating the proposed facility on the Cloud Alliance tower would reach more rooftops and more RUS rooftops than the proposed facility and that the Cloud Alliance site "seems to be the better of the 2" sites and "[o]verall ... seems to be the better option in the long run." *See* Exhibit B, attached.

° On April 15, 2015, VTel employee, Gordon Mathews, who lacks RF expertise, informed Mr. Jemmott that his [Jemmott's] conclusion regarding the superiority of the Cloud Alliance site was "not the conclusion we were hoping for." *Id.*

° In April 2015, even after discussing his conclusions with Mr. Mathews and agreeing to advocate for the proposed site, Mr. Jemmott did not agree with the decision to locate the tower on the proposed site and his recommendation at that time was to utilize the Cloud Alliance site. Exhibit C (Deposition of Ronnie Jemmott, at p. 247), attached.

³ Much of this evidence has already been prefiled with the Board.

° On April 17, 2015, the Town notified VTel that it did not support the proposed tower site. *See Exhibit C, attached.*

° On July 3, 2015, VTel communicated to the DPS that “we and [USDA-]RUS are sort of expecting Calais to go down in flames” and suggested “that VTel will agree to a different plan for Calais.” *See Exhibit D, attached.*

° On July 7, 2015, VTel requested that the DPS “recommend against Calais until VTel finds a better site.” *See Exhibit E, attached.*

° On May 15, 2015, VTel filed its 248a Petition seeking a CPG for the proposed Calais site.

° On October 6, 2015, Scott Heffernan, DPS' RF expert, filed a supplemental report concluding, based on VTel's stated coverage objective, that “the best solution for providing coverage to these RUS pops would be to utilize the existing Cloud Alliance facility in Woodbury. By VTel's own submitted data, the Cloud Alliance facility would cover three times as many RT's (3,453 from the cloud Alliance facility versus 1,105 from the proposed VTel facility) and over twice as many RUS_RT's (1,375 from the cloud Alliance Woodbury facility versus 621 from the proposed VTel facility).” *See Exhibit F, attached.*

° On November 6, 2015, the Town filed the prefiled testimony of its RF expert, Brian Webster, who testified at length regarding the superiority of the Cloud Alliance site in meeting VTel's stated coverage objective.

° On November 6, 2015, the Town filed the prefiled testimony of Michael Birnbaum, who testified regarding the availability of the Cloud Alliance tower.

° On November 23, 2015, the Town responded to VTel's interrogatories and requests to produce.

° On November 27 and 30, respectively, VTel notified the Town and the DPS that it would not be deposing their RF experts, despite having previously noticed the depositions of those experts.

° On December 8, 2015, the Town prepared and filed the rebuttal prefiled testimony of its RF expert, Mr. Webster. VTel did not file rebuttal testimony.

° On December 9, 2015, the Town prepared and filed its evidentiary objections and motion in limine. VTel did not file any objections to the Town's testimony and exhibits.

° On December 9, 2015, at 3:26 p.m., VTel formally filed its Notice of Withdrawal of Petition.

The Petitioner's Actions Unreasonably Increased Costs

Given all of the foregoing, it is reasonable to conclude that VTel's decision in this case to move for dismissal of its 248a petition was motivated principally by a desire to avoid an adverse judgment, and not, as it suggests in its awkwardly worded motion, because "towns or churches opposed or asked VTel to reconsider a

site.” Indeed, given all of the information available to VTel over the eight month period preceding the filing its motion to dismiss indicating that the Cloud Alliance site was superior to VTel’s proposed site (which VTel could have and should have publically acknowledged), it is patently unreasonable that VTel required the Town, DPS, the intervening parties and the Board to continue to incur very substantial costs associated with this litigation. Many of those costs could have been avoided if VTel had been genuinely interested in identifying the best solution to meet its coverage objective. Three different RF experts opined regarding the superiority of the Cloud Alliance site in meeting VTel’s coverage objective. Yet, VTel obstinately refused to consider collocation as an option, despite having knowledge of and detailed information regarding the Cloud Alliance tower, the availability of space on that existing site, and its coverage potential.

The Petitioner’s Stated Reasons for Withdrawal Are Disingenuous

Petitioner, in its Notice of Withdrawal of Petition, suggests that the basis for its motion to dismiss is that VTel missed its “construction deadline” because “constructive but intense Town opposition has resulted in delays.”⁴ This suggestion is disingenuous and objectionable (and somewhat offensive) for several reasons.

⁴ It is not clear precisely what this odd phrase by VTel means.

First, the Town complied with every deadline established by the scheduling orders in this proceeding. By contrast, VTel engaged in protracted wrangling over the production of documents during discovery (some information requested by the Town has never been produced). VTel also provided inaccurate information regarding its *coverage objective* (a fundamental premise of its petition), leading to supplementation by VTel (very late in the process) on October 13, 2015, and consequent expense and delay as the parties attempted to understand the reasons underlying this change.⁵ It also failed to fully and accurately disclose facts regarding the status of its RF expert (including where and for whom he worked) until immediately prior to his duly noticed deposition, and then refused to make that expert available until it had extracted an agreement from the Town to pay the costs of that deposition, leading to both the postponement of the deposition and the need for VTel to file "corrective" testimony, dated October 26, 2015, with the Board. The record on these issues speaks for itself.

VTel also attempts to use its Notice of Withdrawal to cast itself and its decision to withdraw in a positive light, stating that it "always considers community guidance, and plans to keep doing so." If VTel was sincere in its assertion this case would have concluded long ago. Instead, VTel pressed on -- almost to the bitter end and in the face of mounting evidence that a CPG was not

⁵ The Town was ultimately able to demonstrate that VTel's stated coverage objective, as originally stated and as supplemented, was inaccurate for multiple reasons. See Deposition of Ronnie Jemmott at 233-239, attached as Exhibit G.

warranted for this Project on this site -- requiring the parties to continue to litigate to defend their legal rights and interests⁶.

