

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF GLOBAL SIGNAL
ACQUISITIONS II FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE RE-LOCATION,
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 1919 BOSTON POST ROAD,
GUILFORD, CONNECTICUT

DOCKET NO. 349

DATE: MAY 1, 2008

POST- HEARING BRIEF OF APPLICANT GLOBAL SIGNAL ACQUISITIONS II

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”), Global Signal Acquisitions II (“Global Signal” or the “Applicant”) submits 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 Applicant also submits its Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

A. History of the Existing Facility

The Applicant, in accordance with the 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 or about October 19, 2007 for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the proposed re-

location of an existing telecommunications facility on the property located at 1919 Boston Post Road in Guilford (the "Property").

A 150 foot telecommunications tower currently exists on the property located at 1919 Boston Post Road (the "Existing Facility"). On May 22, 1997, the Guilford Planning and Zoning Commission approved an application for a special permit for Sprint Spectrum, LP to construct a 130 foot monopole at 1919 Boston Post Road, and a special permit was issued on June 4, 1997. Subsequent to the construction of the Existing Facility, regulatory jurisdiction over the Existing Facility became the province of the Council. See Westport v. Connecticut Siting Council, 260 Conn. 46 (2002). On February 14, 2003, Sprint Sites USA filed a petition for a declaratory ruling, Petition No. 613, with the Council for a twenty foot extension of the existing monopole. The Council made a determination that the modifications to the Existing Facility would not result in an adverse environmental impact, and in fact the modifications were necessary to allow Nextel, T-Mobile and AT&T to provide adequate wireless coverage to this area.

The Property is proposed to be the location of new development that will enhance and benefit the Town of Guilford as well as the residents of Guilford. In order for the Property to be developed in a productive manner, the Existing Facility must be relocated to a different location on the Property. Global Signal has agreed to relocate the Existing Facility in order to accommodate this development. The purpose of this application, then, is simply to relocate the Existing Facility and will not involve making any changes to the carriers co-locating on the Existing Facility. Nevertheless, as discussed more fully below, a new facility will also provide other

benefits: (1) structurally capable of accommodating additional carrier antennas to improve capacity; (2) structurally capable of accommodating tower emergency antennas; and (3) compliance with the updated building code in regard to wind-loading. Previously, the Applicant had submitted a similar proposal as a petition for declaratory ruling (Petition No. 792). In ruling on that Petition, the Council had requested that the proposal be re-submitted as a Certificate.

Global Signal proposes to dismantle the Existing Facility and re-construct a new monopole on the Property (the "Re-located Facility") at either of two locations: the Application Site or the Alternate Site (as defined below). The Existing Facility and proposed Re-located Facility are prime examples of the benefits of tower sharing. The Existing Facility has six (6) carriers co-locating on it including both Cingular equipment and AT&T Wireless equipment. Due to the merger of Cingular and AT&T Wireless into New Cingular Wireless (now AT&T), AT&T now only requires one set of equipment on the Re-located Facility. To promote the sharing of wireless facilities in the Guilford area, the Re-located Facility can accommodate the remaining five (5) antenna platforms and equipment for the wireless carriers that currently co-locate on the Existing Facility. Other than removing one of the two sets of equipment on the Existing Facility for New Cingular Wireless/AT&T, all of the carriers on the Existing Facility have committed to re-locating on the Re-located Facility.

The purpose of this Re-located Facility is to continue to provide wireless telecommunications services to Guilford along Interstate I-95, the Boston Post Road and the surrounding area.

B. Application

In the Application, the Applicant proposes to dismantle the Existing Facility and reconstruct the Re-located Facility approximately 700 feet to the southeast of the Existing Facility (the "Application Site"). (Application ("App.") at Exhibit C; Continued Hearing Transcript ("Con't Tr.") at 46). During the hearing process, the Siting Council expressed its desire to review plans for an alternative location on the Property. In response to this request and in response to the concerns raised by the parties and intervenors to this proceeding, the Applicant prepared plans for this third location on the Property (the "Alternate Site"). A comparison chart of the three locations; the Existing Site; the Application Site and the Alternate Site is contained below:

	Location A ("Existing" site)	Location B ("Application" site)	Alternate Site ("Alternate" Site)
Minimum Required Tower Height	150'	150'	150'
Compound Size	3050 sq feet	3050 sq feet	3403 sq feet
Property Line Setbacks	184.14'	106.32'	88.49'
Setback from Nearest Residential Property	414.15'	560'	293.76'
Setback from wetlands	754.94' (WL#3) 357' (WL#23)	129'	679' (WL#3) 437' (WL#23)
Tree Removal	N/A	0 trees 6" or greater in diameter	0 trees 6" or greater in diameter
Cut/Fill Required	N/A	Fill 2' +/-	Fill 21' +/-*
Visual Impact	54 Acres of year round visibility	51 Acres of year round visibility	43 Acres of year round visibility
Historic Impact	None	None	None
FAA	No lighting required	No lighting required	No lighting required

* This level of fill is otherwise required for the proposed retail development.

