DOCKET NO. 506 - 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 wireless telecommunications facility located at 499 Mile Lane, Middletown, Connecticut.	}	Connecticut
	}	Siting
	}	Council

April 21, 2022

Opinion

On September 30, 2021, New Cingular Wireless PCS, LLC (AT&T) submitted a petition (Petition 1465) to the Connecticut Siting Council (Council) for a declaratory ruling that the proposed construction, maintenance and operation of a new 150-foot monopole wireless telecommunications facility to be located at 499 Mile Lane in Middletown, Connecticut would not require a Certificate of Environmental Compatibility and Public Need (Certificate). AT&T withdrew Petition 1465 on October 6, 2021 and converted it into an application for a Certificate for the proposed construction, maintenance and operation of a new 150-foot monopole facility at this site. Parties to the proceeding are AT&T, the City of Middletown (City) and Talias Trail (TT).

While this application was pending, on December 14, 2021, AT&T requested the Council initiate a Feasibility Proceeding pursuant to Connecticut General Statutes (CGS) §16-50aa(c)(2) to determine whether AT&T's shared use of the existing City-owned facility or construction of a replacement facility for shared use by AT&T and the City is technically, legally, environmentally and economically feasible and meets public safety concerns (Feasibility Request). During a regular meeting held on March 24, 2022, the Council declined to issue an order for the proposed shared use of the existing facility.

The United States Congress recognized a nationwide need for high quality wireless services through the adoption of the Federal Telecommunications Act of 1996 and directed the Federal Communications Commission (FCC) to establish a market structure for system development and develop technical standards for network operations. The FCC preempts state or local regulation on matters that are exclusively within the jurisdiction and authority of the FCC, including, but not limited to, network operations and radio frequency emissions. Preservation of state or local authority extends only to placement, construction and modifications of telecommunications facilities based on matters not directly regulated by the FCC, such as environmental impacts. The Council's statutory charge is to balance the need for development of proposed wireless telecommunications facilities with the need to protect the environment.

AT&T is licensed by the FCC to provide personal wireless communications service throughout the state. AT&T would construct, maintain and own the proposed facility and would be the Certificate Holder.

AT&T currently lacks adequate wireless service along Route 3 (Newfield Street), Mile Lane, Ridgewood Road and surrounding roads. Drive testing of the network and performance of existing cell sites indicates that a coverage gap exists in the proposed service area. AT&T would deploy 700 MHz, 850 MHz, 1900 MHz, and 2100 MHz frequency bands at the site, all of which transmit voice and data services and are designed to carry 5G services.

Coverage modeling indicates that AT&T would meet its coverage objectives with antennas mounted at a tower height of 150 feet. The proposed facility would provide AT&T with 1.57 square miles of incremental coverage to the proposed service area at the 700 MHz frequency band with a minimum of -93 dBm signal strength. This coverage would include, but not be limited to, 1.29 miles of main road coverage and 7.17 miles of secondary road coverage.

AT&T's deployment would enable customers to make wireless calls within the service area. In addition to wireless call capability, AT&T's deployment would feature emergency communication FirstNet services. FirstNet is a subscriber service available to local emergency response entities that would allow preferred wireless service on AT&T's 700 MHz system during emergencies. AT&T and FirstNet work together to determine which sites are prioritized. FirstNet is independent of the City's public safety communications system. The City is not a subscriber to FirstNet.

The proposed site is located on a 23.72-acre City-owned parcel at 499 Mile Lane that is zoned Residential (R-15). The parcel currently hosts an existing 180-foot tall self-supporting lattice tower also owned by the City. The existing facility was designed to accommodate police, fire, emergency management, public works and local government antennas for the City and the Town of Portland. This tower also provides links to statewide emergency response assets and is the master site for the City's entire public safety communications system that must maintain continuity of service.

The existing tower compound is located in the central portion of the property. AT&T's proposed 150-foot monopole tower would be located adjacent to the existing City-owned facility at a ground elevation of 109 feet above mean sea level (amsl) and within a trapezoidal fenced compound expansion area attached to the northern side of the existing City facility compound.

After the application was submitted to the Council, the proposed tower was relocated from its originally proposed location due to the presence of wetlands. Wetland 1 is located to the south, west and east of the existing compound. AT&T's proposed relocated compound expansion area would be approximately 20 feet east-northeast of Wetland 1.