Given the circumstances presented here, the Town should not be required to defend its interests and expend public resources a second time should VTel decide to apply to develop the same site in the future, as long as the potential to collocate on the Cloud Alliance site continues to exist. Therefore, the Board should dismiss this case with prejudice.

The Board Should Determine Whether the Petitioner Acted In Good Faith

In addition, the Board should condition the dismissal of this Docket on the requirement that VTel respond to Board issued discovery inquiring into the facts and circumstances of VTel's decision to withdraw its petition, including why VTel waited until just prior to the technical hearing to move to withdraw and why VTel refused to seriously consider collocation on the Cloud Alliance tower, notwithstanding substantial evidence indicating that the Cloud Alliance tower was a superior site. This inquiry is necessary to determine whether VTel proceeded in good faith in pursuing its petition for the period of time that it did, and to forestall telecommunications companies, in the future, from pursuing new construction at

⁶ Unlike a civil action between private parties over private rights, when a state agency or a municipality participates in a CPG proceeding as a statutory party, it does so to defend and vindicate *public* rights and interests, and expends precious *public* resources in the process. The legal and fiscal hurdles that a municipality, particularly a small municipality like Calais, must overcome to represent the interests of the public in a § 248a case cannot be gainsaid.

the expense of the Legislative preference "to utilize existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities." *See e.g.*, Act 79 (2007-2008) (An Act Relating to Establishing the Vermont Telecommunications Authority to Advance Broadband and Wireless Communications Infrastructure Throughout the State), at § 8062(a)(9); 30 V.S.A. § 248a(c)(3).

Conclusion

For all of the foregoing reasons, the Town respectfully requests that the Board dismiss this Docket with prejudice, and subject to the terms and conditions discussed above.

DATED at Burlington, Vermont, this 11th day of December 2015.

TOWN OF CALAIS
By: Stitzel, Page & Fletcher, P.C.,
Its Attorneys



Joseph S. McLean

cas15-028 (vtel) jsm response to vtel notice to withdraw 15-12-11 lit



1 for?
 2 A. 823.
 3 Q. Okay. So if -- if we were to look at the
 4 difference between the 1099 and the 823, would the
 5 difference be sites that are potentially covered by
 6 other towers?
 7 A. Correct.
 8 Q. Okay. That's helpful. Now, just stick with
 9 this e-mail chain for a second. This -- so going back
 10 to April 14th and 15th of 2015, there was an e-mail
 11 exchange between yourself and Mr. Jemmott. I think it
 12 begins roughly on page 6. Do you see that, where you
 13 ask Mr. Jemmott for some -- to add some composite
 14 coverage slides for CA and CC?
 15 A. Yes.
 16 Q. Okay. And he provides that analysis to you,
 17 does he not?
 18 A. Yup.
 19 Q. And in an e-mail from 9:39 AM on the 15th, he
 20 writes, "Please find attached coverage prediction for
 21 Calais-01 site candidates. After comparing the
 22 coverage for both candidates Calais-01_CA seems to be
 23 the better of the 2 since it provides better
 24 connectivity with neighbors and better coverage to
 25 rooftops and roads."

1 feedback. So I know we looked at the Cloud Alliance
 2 site early in the process, but I don't know if we got
 3 an output that would mirror this type of table.
 4 Q. Am I right that VTel was aware of the Cloud
 5 Alliance site in Woodbury at least as early as February
 6 2014 when you were in the process of trying to get the
 7 Plainfield tower constructed?
 8 A. Yup.
 9 Q. And -- because at that time VTel had at least
 10 given some passing consideration to possibly purchasing
 11 the Cloud Alliance tower in Woodbury?
 12 A. It may have been discussed. I think we were
 13 looking at -- I think it started with the Plainfield
 14 site and then they have a portfolio of towers, so, you
 15 know, if there's a discussion to buy one, there's
 16 probably a discussion about why not buy all of them?
 17 Q. Okay.
 18 A. So it's kind of a -- we looked at a lot of
 19 different possibilities to acquire sites, including
 20 purchases.
 21 Q. But you agree with me, at least, that
 22 information was communicated to Diane Guité in February
 23 of 2014 that the Cloud Alliance tower in Woodbury may
 24 be for sale?
 25 A. From me?

1 Do you see that?
 2 A. Yes.
 3 Q. Okay. And the Calais-01_CA was the Cloud
 4 Alliance site; is that right?
 5 A. Yes.
 6 Q. And was -- was your inquiry to Mr. Jemmott on
 7 April 14th the first time that you had asked Mr.
 8 Jemmott to compare these two sites?
 9 A. I'm not sure. It may have been the first time
 10 he had run them. I know that we looked at the
 11 comparison a lot earlier on in the process.
 12 Q. When you say "looked at the comparison," did
 13 you actually have an RF engineer do the side-by-side
 14 analysis of total rooftops and RUS rooftops based on
 15 the -- certain parameters, including the height of the
 16 towers and the directions of the antennas, et cetera?
 17 A. I don't know that we got that -- that type of
 18 output.
 19 Q. Okay.
 20 A. There's, you know, the initial review of kind
 21 of what's in the area, what sites might be available or
 22 might be candidates. You feed a list to the RF
 23 engineers and they'll oftentimes -- just depending on
 24 what they're doing, workload and stuff, sometimes
 25 they'll dig into it. Sometimes they'll give a general