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 the Re-located Facility. (Applicant’s Exhibit 1 (“App.”) at Exhibit H).

The Applicant has already established that there is a public need for wireless telecommunications service in this area of Guilford by virtue of the underlying approvals from the Guilford Planning and Zoning Commission originally and the Council in Petition 613T. There are no other telecommunications facilities in this area of Guilford and no utility structures or other suitably tall structures on which to locate telecommunications facilities. The Council, in Petition 613T, already made a determination that there is a coverage gap in this area of Guilford. In Petition 613T, the Council approved a 20-foot extension of the Existing Facility in order to fill the coverage gaps experienced by T-Mobile and Nextel. See Petition 613T.

The Council has routinely approved the re-location of existing telecommunications facilities on the same property and has also re-located proposed facilities on the same property during the course of considering an application. In Petition 765, the Council approved the petition of Optasite, Inc. to replace an existing lattice tower with a new monopole approximately 200 feet away from the existing lattice tower “[t]o improve the aesthetics of the property and to permit sufficient ground space for multiple carriers.” See Petition 765, Staff Report. In Petition 394,

the Council approved the petition of Springwich Cellular Limited Partnership to replace an existing monopole so that it was structurally capable of handling the co-location of additional carriers. That replacement also involved re-locating the existing monopole 20 feet away from the existing tower and expanding the existing equipment compound. See Petition 394 Staff Report, Decision and Order. In Docket 278, the Council approved the replacement of an existing 100 foot tower with a 140 foot tower approximately 35 feet away from the existing tower. In addition, in Docket 329, the Council approved a telecommunications facility in Meriden at a location proposed during the course of the proceedings.

In the present Application, the Council has already made a determination that the Existing Facility is fulfilling a public need. Similar to Petition 765, the Existing Facility needs to be re-located in order to accommodate the underlying development on the Property, which the Town of Guilford is in support of and will provide a public benefit to the Town and its citizens. See 7:00 Tr. at 8-10. In addition, just as in Petition 394, the Existing Facility has reached its maximum structural capabilities. See Con't Tr. at 52-53, 76-77. Additionally, the Existing Facility would not support such co-location when and if Guilford public safety should make such an election because the Existing Facility is at its maximum structural capabilities. Approval of the Re-located Facility at either the location proposed in the Application or the Alternate Site would permit the Applicant to add the additional structural capability required to continue to permit co-location for both public safety, additional wireless carriers and permit the existing tenants to add antennas to address capacity problems in the area. See Con't Tr. at 84-86. Therefore, there is clearly a public need.

In addition, as indicated by the First Selectman of Guilford, the Town of Guilford is in support of the retail development on the Property and the tax revenue generated from the development will be a public benefit to the Town. (3:00 Tr. at 8-10). Despite questions posed to a DDR witness addressing previous testimony, the proposed retail development cannot be developed on the Property with the Existing Facility still in place due to the size and shape of the Property and the Existing Facility's location in the middle of the Property.¹ (3:00 Tr. at 76-78; Cont Tr. at 87-91). Therefore, approval of either location (the Application Site or the Alternate Site) will provide the additional public benefit to the Town of Guilford of permitting the proposed retail development and generating tax revenue for the Town.

III. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, the Applicant has 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).

¹ Said questions took the witness's previous testimony out of context. At the Continued Hearing Attorney Bennett cited a response beginning on page 76, line 15 of the January 15, 2008 transcript and asked James Grafmeyer whether he remembered testifying that "anything as possible" in designing the center in such a way as to "leave that tower where its at" (Cont. Tr. at 89). What was omitted however was the full context of his response. The next sentence of Mr. Grafmeyer's response was "But unfortunately, if that were to happen, this project would not happen." (Tr. at 76, line 24) Chairman Caruso then inquired "Is that would, cannot, or it's not economically feasible?" to which Mr. Grafmeyer responded "Probably all of the above." (Tr. at 77, line 5), clearly indicating developing the center with the tower in its existing location was not feasible on several levels.

