

CONNECTICUT SITING COUNCIL

PETITION OF NEW CINGULAR)
WIRELESS PCS, LLC ("AT&T") TO THE)
CONNECTICUT SITING COUNCIL FOR A) PETITION NO. 1010
DECLARATORY RULING THAT NO)
CERTIFICATE OF ENVIRONMENTAL) FEBRUARY 21, 2012
COMPATIBILITY AND PUBLIC NEED IS)
REQUIRED FOR THE PROPOSED)
INSTALLATION OF A CONCEALED)
TOWER ON A WATER TANK AND)
RELATED FACILITIES LOCATED AT A)
WATER TREATMENT PLANT AT)
455 VALLEY ROAD)
GREENWICH, CONNECTICUT)

**AT&T's MOTION TO STRIKE
PRE-FILED TESTIMONY OF DAVID MAXSON**

Petitioner, New Cingular Wireless PCS, LLC ("AT&T") moves to strike the pre-filed testimony of Mr. David Maxson, dated February 15, 2012, for the reasons more fully set forth herein:

1. Mr. Maxson is not an "expert" witness

In his pre-filed testimony, Mr. Maxson holds himself out to be an "expert on radio frequency coverage analysis and on the placement, construction and modification of personal wireless facilities." Maxson Pre-Filed Testimony, A4. Yet, in litigation related to wireless facilities, courts have found Mr. Maxson's testimony on behalf of municipalities to be "completely unreliable and unpersuasive." Omnipoint Holdings, Inc. v. City of Cranston, No. 06-531 slip op. at 8 (D.R.I. Oct. 23, 2008), aff'd, 586 F.3d 38, 44-45, 53 (1st Cir. 2009). In fact, the court in Cranston went on to reject Mr. Maxson's testimony finding a "dearth of experience in designing wireless networks." Id. Moreover, Mr. Maxson has affirmed in other proceedings that he does not hold a degree in engineering and has "no formal training with respect to the

placement, construction or modification of personal wireless facilities.” See Sprint Spectrum, L.P. v. Zoning Bd. Of Adjustment of Borough of Paramus, 2010 WL 4868218, *5 (D.N.J. Nov. 22, 2010). In this proceeding, Mr. Maxson’s curriculum vitae noticeably omits his educational training and at best indicates his prior experience with radio broadcasting, his recent passage of a test to become a “Wireless Communications Professional” and his current focus on consulting for municipalities as a business objective. For all these reasons, AT&T objects to Mr. Maxson’s characterization of himself as an “expert witness” in this proceeding.

2. Mr. Maxson’s testimony is not legally relevant to this proceeding

AT&T has consistently stated that Mr. Wells’ testimony, reports, coverage analyses and any discussion regarding the lack of alternatives has been provided to the Siting Council as background information in this proceeding. As a matter of law, Mr. Wells’ testimony (other than his report confirming compliance with FCC MPE limits) is simply not relevant to the Council’s consideration of whether AT&T’s project involves any “substantial adverse environmental effects” for purposes of the Public Utility Environmental Standards Act. Indeed, coverage assessments, height analyses and the lack of alternative sites or effective technologies have absolutely no legal relevance as to whether AT&T’s concealed tower on the water tank and shelter at grade have any “environmental effects”. See C.G.S. § 16-50i(a)(6) and R.C.S.A. § 16-50j-2a(g)(6).

Mr. Maxson’s pre-filed testimony is almost exclusively dedicated to challenging AT&T’s assessments of its own network, the effectiveness of the proposed facility in serving AT&T’s customers, and the relative height of the facility. Maxson Pre-filed Testimony, A9-A15. Moreover, the pre-filed testimony contains Mr. Maxson’s attempts to recast his own conclusions from just one year ago regarding alternative technologies and the need for a completely unrelated

tower proposal by T-Mobile. Id. Mr. Maxson goes on to provide lay opinions regarding the structural sufficiency of the water tank to support the AT&T proposed tower. Id. A16.

The Petitioner respectfully requests that the pre-filed testimony of Mr. Maxson be stricken as legally irrelevant to this proceeding.

Respectfully Submitted,



Christopher B. Fisher, Esq.
Cuddy & Feder, LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
(914) 761-1300

Attorneys for and on behalf of
Petitioner AT&T

CERTIFICATE OF SERVICE

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

Mario F. Coppola, Esq.
Bercham, Moses, and Devlin, P.C.
27 Imperial Avenue
Westport, Connecticut 06880

Dated: February 21, 2012

A handwritten signature in black ink, appearing to read 'CB Fisher', written over a horizontal line.

Christopher B. Fisher, Esq.

cc: Michele Briggs, AT&T
Liz Camerino-Schultz, Aquarion