1 Q. Do you recall that? Not -- not necessarily
 2 from you. I'm just wondering if you have a general
 3 recollection of that.
 4 A. I don't remember any -- anybody saying that
 5 they're for sale, but I remember there would have
 6 been -- there could have been discussions with Cloud
 7 Alliance generally about what's the status of your
 8 towers and things like that.
 9 Q. Let me just show you Deposition Exhibit 7.
 10 (Deposition Exhibit No. 7 was
 11 marked for identification.)
 12 BY MR. McLEAN:
 13 Q. Have you had a chance to review that?
 14 A. Yes.
 15 Q. Okay. So going to the last e-mail in the
 16 chain, which is on pages 223 and 224 of this e-mail,
 17 would you agree with me that there is a message from
 18 you to Karl Rinker asking about Karl's familiarity with
 19 the Cloud Alliance tower in Plainfield? Do you see
 20 that?
 21 A. Yeah.
 22 Q. Okay. And do you see the response by Mr.
 23 Rinker on page 221 --
 24 A. Yes.
 25 Q. -- indicating he's very familiar with the

1 site -- or with the tower, rather?
 2 A. Yup.
 3 Q. And there is further discussion by Mr. Rinker
 4 regarding the structural capacity of this tower, and he
 5 indicates that -- he suggests that you do a structural
 6 right away? Do you see that language?
 7 A. Yup.
 8 Q. Okay. And as we proceed to the next message
 9 in the chain, you see an e-mail from Diane Guité on
 10 February 6, 2014, at 11:00 AM where she writes, No, no,
 11 we want the structural to fail, trying to come up with
 12 reasons why we can build our own tower. If we put up
 13 our standard config and then some, is it reasonable to
 14 assume the tower would fail? We would, on the other
 15 hand, think about buying his tower in Woodbury if it's
 16 for sale. Do you think it would be?
 17 Do you see that?
 18 A. Um-hum.
 19 Q. Okay. So you agree with me that Ms. Guité had
 20 at least some knowledge and, let's call it, passing
 21 interest or curiosity about whether or not the Cloud
 22 Alliance tower in Woodbury would be for sale in
 23 February of 2014?
 24 A. That's correct.
 25 Q. Okay. And do you see where Mr. Rinker says in

1 A. There may have been recent discussions, you
 2 know, of a general nature, because, you know, VTel
 3 always looks to -- looks for opportunities to purchase
 4 and kind of looks long term to, you know, supplement
 5 the network and things like that, so --
 6 Q. Would you have been directly involved or were
 7 you directly involved in those discussions?
 8 A. I've talked to Michael Birnbaum here and there
 9 off and on.
 10 Q. Have you been asked by Mr. Guité or other VTel
 11 personnel for an opinion regarding whether it was
 12 reasonable or made business sense to purchase the Cloud
 13 Alliance tower?
 14 A. I don't remember -- I don't recall exactly,
 15 but I think there's some -- we've been looking for a
 16 way to fill in, again, kind of some supplement
 17 coverage, primarily in Plainfield, and I think there
 18 is -- we reached -- we contacted Cloud Alliance about
 19 that possibility, and the feedback was we don't sell
 20 one-off towers; we sell -- there's a possibility that
 21 we'd consider selling all of them.
 22 Q. Okay.
 23 A. So I think it was -- you know, it was driven
 24 by long-term interest in looking for a way to get some
 25 supplemental coverage in Plainfield where the initial

1 the next e-mail on page 220 at the bottom of the page
 2 Woodbury "may be for sale. He is going to give me a
 3 price next week"?
 4 A. Yes.
 5 Q. Okay. Do you understand "he" to be Michael
 6 Birnbaum?
 7 A. Probably.
 8 Q. Okay. And then --
 9 A. However, he was talking to Cloud Alliance. I
 10 think they have a few partners, so I don't know.
 11 Q. Okay. And you see Ms. Guité says, "No, we'd
 12 rather build our own tower than use his. Let us know
 13 on Woodbury, that's interesting"?
 14 A. Yes.
 15 Q. So again, Ms. Guité at least is indicating
 16 that she is not particularly interested in using other
 17 Cloud Alliance towers but does have some ongoing
 18 interest in potentially purchasing the Woodbury Cloud
 19 Alliance tower; is that right?
 20 A. Yes.
 21 Q. Okay. And do you know whether Mr. Birnbaum or
 22 any other representatives of Cloud Alliance continued
 23 to communicate with VTel regarding the potential
 24 purchase of the Cloud Alliance tower into this year,
 25 2015?

1 site that we proposed didn't work out.
 2 Q. And were those discussions that you directly
 3 had with Cloud Alliance, or was that information made
 4 known to you sort of secondhand?
 5 A. I talked with Cloud Alliance here and there.
 6 Q. Okay. So you talked directly to Michael
 7 Birnbaum about that?
 8 A. Yeah.
 9 Q. Okay. And can you confirm that at your
 10 request Mr. Birnbaum sent you engineering drawings of
 11 the Cloud Alliance tower in Woodbury?
 12 A. I think he sent whatever plans he had for all
 13 the -- I think it was four towers.
 14 Q. Okay. Do you recall when he sent those?
 15 A. I don't recall.
 16 Q. Sometime this year?
 17 A. Possibly.
 18 Q. Would it have been in 20- -- it wouldn't have
 19 been in 2014, would it have?
 20 A. Well, as you can see, there's been off-and-on
 21 between Cloud Alliance and VTel for a while. I
 22 don't -- I forget what he would have sent through 2014
 23 or more recently, but there's been -- you know, since
 24 the Plainfield issue, there's -- you know, we've been,
 25 like I said, looking to find a way to fill in coverage

