

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

SBA TOWERS III AND NEW CINGULAR
WIRELESS PCS, LLC (AT&T)
APPLICATION FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
TOWER FACILITY AT WEWAKA BROOK
BRIDGEWATER, CONNECTICUT

DOCKET NO. 412

December 1, 2011

SBA TOWERS III ("SBA") & NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
POST HEARING BRIEF

Respectfully Submitted,

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PRELIMINARY STATEMENT

SBA Towers III (“SBA”) and New Cingular Wireless PCS, LLC (“AT&T”) (together the “Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post hearing brief in support of the Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for a tower facility in Docket No. 412. The Application addresses the public need for a new tower facility to provide service to Bridgewater along State Route 133 (Main Street) as well as to surrounding roads and homes. Throughout the proceedings in this Docket, the Applicants provided data, testimony and otherwise responded to interrogatories providing the Council comprehensive analysis of the public need for reliable service in this part of Bridgewater, including the review of possible siting alternatives, and the potential environmental effects associated with each candidate facility proposed in this Docket. The process has revealed that a tower facility is needed to provide service in this area of the State. Further, that the location and height of the candidate sites proposed by the Applicants do not present significant, aesthetic, or environmental impacts to this part of the State. As such, the Applicants request a Certificate for a new tower facility to meet the public need for wireless services be issued for one of the candidate facilities proposed in this Docket to serve this part of Bridgewater.

STATEMENT OF FACTS

I. Public Need

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to access its wireless network. In this case, coverage gaps for reliable service exist in the northern section of Bridgewater. AT&T's RF engineers generated a search area in order to address this need. Applicants' Ex. 3, pp. 6-7; Attachment 1.

To aid in the site search, AT&T's real estate consultants reviewed the existing AT&T and other telecommunications site locations in the area and as identified on the list of existing sites as included in the Application. Applicants' Ex. 3, Attachment 1. There are no existing towers or structures within four (4) miles of the targeted search area that would sufficiently address AT&T's need for reliable in-building coverage in this area. Applicants' Ex. 3, Attachment 1. Indeed the Town of Bridgewater's own radio frequency consultant confirmed the need for service in this area of town. Tr. November 1, 2011 (1:00 PM), pp. 150. While T-Mobile submitted a letter for the record to the effect that T-Mobile would not seek to locate on this facility, if built, in the future, T-Mobile has no facilities in the Town of Bridgewater (Applicants' Ex. 3, Attachment 1) and T-Mobile did conduct a search for a site in Bridgewater within the past five years (4/5/11 Tr. 1:00 p.m. p. 51).

II. AT&T & SBA Site Searches, Technical Consultation with the Town of Bridgewater and Identification of Candidate Sites

Once it was determined that a new tower facility was needed to provide coverage in this part of Bridgewater, AT&T investigated a number of properties in the site search area. Applicants' Ex. 3, Attachment 2. SBA also began conducting its own investigation for a tower site in this

area. Applicants' Ex. 3, p. 9. Subsequently, AT&T and SBA worked together to identify suitable locations for a telecommunications tower facility. Applicants' Ex. 3, p. 9. As a result of these efforts, SBA subsequently leased a tower and compound site on the property of Mary Allen with access through the property of Ed and Cynthia Bennet at 89 Wewaka Brook Road.

By letter dated July 16, 2010, the Applicants filed a technical report with the Town of Bridgewater with specific details about the proposed facility at Wewaka Brook Road. Applicants' Ex. 3, Attachment 10 (letter), Bulk File (Technical Report). The Technical Report included detailed information on the public need for a tower facility in this part of the State, explained the site selection process and the environmental effects of the proposed facilities including visual reports. See, Bulk Filing, Technical Report.

On September 7, 2010 the Town of Bridgewater held a public meeting and information session which the Applicants' representatives and project team attended to provide an overview of the proposal, answer questions and receive comments from the public. Applicants' Ex. 3, Attachment 10. SBA and AT&T pursued alternatives suggested by the Town and followed up on other leads which were the result of the consultation process. Applicants' Ex. 3, p. 10. In total, the Applicants reviewed fourteen (14) properties for the location of a tower facility. Applicants' Ex. 3, Attachment 2 ("Site Search Summary"). The other sites investigated were either rejected by AT&T or otherwise not made available by the property owner.

In addition to the public meeting/information session held on September 7, 2010 in the Town of Bridgewater, a site visit of the proposed facility access drive and compound site was conducted with the Town of Bridgewater Inland Wetlands Commission on October 5, 2010 with AT&T and SBA representatives and project team in attendance.