There are 91 residences located within 1,000 feet of the proposed tower. The distances from the residences at Nos. 29, 50, and 59 Talias Trail to the proposed tower location are 700 feet, 517 feet and 606 feet, respectively. The distance from the nearest residence at 60 Talias Trial is approximately 425 feet to the proposed tower location.

During the proceeding, TT expressed concerns about the visibility of the existing City-owned tower and the increased visibility expected with the proposed second tower at the same site. TT also expressed a preference for a shared monopole design over a shared lattice or monopine tower design at an alternative location southeast of the existing facility on the host parcel.

AT&T prepared a visual impact assessment utilizing a two-mile radius study area (8,042 acres) and computer modeling that was supplemented with in-field studies. Based on the visual impact assessment, the proposed tower would be visible year-round from approximately 90 acres (1.12%) and seasonally visible (leaf-off conditions) from approximately 122 acres (1.52%) of the Study Area. Seasonal visibility would occur from an approximately 0.47-mile long section of Mile Lane with some limited interspersed year-round views. The facility would be visible year-round from the majority of the Talias Trail neighborhood.

AT&T is the only telecommunications carrier that would locate on the proposed tower. The tower and compound would be designed to accommodate a total of three to four carriers. No other carriers intervened in the proceedings.[1] No other carriers expressed an interest in collocating on the proposed facility during

[1] On March 16, 2022, Verizon submitted a Request for Intervenor Status in Docket 506 that was rendered moot when AT&T's March 16, 2022 Motion to Reopen the Evidentiary Record was denied by the Council during a regular meeting held on April 7, 2022.

the proceedings. AT&T proposes to install 9 panel antennas and 12 remote radio heads on sector frame mounts at a centerline height of 150 feet. The compound would be accessed by the City's existing access drive that extends from Mile Lane. Utilities to the compound would be installed underground from an existing utility pole located east of the compound to a new meter bank to be installed inside the existing compound.

In 2017, AT&T identified a need for coverage, as well as a need for FirstNet public safety communications, in the northern area of Middletown along Mile Lane, Newfield Street, Ridgewood Road and surrounding areas. Although AT&T expressed interest in collocation at the City's existing facility, AT&T had not established a site search at that time and did not engage in any further discussion with the City until 2019, one year after the City's facility was built and operational.

AT&T has 17 existing wireless telecommunications facilities within a four-mile radius of the proposed site, but none of these sites provide adequate coverage to the target area. The City-owned tower is the only existing tower structure within a 4-mile radius that could meet AT&T's coverage objectives. When AT&T approached the City in 2019, the City expressed concerns about AT&T's collocation plans. Disruptions to the City's public safety communications system and equipment cutovers are unacceptable to the City.

After determining there were no other suitable towers within a 4-mile search area, AT&T searched for properties suitable for tower development. AT&T investigated 2 sites, one of which was selected for site development. The other site was at the Lawrence School. That site was rejected by AT&T because it is significantly lower in elevation than the proposed site, contains wetlands and would not provide reliable wireless services to the target area.

Given that AT&T only investigated two sites prior to submission of the application, the Council believes AT&T's site search has not been exhaustive. During the proceeding, the Council and TT inquired about the feasibility of alternatives to meet AT&T's coverage objectives, including, but not limited to, collocation on the existing City-owned facility, collocation on a shared replacement facility, site development at alternate locations on the City-owned parcel at 499 Mile Lane, site development on other City-owned parcels within a four-mile radius and collocation on an existing Eversource Energy (Eversource) electric transmission line structure in the right-of-way (ROW) south of the host parcel.

On March 25, 2022, pursuant to CGS §16-50aa(c)(2), the Council determined that AT&T's shared use of the existing City-owned facility or construction of a shared replacement facility was not technically, legally, environmentally or economically feasible, and would not meet public safety concerns. Reinforcement of the existing tower to accommodate AT&T's collocation is not technically feasible due to the amount of welding required, which could potentially weaken the tower. Construction of a replacement tower to accommodate the City and AT&T is not economically feasible due to its total cost in excess of $1M.