KEY

From: Ronnie Jemmott
Sent: Wednesday, April 15, 2015 10:40 AM
To: Gordon Mathews
Subject: RE: Calais-01 RF Comparison for Permitting

(*)

I went over the predictions and evaluation last evening and concluded - Overall Calais_01_CA seems to be the better option in the long run. The coverage provided by that site facilitates outdoor solutions at various heights in order to provide customers in the South with coverage. See below rooftop count. Feel free to give me a call if you require further details.

| SITE NAME | LONGITUDE | LATITUDE | MODEL | RCH (ft.) | RJS_RTS | TOTAL_RTS | AREA (sq) |
|--------------|---------------------|-----------------------|--------------------|-----------|---------|-----------|-----------|
| Calais-01_CC | FINAL -72.456941 | LOCATION 44.412192 | 3ft_Outdoor_0dBi | 135 | 621 | 1,015 | 46.44 |
| | | | 25ft_Outdoor_14dBi | | 3,639 | 12,570 | 485.97 |
| Calais-01_CA | -72.3937077 | 44.4411777 | 3ft_Outdoor_0dBi | 100 | 1,375 | 3,453 | 159.78 |
| | | | 25ft_Outdoor_14dBi | | 7,021 | 19,719 | 858.94 |
| | | | | | | | |
| | | | | | | | |

Best regards,

Ronnie B. Jemmott
 RF Planning & Optimization Engineer
 VTel Wireless, Inc.
 354 River Street
 Springfield, VT 05156
 Phone: (802) 885-4444
 Mobile: (347) 824-9325
 E-Mail: rjemmott@vermontel.com



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From: Gordon Mathews
Sent: Wednesday, April 15, 2015 10:03 AM
To: Ronnie Jemmott
Subject: RE: Calais-01 RF Comparison for Permitting

Thanks, that's not the conclusion we were hoping for.

What about for RUS coverage? I thought yesterday we concluded CC was preferable for covering RUS, particularly to the south.

From: Ronnie Jemmott
Sent: Wednesday, April 15, 2015 9:39 AM
To: Gordon Mathews
Subject: RE: Calais-01 RF Comparison for Permitting

Hi Gordon,

Please find attached coverage prediction for Calais_01 site candidates. After comparing the coverage for both candidates Calais_01_CA seems to be the better of the 2 since it provides better connectivity with neighbors and better coverage to rooftops and roads.

Best regards,

Ronnie B. Jemmott
RF Planning & Optimization Engineer
VTel Wireless, Inc.
354 River Street



1 A. No. That's not my answer. I would say
 2 there's a possibility that -- yes, I think Calais-01-
 3 CC, there's a possibility that it covers more rooftops
 4 at a stronger signal level.
 5 Q. Wait. Can you say that again?
 6 A. I think Calais CC, there's a possibility that
 7 it covers --
 8 Q. Calais CC?
 9 A. Yes.
 10 Q. Which is contrary to this statement; is that
 11 correct?
 12 A. Yes.
 13 Q. So are you saying that you no longer agree
 14 with the statements you made in that April 15th --
 15 A. I'm not saying that. I just think looking at
 16 it afterwards, there's a possibility -- you can see
 17 there's a possibility that you have more rooftops here
 18 covered by -- more rooftops covered by a stronger
 19 signal with Calais CC.
 20 Q. So do you agree or disagree with the statement
 21 you made on April 15th that you just read?
 22 A. I mean, in the long run, I think where the
 23 coverage objective is concerned, northwest, northeast,
 24 and south, the Calais CC might be better, taking into
 25 concern a combination of -- taking into concern

1 Q. And what did you talk to him about in
 2 specific?
 3 A. About this site, we can probably use it in the
 4 future because it -- it covers a whole -- the large
 5 area, but the -- the coverage objective was smaller
 6 than such a large expanse, so we had to move to CC,
 7 candidate CC.
 8 Q. Did you determine you had to move to candidate
 9 CC?
 10 A. No. It was a mutual agreement.
 11 Q. Did Gordon tell you you had to move to
 12 candidate CC?
 13 A. We pretty much discussed it and came to an
 14 agreement that we would use CC.
 15 Q. At the time that you made the decision, did
 16 you agree with that decision?
 17 A. With?
 18 Q. Going with candidate CC?
 19 A. At the time, no, but, you know, in
 20 understanding exactly what covered -- what areas needed
 21 to be covered, we decided to use CC as a location.
 22 Q. So your recommendation at that time was to go
 23 with the Cloud Alliance tower?
 24 A. At that time, yes. At that time.
 25 Q. Okay. What was the coverage objective at that

1 fixed -- fixed coverage as well at rooftop level.
 2 Q. So you're saying you no longer would make the
 3 statements you made on April 15th?
 4 A. Probably not.
 5 Q. Probably not.
 6 A. No.
 7 Q. So what's changed since April 15th for you?
 8 A. I think after -- I'm not sure if at that time
 9 I had done a rooftop analysis. I'm not sure.
 10 Q. What do you mean by "rooftop analysis"?
 11 A. With an external -- prediction with an
 12 external antenna.
 13 Q. So when you're saying that, you mean the 10
 14 dBi or --
 15 A. Yes.
 16 Q. -- 14 dBi?
 17 A. Right. And after seeing what it covers, it
 18 wasn't, you know, going over too far, just covering the
 19 Calais area right, I think that would probably change
 20 my mind for now.
 21 Q. Did anybody talk to you after April 15th about
 22 the conclusion you reached in this e-mail?
 23 A. Yes.
 24 Q. Who did you talk to about it?
 25 A. I spoke to Gordon about it.