III. AT&T's Certificate Application & Pre-Hearing Filings

On November 19, 2010 the Applicants submitted their application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility located at Wewaka Brook Road in Bridgewater, Connecticut. The application was subsequently identified by the Siting Council as Docket No. 412.

The Application is for a proposed facility which would consist of a 170' high self-supporting monopole within a 45' x 80' fenced equipment compound enclosed by a chain link fence located in the northwestern portion of the property. Applicants Ex. 3, p. 3; p. 11; and Attachment 3. AT&T would install up to twelve (12) panel antennas on a platform at a centerline height of approximately 167' AGL and unmanned equipment within the compound. Applicants Ex. 3, p. 3; p. 11; and Attachment 3. Both the monopole and the equipment compound are designed to accommodate the facilities of at least three other wireless carriers. Applicants Ex. 3, p. 3; p. 11; and Attachment 3. Vehicle access to the compound will extend from Wewaka Brook Road westerly over a proposed new bridge and along an existing access drive then over a new gravel access drive a total distance of approximately 2,495' to the proposed compound. Applicants Ex. 3, p. 3; p. 11; and Attachment 3. Utilities to serve the proposed facility would extend underground from pole number 1242 on Wewaka Brook Road and generally follow the access drive to the site. Applicants Ex. 3, p. 3; p. 11; and Attachment 3.

The Town of Bridgewater sought party status and received same on January 6, 2011. On March 8, 2011 the Applicants submitted responses to Siting Council pre-hearing interrogatories. On March 20, 2011 the Applicants' submitted responses to the interrogatories submitted by the Town of Bridgewater, party in this Docket. A public hearing was scheduled by the Siting Council in the Town of Bridgewater for April 5, 2011.

Public Hearing, Supplemental Submission and Continued Hearing

On April 5, 2011 the Siting Council conducted an official site visit touring the proposed access drive to the site and the proposed location of the tower, proposed equipment compound area and viewed the surrounding properties. The Applicants attempted to raise a balloon at the candidate location to a height representative of the proposed tower height however weather conditions (i.e. wind and rain) were not conducive to a sustained balloon float. Tr. 4/5/11 3:20 pm pp. 15-16. At that day's public evidentiary hearing, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the need for a proposed facility, the investigation of alternative sites and any environmental effects associated with construction of a tower at the proposed candidate locations.

A continued hearing was then scheduled for September 13, 2011 for continued cross examination of both AT&T and the Town of Bridgewater's own witnesses. In advance of that hearing the Siting Council issued a second set of interrogatories to the Applicants on August 17, 2011 and responses dated September 6, 2011 were provided by the Applicants to the Siting Council and the Town of Bridgewater as a party.

At the Town of Bridgewater's request the September 13th hearing was canceled and subsequently rescheduled to November 1, 2011. The lateness of that continued hearing combined with the deadline for Siting Council's decision required a denial without prejudice in Docket 412 which was immediately reopened for reconsideration prior to the continued hearing already scheduled for November 1, 2011. The continued hearing for now reopened Docket 412 was held on November 1, 2011 and closed that same day. Tr. 11/1/11 1:00 PM 168. All interested persons including the Town as a party and interested members of the public have been given a full and fair opportunity to present information to the Council as part of the hearing and Application process.

POINT I

A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY IN BRIDGEWATER

Pursuant to Connecticut General Statutes (“CGS”) Section 16-50p, the Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need”. CGS § 16-50p(a)(1). In this Docket, AT&T provided coverage analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable wireless services to residents and the traveling public in the targeted section of Bridgewater. See, Applicants’ Ex. 3, page 1, Attachment 1; Applicants’ Ex. 4 (Responses to Siting Council Interrogatories, Set One); Applicants’ Ex. 5 (Responses to Town of Bridgewater Interrogatories) Applicants’ Ex. 6 (Responses to Siting Council Interrogatories Set Two) as well as Applicant’s Ex. 8 (Supplemental Submission of drive-test result mapping of the area). Notably, the Town of Bridgewater’s own radio frequency consultant confirmed the need for service in this area of town. Tr. November 1, 2011 (1:00 PM), p. 150. Of note, no licensed wireless telecommunications carrier maintains a wireless site in the Town of Bridgewater. Applicants’ Exhibit 1, Attachment 1.

