

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF MCF
COMMUNICATIONS bg, INC. AND
OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 237 SANDY HOLLOW ROAD IN THE
TOWN OF GROTON, CONNECTICUT

DOCKET NO. 343

DATE: NOVEMBER 30, 2007

**POST-HEARING BRIEF OF MCF COMMUNICATIONS BG, INC. AND
OMNIPOINT COMMUNICATIONS, INC.**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”), MCF Communications bg, Inc. (“MCF”) and Omnipoint Communications, Inc. (the “Co-Applicants”) submit this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. The Co-Applicants also submit their Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

The Co-Applicants, in accordance with provisions of Connecticut General Statutes (“C.G.S.”) §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies (“R.C.S.A.”), applied to the Connecticut Siting Council (“Council”) on July 11, 2007 for a Certificate of Environmental Compatibility and Public Need (“Certificate”).

Co-Applicant MCF proposes to construct a 130-foot self-supporting steel monopole telecommunications facility in the southeastern portion of a 3.35 acre parcel of land owned by the Mystic River Ambulance Association known as 237 Sandy Hollow Road, Map 261909, Block 06, Lot 5371 of the Groton Tax Assessor's Map ("Site").

The 1,975 square foot leased area will include a 35-foot by 50-foot fenced compound area with an additional 15-foot by 15-foot bump-out area and a monopole tower (the "Facility") designed to accommodate the antenna arrays and associated equipment of Omnipoint Communications, Inc. ("T-Mobile") and the equipment of three (3) other telecommunications carrier ("Facility"). In addition, the proposed Facility will be designed to accommodate the emergency services equipment for the Town of Groton.

The purpose of this Facility is to provide wireless telecommunications services to Groton, including along Interstate I-95 and surrounding areas. T-Mobile currently experiences either significant gaps in coverage or inadequate coverage in the area. A Facility at the Site will provide wireless coverage service for T-Mobile in this area which is currently experiencing inadequate coverage.

II. **A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA**

Connecticut General Statute ("C.G.S.") §16-50p(a) mandates that 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..." C.G.S. §16-50p(a). There can be no dispute that there is a significant public need for this Facility. T-Mobile demonstrated its lack of coverage in this area and the

Town of Groton has indicated its need to locate its emergency services equipment on the proposed Facility. Even a resident of Groton in the area acknowledged that he has no existing coverage at his home. (7:00 Transcript (“Tr.”) at 20-21).

There are no other telecommunications facilities in this area of Groton and no utility structures or other suitably tall structures on which to locate a telecommunications facility, which are available for leasing. Adequate and reliable telecommunication capabilities are beneficial to persons who are traveling through, working, or living in the area. These communications issues can be alleviated with the construction of this Facility, which will provide benefits for both the residents and businesses in the Town.

T-Mobile, a Co-Applicant, has established that it is currently experiencing significant coverage gaps and capacity problems which result in inadequate coverage in this area. A Facility at the proposed Site will alleviate that inadequacy. In addition, a Facility at the proposed Site will provide coverage for the Town of Groton’s emergency services.

III. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, the Co-Applicants have identified “the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife...” as required by C.G.S. §16-50p(a). Indeed, the record in this matter

convincingly demonstrates that the Facility will have a minimal environmental impact on the surrounding areas, and will not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff'd, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

The Co-Applicants conducted a complete and comprehensive environmental analysis of this proposal, which can be found at Exhibits: J (Phase I Environmental Site Assessment), K (Visibility Study) L (Wetlands & Watercourses Delineation Report), M (State Agency Correspondence), and O (NEPA Compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The environmental analysis concludes that:

- i. No wetlands or watercourses will be impacted by the proposed Facility (See App. at Exhibit L, Exhibit O; 3:00 Tr. at 15-20);
- ii. No species of concern on Site (See App. at Exhibit M; Exhibit O);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (See App. at Exhibit O);
- iv. No listed species or designate critical habitats occur on or near the site. (See App. at Exhibit M, Exhibit O);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (See App. at Exhibit M);

- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See App. at Exhibit O);
- vii. The Facility will be located outside of the 100 year flood zone; (See App. at Exhibit O); and
- viii. The tower will not be lit (See App. at Exhibit Q; Interrogatory Responses).

As far as the Facility's potential visibility, the Facility is proposed to be located on the Site in order to minimize impact to residential receptors. The topography and the mature vegetation at the Site will significantly limit the visual impact of the Facility. In addition, the size of the Site itself will assist in reducing the visual impact of the Facility. In addition, much of the anticipated visual impact will be within the immediate vicinity of the I-95 corridor.

Views of the Facility are expected to be visible year-round from only 20 acres within a two-mile radius of the tower, which is less than one percent (<1%) of the study area. In addition, the Facility will be seasonally visible from an additional 56 acres. Of note, there will be no visibility from any scenic roads or areas, state parks or cultural or recreational receptors. While Sandy Hollow Road is a locally designated scenic road, the applicable local regulations do not prohibit the development of the proposed Facility. In addition, the Town of Groton was satisfied that the proposed Facility would not impact Sandy Hollow Road because of the location of the Site. The proposed Facility will be visible from approximately seventeen (17) residences year-round and twenty-two (22) residences will experience limited seasonal views of the Facility.

As the foregoing demonstrates, any environmental impacts associated with the Facility will be extremely limited. Further, the Facility will eliminate the need for

additional facilities in this area of Groton, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

IV. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. C.G.S. §16-50aa. In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council “may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state.” “The sharing of facilities is encouraged, if not required by General Statutes §16-50p(b)(1)(A).” Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. Accordingly, the issuance of a Certificate will help avoid the construction of new telecommunications tower(s) in this area of Connecticut. Because all major telecommunications carriers could utilize the Facility as well as local emergency services, if requested, approval by the Council will uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

It is clear from the evidence presented in the docket that approval of the Facility in this area of Groton is necessary to provide adequate wireless coverage. The Co-Applicants have demonstrated that utilization of the Site provides the best location for a Facility in this area of Groton. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, the Co-Applicants, MCF Communications bg, Inc. and Omnipoint Communications, Inc. respectfully urge the Council to issue a Certificate for the proposed Facility.

MCF COMMUNICATIONS BG, INC.
OMNIPOINT COMMUNICATIONS, INC.

By:  _____

Attorneys for the Applicants
Julie D. Kohler, Esq.
jkohler@cohenandwolf.com
Carrie L. Larson, Esq.
clarson@cohenandwolf.com
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel. (203) 368-0211
Fax (203) 394-9901

Certification

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

Charles E. Stevens
12 Stony Hill Drive
Mystic, CT 06355



Carrie L. Larson