1 time? You've referred to a coverage objective, but I'm
 2 not sure what coverage objective you're referring to.
 3 A. Covering as many rooftops as possible,
 4 ensuring that the majority of these rooftops have --
 5 not a majority but a good bit of them have very strong
 6 signal strength. Within the range of neg 80 to neg 98,
 7 you want to ensure that you have rooftops -- as many
 8 rooftops in there. Locations, specific locations, such
 9 as the northwest, northeast, and south, that is part of
 10 the coverage objective as well.
 11 Q. So is it correct --
 12 A. And --
 13 Q. Sorry.
 14 A. Yeah. Ensuring that rooftops -- subscribers
 15 can be served either by mobile or rooftop, ensuring the
 16 combination of the two can give as much coverage as
 17 possible.
 18 Q. So that was your coverage goal at the time?
 19 In April of -- on April 15th, that's the coverage goal
 20 you had in mind?
 21 A. Are you referring to this?
 22 Q. Yes.
 23 A. No. I was referring to CC.
 24 Q. You're referring to currently?
 25 A. Coverage -- yes. Coverage goal for this was

Burke, Dan

From: Porter, James
Sent: Friday, July 03, 2015 1:23 PM
To: Recchia, Chris
Subject: Fwd: Urgent Final Five Update

Ugh. Frankly I'm sorry Calais is dying but I don't think it has a chance.

Sent from my iPhone

Begin forwarded message:

From: Michel Guite <mguite@vermontel.com>
Date: July 3, 2015 at 1:20:26 PM EDT
To: "Recchia, Chris" <Chris.Recchia@state.vt.us>, "Porter, James" <James.Porter@state.vt.us>, "Bourgeois, Kiersten" <Kiersten.Bourgeois@state.vt.us>
Cc: Jeff Monder <jmonder@vermontel.com>, "Springer, Darren" <Darren.Springer@state.vt.us>, Gordon Mathews <gmathews@vermontel.com>
Subject: RE: Urgent Final Five Update

Thanks a million Chris. We and RUS are sort of expecting Calais to go down in flames.

But the loss of Rochester and Cabot would hurt a lot.

RUS is doing its 7/24/365 best to be flexible, and make this Vermont project a model to praise, but they -- my personal opinion - are under weekly pressure from Bernie Sanders, and feel perhaps erroneously that the Governor supports Bernie - to not forgive rural sites unbuilt.

We have tower equipment delivered. We are paying a very high cost to keep Ericsson teams watching movies in local motels to be ready to jump when build permits arrive. We have been turning up sites every few days. End in sight at last.

Is there anything we might together do to advocate to PSB a green light for Rochester and Cabot, perhaps agreeing that VTel will agree to a different plan for Calais? A peculiar fact for Calais is that the farmer whom they want us to deal with was our first contact, who turned us down. He says now he is sorry he said no. It would be costly to switch, but I would do it.

Best, and thanks again for July 4 reply.

Fabulous article about VT energy innovation with GMP and Mary Powell in New Yorker this week.