During the Course of this Docket the Town of Bridgewater sought to question the signal-level thresholds used by AT&T as depicted in various coverage maps submitted in this Docket. Indeed, these thresholds are the standard AT&T has designated as sufficient to provide reliable service in its network. Indeed, negative 82 dBm is the standard and to design below that is a problem. Tr. November 1, 2011 (1:00 PM), p. 87. Indeed materials provided by the Town of Mark Cosgrove of a completely different carrier Omnipoint¹, while not relevant to AT&T’s network standards and design, nevertheless affirm that in defining acceptable signal level

¹ An “affidavit” of one Mark Cosgrove was included in the prefiled testimony of Ronald Graiff, P.E. however Mr. Cosgrove was not made available by the Town for cross-examination.

thresholds Omnipoint as a carrier considered 1) the devices and handsets common to the carrier's customer 2) business judgment of the carrier and 3) a scientific determination of the strength of wireless signal ("signal strength") necessary to provide different levels of in-vehicle and in-building coverage. Pre-filed Testimony of Ronald Graiff, P.E. (Affidavit of Mark Cosgrove points 15, 18 and 9). Indeed, AT&T has undertaken its own evaluation for its link budget and designs its network in accordance with acceptable threshold levels. As confirmed by Mr. Graiff himself, the general uncertainty of RF propagation makes this not an exact science but one based upon experience. Tr. 11/1/11 1:00 pp. 126, 158. Indeed, the applicable design thresholds are adopted in accordance with AT&T's experience and judgment in its network design.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER MORE VIABLE ALTERNATIVE PROPERTIES FOR SITING THE PROPOSED TOWER FACILITY

The Applicants submitted considerable evidence demonstrating their comprehensive search for sites. Applicants Ex. 3, Attachment 2. The Applicants identified and investigated all existing tower structures within four miles of the search area. Applicants' Ex. 3, Attachment 1. There are no other "tall" structures in this area of the State which would be suitable to provide the needed service. AT&T Ex. 3, Tabs 1 and 2. The record in this proceeding demonstrates that there are no existing towers, structures or other more viable alternative properties other than the proposed candidate for the site of the proposed facility in this Docket. The record in this Docket is also clear that this area, due to topography as well as lack of willing land owners, does not lend itself to any type of two-site solution. Tr. 11/1/11 1:00 pp. 31-32. Furthermore, a potential future site in northern Bridgewater at Second Hill Road would not, even at a height of 190', reduce the minimum height needed for the facility at Wewaka Brook Road. Applicants' Ex. 4 (Response to question 38 and Attachment 9).

POINT III

THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to CGS Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. The Applicants respectfully submit that a facility at one of the candidate locations presented in this Docket will have no significant adverse environmental effects on the resources listed in Section 16-50p of the General Statutes. Further, that any localized impacts are not significant and can be managed through appropriate engineering controls and site modifications.

1. Potential Visual Effects

Potential visibility was assessed within an approximate (2) two mile radius of each candidate location using a complex computer – based, predictive view shed model coupled with in-field analysis and photographic simulations of a tower at each location.

The record in this Docket demonstrates that a facility at the candidate site at Wewaka Brook Road will have no significant adverse visual impact on any scenic or historic resources that are specifically listed or identified as of significant State, regional or local importance. Applicants' Ex. 3, Attachment 7. The year round visual impact is limited to approximately 62 acres of the total 8,042-acre study area or less than 1%. Applicants' Ex. 3, Attachment 7. The majority of year-round visibility associated with the facility occurs over Northrup Street to the west of the propose facility and parts of Skyline Ridge Road located to the east. Applicants' Ex. 3, Attachment 7. Overall, the intervening topography and terrain serve to significantly minimize

the potential for year-round views of the proposed Facility from other locations in the study area. Applicants' Ex. 3, Attachment 7.

The State Historic Preservation Officer ("SHPO") determined that the proposed facility will not have any visual impact on historic resources. Applicants' Ex. 3, Attachment 9. The parcel on which this candidate facility is proposed and immediate surrounding areas exhibit no scenic, natural, historic, or recreational characteristics which are unique. Applicants' Ex. 3, Attachment 9.