According to the record, there are no agreements for AT&T to locate a telecommunications facility on any City-owned parcels, including the 499 Mile Lane property as the lease agreement for AT&T's proposed facility at the City-owned site is not executed. While the City could consider a telecommunications facility at an alternate location at 499 Mile Lane and/or a telecommunications facility at another City-owned parcel, such proposal would require review by the City's Office of General Counsel, Mayor, and City Common Council before any lease could be executed. There is no evidence in the record that any further discussions have occurred between AT&T and the City regarding a telecommunications facility at an alternate location at 499 Mile Lane and/or another City-owned parcel in the area.

The Council recognizes that AT&T's 2018 search ring has a ¼-mile radius that is squarely centered within the Eversource electric transmission line ROW located to the south of the host parcel. The proposed facility site is located about 1,800 feet north of the search ring center.

In July 2020, the Council approved the replacement of 80 115-kV wood electric transmission line structures with new weathering steel H-frame structures along the Eversource ROW. There is existing access to the ROW from local roads. Elevations in this area range from approximately 90 feet amsl to 190 feet amsl. The City facility is at an elevation of approximately 109 feet amsl. Eversource completed construction of the new weathering steel H-frame structures in June 2021.

AT&T believes collocation on any of the electric transmission line structures is not feasible due to structural engineering challenges, access limitations to the top of the hill and general Eversource aversion to allowing new towers and collocations within its ROWs. However, the record demonstrates that AT&T was under the impression the electric transmission line structures in the ROW to the south of the host parcel were degraded wood structures. The record also demonstrates that AT&T has not had discussions with Eversource about potential collocation on an electric transmission line structure as of February 17, 2022.[2] Thus, an electric transmission line structure collocation alternative has not been fully and adequately evaluated to determine its feasibility.

Under the Public Utility Environmental Standards Act (PUESA), the Council shall not grant a Certificate, either as proposed or as modified by the Council, unless it shall find and determine:

1. A public need for the facility and the basis of the need;
2. The nature of the probable environmental impact of the facility, including, but not limited to, impacts on and conflicts with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, agriculture, forests and parks, air and water purity and fish, aquaculture and wildlife; and
3. Why the adverse effects or conflicts with the policies of the state are not sufficient reason to deny the application.

The state tower sharing policy encourages the sharing of towers for fair consideration whenever technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. Telecommunications equipment collocations on electric transmission line structures, where technically, legally, environmentally and economically feasible and meet public safety concerns, are consistent with the state policy.

Although pursuant to CGS §16-50p, there shall be a presumption of public need for personal wireless services, the Council is limited to consideration of a specific need for any proposed facility to be used to provide such services to the public. The evidence in the record suggests that AT&T's specific need for a facility may be better met by another site in the area. This possibility, however, was never fully explored during the proceeding.

Without a finding and determination of a specific public need for the facility, the Council does not reach any finding and determination on the environmental impacts or why the environmental impacts are or are not sufficient reason to deny the application, but the Council notes that it may deny an application if the

[2] AT&T's March 16, 2022 Motion to Reopen the Evidentiary Record included an attachment entitled, "Eversource Wireless Antenna Collocation Project Structure Review Requirements, Request for New Installation" that is dated March 14, 2022.

proposed facility would substantially affect the scenic quality of the surrounding neighborhood and no public safety concerns require that the proposed facility be constructed.

Therefore, the effects associated with the construction, maintenance and operation of a second telecommunications facility at the existing City-owned site, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; agriculture; forests and parks; air and water purity; and fish, aquaculture and wildlife are not possible to weigh when compared to the specific need for the proposed facility, which has not been established in evidence, and, as such, cannot be determined to be in harmony with policies of the state.

Based on the record of this proceeding,[3] the Council finds that alternatives to construction, operation and maintenance of the proposed AT&T facility at the Mile Lane site adjacent to the existing City facility, including, but not limited to, potential collocation on an electric transmission line structure, construction of a facility at an alternate location on the host parcel or construction of a facility on another City-owned parcel in the area along the ridge, remain unexplored, and the lack of a complete evaluation of other potentially available alternative sites, some of which were identified and suggested by the Council and TT during the proceeding, is sufficient reason to deny this application. Therefore, the Council will deny this application without prejudice and will not issue a Certificate for the construction, maintenance, and operation of a second telecommunications facility adjacent to the existing City-owned tower at 499 Mile Lane, Middletown, Connecticut.

[3] Inclusive of the record and the Council's March 25, 2022 final decision in the Feasibility Proceeding requested by AT&T. (Council Administrative Notice Item No. 35)