Best,

Sent via the Samsung Galaxy S@ 4 mini™, an AT&T 4G LTE smartphone

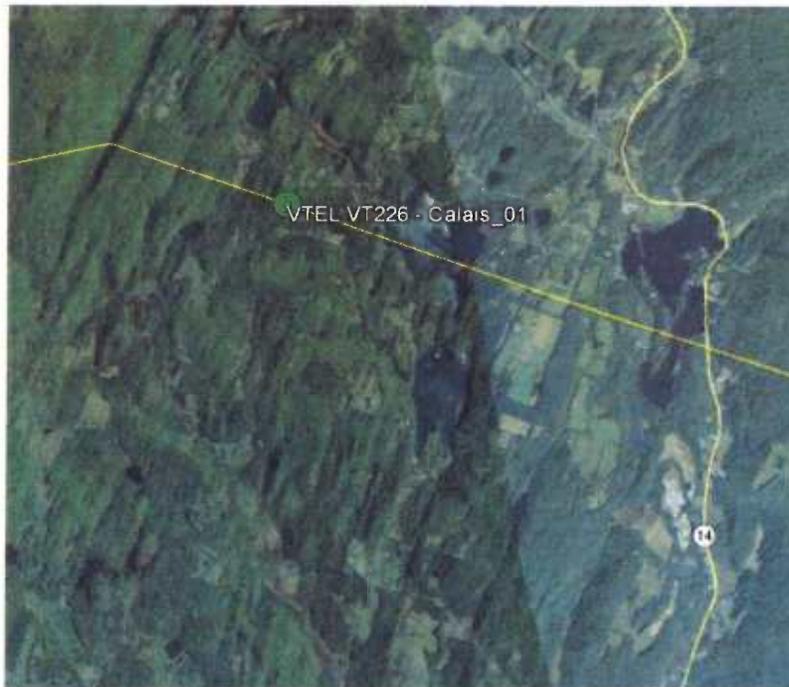
DPS-1098

>> Mobile: 914 572-7664
>> E-Mail: mguite@vermontel.com<<mailto:mguite@vermontel.com>>
>> Get the latest news and updates on VTel GigE, VTelevision and VTel WOW – Like us on Facebook!
>> From: Recchia, Chris [<mailto:Chris.Recchia@state.vt.us>]
>> Sent: Wednesday, July 08, 2015 1:06 PM
>> To: Michel Guite
>> Cc: Porter, James; Bourgeois, Kiersten; Jeff Monder; Springer, Darren; Gordon Mathews
>> Subject: Re: Urgent Final Five Update
>>
>> Michel - I cannot do 1pm, but I can do 4pm - would that work for you?
>>
>> Sent from my iPhone
>>
>> On Jul 8, 2015, at 1:03 PM, "Michel Guite" <mguite@vermontel.com<<mailto:mguite@vermontel.com>>> wrote:
>> Hi and we are at 802-885-7000 if 1 pm call is still on. We can if you prefer meet at 885-7070 on conference bridge any time.
>>
>> Michel Guite
>> President
>> Vermont National Telephone Co, Inc.
>> Phone: 802 885-7000
>> Mobile: 914 572-7664
>> E-Mail: mguite@vermontel.com<<mailto:mguite@vermontel.com>>
>> Get the latest news and updates on VTel GigE, VTelevision and VTel WOW – Like us on Facebook!
>> From: Recchia, Chris [<mailto:Chris.Recchia@state.vt.us>]
>> Sent: Tuesday, July 07, 2015 4:41 PM
>> To: Michel Guite
>> Cc: Porter, James; Bourgeois, Kiersten; Jeff Monder; Springer, Darren; Gordon Mathews
>> Subject: Re: Urgent Final Five Update
>>
>> Thanks Michel - is it possible to speak with you about this tomorrow afternoon?
>>
>> Sent from my iPhone
>>
>> On Jul 7, 2015, at 3:00 PM, "Michel Guite" <mguite@vermontel.com<<mailto:mguite@vermontel.com>>> wrote:
>> Dear Chris,
>>
>> Thank you again very much for your welcome July 4th weekend reply.
>>
>> Burke as you indicated was PSB approved. We are capable of getting a site built within 21 days, after permitting. So the concrete for Burke is being mixed, with the tower en route, and Ericsson teams ready to climb the pole and install the radios. Oddly, the pacing factor is how long it takes concrete to dry, rather than how long it take to install 4G technology.
>>
>> Several other sites are also being completed this week.
>>
>> If there is a possibility DPS and VTel Wireless could somehow publicly and transparently cooperate, in such a way that DPS might, because of RUS time schedule and rural homes to be served, recommend issuance of permits for Rochester and Cabot (also called Peacham), and recommend against Calais until VTel finds a better site?
>>
>> Best,
>>
>> Michel Gulte

Wireless Application Review

VTel VT226
Calais-01
1056 Bayne Comolli Road
Calais, VT 05650

October 6, 2015



Prepared By:
EBI Consulting
21 B Street
Burlington, MA 01803
(781) 418-2322
Engineer: Scott Heffernan

6.0 Conclusion

EBI Consulting was hired to review the Application submitted by VTel for their proposed site at 1056 Bayne Comolli Road in Calais, Vermont. VTel is applying for a permit to construct a 140 foot monopole at this location for the stated purpose of providing coverage to residential dwellings “west of Vermont Route 14 and east of Vermont Route 12”. The project will include the construction of a 140 foot tall monopole within the proposed 20 foot by 20 foot (400 sq ft) foot square lease area with 2 equipment cabinets placed on a 10 foot by 10 foot concrete slab. VTel is proposing to install up to 9 antennas (3 per sector) at an antenna centerline of 135 feet above ground level. Additionally, VTel is proposing four microwave antennas on the support platform centered at 135 feet above ground level. The centerlines of the microwave dishes may vary slightly from this height based upon their final alignment configuration.

EBI Consulting was tasked with reviewing the proposed VTel facility at 1056 Bayne Comolli from a coverage perspective to compare the potential coverage from the proposed facility with two existing facilities in the area. These existing facilities are currently utilized by Cloud Alliance. The first is a 130 foot guyed tower located in Woodbury, VT on Robinson Mountain just north of Cabot Road. It appears that the next available height for antennas on this facility is approximately 100 feet above ground level. This height was analyzed by VTel as part of this application.

The second alternate site is a silo facility located at 418 Robinson Hill Road in Calais, VT. The reported available height at this facility is approximately 35 feet above ground level. This height was analyzed as well by VTel as part of this application.

The proposed VTel facility at 1056 Bayne Comolli at 135 feet, as stated earlier in this report, appears to provide decent coverage in the immediate area surrounding the facility. This footprint lies between the Route 14 and Route 12 corridors along the elevated ridgeline that runs parallel to both highways. The coverage however is contained within this area leaving the Route 14 and Route 12 corridors predominantly uncovered. Coverage falls primarily on the secondary roads such as Bayne Comolli Road, Chartier Hill Road, Cranberry Meadow Road as well as additional nearby secondary roadways and local residences. This site is located at the extreme northern edge of Calais on the Woodbury border. There is a large percentage of coverage that extends into Woodbury due to the sites physical location. Per VTel’s own submission, this site as a stand-alone facility could cover 1,105 residential dwellings and 621 RUS_RT’s utilizing the user equipment with a 3 foot 0 dBi outdoor antenna. This configuration also will have a useable footprint of 46.44 sq. miles per the same data.

The first Alternate location, the 130 foot guyed tower on Robinson Mountain in Woodbury, would provide a large footprint of reliable coverage that extends along the Route 14 corridor in a Woodbury as well as extending approximately 6 plus miles down into Calais. Coverage from this facility covers a solid area extending approximately 3 to 3.5 miles from the facility and then continues to cover 3 to 4 miles beyond that point predominantly on the higher elevation areas. Lower lying areas beyond this initial 3 to 3.5 mile radius extending south into Calais will experience pockets of coverage that drop below the reliable signal level as outlined by VTel. Per

VTel's own submission, this site as a stand-alone facility could cover 3,453 total residential dwellings (RT's) and 1,375 RUS_RT's utilizing the user equipment with a 3 foot 0 dBi outdoor antenna. This configuration also will have a useable footprint of 159.78 sq. miles per the same data.