2. Potential Impacts to the Natural Environment

Potential impacts to the natural environment from a facility at one of the proposed candidate sites are not significant and can be addressed through proper construction techniques and facility modifications overseen by the Siting Council.

i. Wetlands and Watercourses

The development of any of the proposed candidates is not anticipated to cause a significant adverse impact on identified wetland resources. As noted in the application, in addition to a proposed crossing and replacement bridge over Wewaka Brook, the access drive will have some direct impact on two other wetlands resources. Applicants' Ex. 1, p. 17. These are identified in the Preliminary Wetlands and Vernal Pools Assessment as Wetlands 3 and 4. Applicants' Ex. 1, Attachment 6. In all cases, direct impacts and design in the wetlands were avoided as much as conditions allowed. Notably, the Council received testimony that a potential alternate route suggested by the Town of Bridgewater, though never apparently walked or physically explored, (Tr. 11/1/11 1:00 p. 152), would in fact have more direct impacts to wetlands than the proposed route. (Tr. 11/1/11 1:00 p. 15, see also "Alternate Access Map" prepared by VHB).

Where improvements in the wetlands were required, direct impacts were coupled with mitigation measures to avoid and limit adverse impacts to the maximum extent possible and would not result in wetland or watercourse impacts considered to cause a likely significant adverse impact. Applicants' Ex. 1, Attachment 6 (November 11, 2010 VHB memorandum to Hollis Redding of SBA). This was further confirmed on cross examination at the continued hearing on November 1, 2011 by Mr. Gustafson. Tr. 11/1/11 1:00 pm ("I stand behind my assessment and recommendations for protective measures in my November 11, 2010 preliminary wetlands and vernal pool assessment in that the project as designed with the special precautions that I've recommended will not result in a significant adverse impact to the vernal pool systems"). Of note, the current design is consistent with the guidelines or best development practices promulgated by Calhoun and Klemens. Tr. 11/1/11 1:00 pp 37-38. There is essentially no encroachment within a hundred foot envelope of the vernal pools within the 750-foot perimeter (where the impact threshold limit promulgated by Calhoun and Klemens is 25%) there would be less than 2% of development. Tr. 11/1/11 1:00 pp 38-39.

ii. Wildlife

Department of Energy and Environmental Protection's Natural Diversity Database maps were reviewed for the proposed site and as per the Bureau of Natural Resources – Wildlife Division there are no extant populations of Federal or State Endangered, Threatened or Special concern Species that occur on this property. Applicants' Ex. 3, Attachment 8. A Migratory Bird Impact Evaluation was conducted. Applicants' Ex. 4, Attachment 6). As noted therein, the proposed site complies with the United States Fish and Wildlife Service guidelines for minimizing potential impacts to birds and further that no seasonal restrictions would be

recommended in association with the construction or operation of a facility at any of the candidate sites. Applicants' Ex. 4, Attachment 6).

No wildlife issues have been identified in the course of the Applicants' investigations. While the project team's field investigation confirmed the vernal pools contained obligate vernal pool species, no other species of concern was identified in the field. Tr. 11/1/11 1:00, pp. 35-37. As such, the Applicants' respectfully submit that the proposed facility will not significantly impact wildlife or any ecological balance in this area of Bridgewater.

iii. Clearing and Grading

The location of the tower compound utilizes to the maximum extent practicable an existing access road while avoiding to the maximum extent practicable impacts to existing wetlands. Applicants' Ex. 3, Tabs 3, 6. The facility would require the removal of 102 trees above 6" DBH and some clearing of brush. Approximately 1,430 cubic yards of cut and approximately 350 cubic yards of fill will be required to develop the proposed site and access drive. (Applicants' Ex. 4 – Answer 16 to Siting Council Interrogatories).

CONCLUSION

The Applicants have demonstrated a public need for and lack of any significant adverse environmental effects associated with the proposed tower facility. The evidentiary record reveals that no licensed wireless services carrier maintains a site in the Town of Bridgewater and clearly establishes a public need for a facility tower to provide reliable wireless services in and around this part of the State. Moreover, the record demonstrates that the proposed facility will not have any significant adverse environmental effects on documented resources in this part of the State. Indeed, any environmental effects have been minimized and mitigated to the maximum extent practicable through careful siting and on-site engineering controls to further

reduce potential impacts. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for the proposed facility.

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of the foregoing was served on the Connecticut Siting Council electronically and by overnight delivery with copy to:

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Dated: December 1, 2011

A handwritten signature in black ink, appearing to read 'D. M. Laub', is written over a horizontal line.

Daniel M. Laub, Esq.

cc: Hollis Redding, SBA
Michele Briggs, AT&T
Christopher B. Fisher, Esq.