Finally, in analyzing the second alternate facility located on the silo at 418 Robinson Hill Road, it was determined that this facility at 35 feet would provide very robust coverage within the first 2 miles from the facility running northeast and southeast from the site. Coverage potential extending much further west is blocked by the continued increase in elevation and clutter along the ridgeline in this direction. This is due to the location of the silo on the ridge line running between Routes 14 and 12. Similar to the coverage from the propose VTel facility on Bayne Comolli Road, reliable coverage from this facility would be contained to the secondary roadways and residences in the area between Routes 12 and 14 and would not provide reliable coverage to either of these highway corridors.

The challenge in analyzing the proposed VTel facility against the provided alternate sites is that while VTel's coverage objective has been stated as providing coverage to as many RUS pops between the Route 12 and Route 14 corridors. This is a very large area extending from Montpelier to the Hardwick / Wolcott line. This stretch measures approximately 18 to 20 miles and is comprised of some challenging terrain. If the objective is truly to cover as many of these uncovered RUS_RT's as possible in this area the best solution for providing coverage to these RUS pops would be to utilize the existing Cloud Alliance facility in Woodbury. By VTel's own submitted data, the Cloud Alliance facility in Woodbury covers three times as many RT's (3,453 from the cloud Alliance Woodbury facility versus 1,105 from the proposed VTel facility) and over twice as many RUS_RT's (1,375 from the cloud Alliance Woodbury facility versus 621 from the proposed VTel facility).

Additionally, although RUS_RT data was not provided, if a facility were also installed at the existing silo site at 418 Robinson Hill Road in Calais this combination would cover a large percentage of the area between the Routes 12 and 14 in the Calais area.

Now, as stated prior, this area is comprised of some very challenging terrain. Neither the single site alternate solution mentioned above at the Cloud Alliance Woodbury site nor the two site alternate solution including the Robinson Hill silo location will cover this area and the uncovered RUS_RT's completely. There will still be pockets of uncovered RUS_RT's throughout this area. Additionally, one area that will be point of fringe coverage from these two alternate site locations will be in the approximate area of the proposed VTel facility and may require additional coverage solutions at some point. However, analyzing the three facilities based solely on the stated objective for this facility of coverings as many RUS_RT's in this area, the existing Cloud Alliance facilities cover a larger number of the stated RUS_RT's both as a one site solution (Cloud Alliance Woodbury) or as a two site solution utilizing the Woodbury Cloud Alliance guyed tower in addition to the Robinson Hill silo when compared to the proposed VTel facility on Bayne Comolli Road.



1 A. Well, it was an analysis which was already
 2 done, so I didn't have to confirm.
 3 Q. That particular analysis was already done?
 4 A. Yes. Of how many rooftops the site would
 5 cover.
 6 Q. But this analysis is from April 2015, right?
 7 Your analysis --
 8 A. Yes.
 9 Q. -- on Exhibit 12 is from --
 10 A. Yes.
 11 Q. -- April of 2015?
 12 A. Yup.
 13 Q. And your testimony referring to the 1170 sites
 14 is from May 15th, 2015, right?
 15 A. Right.
 16 Q. So is it not correct that you had generated
 17 the lower number prior to submission of your testimony?
 18 A. Yes.
 19 Q. Is it not also true that you had done this
 20 specific analysis prior to the generation of your
 21 testimony?
 22 A. Yes.
 23 Q. So let me get this right. Looking back at the
 24 coverage goal as stated in your testimony, you say, The
 25 primary coverage goal is to reach as many of the 1170

1 you predicted the proposed Calais site would hit in
 2 April 2015.
 3 A. Can you repeat?
 4 MS. SHERMAN: Can you read that, please.
 5 (The record was read as follows: "Can you
 6 look at this table on Exhibit 12 and tell me
 7 how many RUS rooftops you predicted the
 8 proposed Calais site would hit in April
 9 2015.")
 10 THE WITNESS: 621.
 11 BY MS. SHERMAN:
 12 Q. Okay. Can you explain the difference between
 13 1170 and 621?
 14 A. That is RUS rooftops. That should be the
 15 total rooftops.
 16 Q. So the coverage objective should never have
 17 said RUS rooftops; is that correct?
 18 A. Correct.
 19 Q. In your original testimony and in your updated
 20 testimony, correct?
 21 A. Correct.
 22 Q. So when you say "rooftops" in your coverage
 23 goal, it should actually just read "total rooftops"?
 24 A. Total rooftops.
 25 Q. Does your coverage objective have anything to

1 RUS rooftops as possible, most of which are located
 2 west of Vermont Route 12 and east of Vermont Route --
 3 sorry, west of Vermont Route 14 and east of Vermont
 4 Route 12.
 5 And we've already identified that Vermont
 6 Route 12 is not accurate, correct?
 7 A. Um-hum. Correct.
 8 Q. We've also identified that "as many of the
 9 rooftops" refers to the idea that you may not actually
 10 hit all of the rooftops you're predicting to hit with
 11 this site, correct?
 12 A. Right.
 13 Q. In real life?
 14 A. In real life.
 15 Q. And now we've just identified that the number
 16 is not the number of households you predicted would be
 17 hit in April of this year, correct?
 18 A. Right. The revised number is 1099.
 19 Q. 1099. Okay.
 20 A. Yeah.
 21 Q. So let's go to the next word, which is "RUS
 22 rooftops."
 23 A. Um-hum.
 24 Q. Can you look at this table and tell me --
 25 table on Exhibit 12 and tell me how many RUS rooftops

1 do with RUS rooftops?
 2 A. Yes.
 3 Q. Explain --
 4 A. As well.
 5 Q. Explain how it relates to that.
 6 A. We would like to ensure that we cover as many
 7 RUS rooftops as well.
 8 Q. Okay. As well as this total number of
 9 rooftops?
 10 A. That's right.
 11 Q. Looking at this table, can you tell me how
 12 many RUS rooftops the Cloud Alliance tower's predicted
 13 to hit?
 14 A. 1375.
 15 Q. And when I say "Cloud Alliance tower," I mean
 16 collocation of VTel's equipment on the Cloud Alliance
 17 tower.
 18 A. 1375.
 19 Q. And when I'm asking you for these numbers, are
 20 we talking about the numbers that would be hit using
 21 the mobile scenario?
 22 A. Yes.
 23 Q. And that mobile scenario is an antenna at
 24 three feet with a zero dBi?
 25 A. Yes. But take -- take note that, you know,

1 these sites, as I said earlier on, it's a lot of
 2 rooftops; however, we need to ensure that our site --
 3 the strongest signals of our sites does the work, it's
 4 not wasted. The Cloud Alliance tower, if you take a
 5 look, you'll notice most of the strongest signal is
 6 just gone to waste.
 7 Q. So is your --
 8 A. Most of the rooftops are covered with moderate
 9 signal strength.
 10 Q. So is your coverage objective to hit as many
 11 rooftops as possible, or is it to hit -- or to utilize
 12 the highest signal strength?
 13 A. It's a combination. You want to cover as many
 14 rooftops as possible; at the same time, you would like
 15 to ensure that good coverage is provided by the site,
 16 the site is well designed, that its strongest signal
 17 levels cover as many rooftops as possible within your
 18 target area.
 19 Q. Where in your prefiled testimony do you
 20 discuss that coverage objective as inclusive of signal
 21 strength?
 22 A. I think it's -- let me -- I need to go through
 23 it. It should be in there.
 24 Q. You can refer to Exhibit 11 if you would like.
 25 A. Okay. It's not written there, but I think I

1 Q. Okay.
 2 A. But it was -- apparently the route is
 3 incorrect, Route 12. It should be the -- the route --
 4 a different -- the route should have a different name.
 5 In terms of rooftop count, I think that was revised,
 6 and it's in the supplemental.
 7 Q. Would you agree that the supplement still
 8 refers to 1099 RUS rooftops?
 9 A. Yes. That was the final and last review of --
 10 of rooftop counts. It should have been total rooftop
 11 count.
 12 Q. Okay. Can -- can we look back at Exhibit 12,
 13 please. Can you please turn to your e-mail of -- it
 14 looks like April 15th, and it's an e-mail at 9:39 AM.
 15 A. Exhibit 12?
 16 Q. Yes.
 17 A. April 15th, 9:20?
 18 Q. Or 9:39 AM, at the bottom of -- bottom of the
 19 page marked 928. And it says "Hi Gordon." The
 20 greeting is "Hi Gordon." Can you see that e-mail? And
 21 it extends on the next page. Can you read that -- what
 22 you wrote to Gordon, please?
 23 A. "Please find attached coverage prediction for
 24 Calais_01 site candidates. After comparing the
 25 coverage for both candidates Calais_01_CA seems to be

1 can say that part of the coverage objective is ensuring
 2 that, you know, rooftops get good signal strength.
 3 Q. That's how you would state it generally?
 4 A. Yeah. I would say all that is encompassed in
 5 coverage objective, good signal strength, as many --
 6 you know, as many rooftops as possible with good signal
 7 strength, ensuring the coverage areas are -- are
 8 covered, mobile and fixedwise.
 9 Q. Do you agree that the coverage objective as
 10 stated does not mention what you just indicated?
 11 A. No, it doesn't mention it in detail. It
 12 doesn't explain.
 13 Q. Okay. So would you agree that this -- the
 14 coverage goal as stated is -- is not accurate?
 15 A. I would say that -- not that it's not
 16 accurate. It's like -- it could have been expounded
 17 on.
 18 Q. But now that we've identified a number of
 19 elements in it that aren't correct, what part of the
 20 coverage goal's actually correct? If you look at the
 21 sentence, "The primary coverage objective is to reach
 22 as many of the 1,170 RUS rooftops as possible, most of
 23 which are located west of Vermont Route 14 and east of
 24 Vermont Route 12." Did you create this coverage goal?
 25 A. No, I did not create this coverage goal.

1 the better of the 2 since it provides better
 2 connectivity with neighbors and better coverage to
 3 rooftops and roads."
 4 Q. What is -- what were you referring to with the
 5 CA reference?
 6 A. Cloud Alliance's tower.
 7 Q. Okay. So can I confirm that what you stated
 8 on April 15th is that the Cloud Alliance tower would be
 9 a better option because it provides better connectivity
 10 with neighbors and provides better coverage to both
 11 rooftops and roads?
 12 A. Yes. Overall.
 13 Q. Overall. And can -- can you look at Exhibit
 14 11, please. Can you review your answer to question 5.
 15 Just take a look at it. And the question asked there
 16 was, "Please explain why VTel cannot collocate on the
 17 Cloud Alliance Tower in Woodbury in order to meet its
 18 coverage objective."
 19 A. "The Cloud Alliance Tower does not reach as
 20 many RUS rooftops with a satisfactory signal strength
 21 distributed as -- distribution as the proposed Project
 22 on Bayne Comolli Road."
 23 Q. So you said on April 15th that the Cloud
 24 Alliance tower was a better option, and in your
 25 prefiled testimony you're stating that the Cloud