While some of the residents have opined that the proposed Re-located Facility at the Application Site will have an adverse environmental impact, particularly impact on the wetland resources, the record is replete with expert testimony that 1) the Re-located Facility will have no adverse environmental impact; 2) the Re-located Facility will have no effect on wetlands resources; and 3) the Re-located Facility will have a minimal visual impact. In particular, there is no evidence that there will be any negative environmental impact at the Alternate Site as compared to the Existing Facility, nor have the parties or intervenors articulated any basis for their objection to the Alternate Site.

Indeed, the record in this matter convincingly demonstrates that the Re-located 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 Applicant conducted a complete and comprehensive environmental analysis of this proposal, which can be found at Exhibits: K (Wetlands Impact Analysis), L (Visual Resource Evaluation), N (State Agency Correspondence) and P (NEPA Compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions,

concluding the proposed Re-located Facility will not have a negative impact on various resources. The environmental analysis concludes that:

- i. No wetlands within 129 feet of the Application Site or within 437 feet of the Alternate Site; neither the access nor the compound area at either location is located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See App. at Exhibit K, Applicant Exhibit 6);
- ii. No species of concern exist on the Property (See Exhibits N, P);
- iii. The Property is not located in a designated wilderness or wildlife preserve area (See Exhibit P);
- iv. No listed species or designate critical habitats occur on or near the Property. (See Exhibit N, Exhibit P);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (See Exhibit M);
- vi. The Property is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See Exhibit P);
- vii. The Re-located Facility at either the Application Site or the Alternate Site will be located outside of the 100 year flood zone; (See Exhibit P); and
- viii. The tower will not be lit at any location on the Property (See Exhibit R).

As far as the Facility's potential visibility, the Re-located Facility is proposed to be strategically located on the Property in order to minimize impact to residential receptors. The topography in the vicinity of the Property will significantly limit the visual impact of the Facility. In addition, much of the surrounding area is

commercially zoned and in the I-95 corridor therefore there will be minimal visual impact on residential areas.

Views of the Re-located Facility will be very similar to the views of the Existing Facility. The proposed Re-located Facility at the Application Site will be visible from only 51 acres (and only 43 acres at the Alternate Site) within a two-mile radius of the proposed Facility, which is less than 1% of the study area. Of note, there will be no visibility from any scenic roads or areas, state parks or cultural or recreational receptors. The proposed Re-located Facility at the Application Site will be visible from approximately two (2) residences year-round and an additional ten (10) residences will experience limited seasonal views of the Facility. Views of the Re-located Facility at the Alternate Site are virtually identical to the Existing Facility.

In addition, the Applicant has voluntarily agreed to undertake additional measures to reduce the visual impact of the proposed Re-located Facility as much as possible. First, the Applicant has agreed to enclose the compound with stockade fencing. Second, the Applicant has agreed to landscape around the outside of the equipment compound. Third, the Applicant has already agreed, in addition to the compound landscaping, to also landscape the underlying development in accordance with Applicant's Exhibit 10.

Finally, as discussed supra, the Applicant, during the hearing process, voluntarily proposed the Alternate Site to address the concerns raised by the parties and intervenors as well as concerns raised by the Council. The Alternate Site will be even less visible than the Existing Facility. Applicant's Exhibit 6. In addition, the Alternate Site is further away from the residences of the parties and intervenors to

this proceeding. See Con't Tr. at 75, late file Exhibit 11. The parties and intervenors have offered no evidence of any environmental impact in regard to the Alternate Site. Indeed, at the continued hearing, they were unable to offer even a rationale for opposing the Alternate Site.

As the foregoing demonstrates, any environmental impacts associated with the Re-located Facility will be extremely limited or nonexistent. Further, the Re-located Facility will eliminate the need for additional facilities in this area of Guilford by adding the needed structural capacity to permit co-location which the Existing Facility does not currently have, 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).

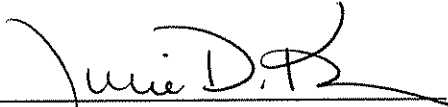
Certification of the proposed Re-located Facility at either the Application Site or the Alternate Site will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing

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 Re-located Facility as well as local emergency services, as 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 Re-located Facility in this area of Guilford is necessary to provide adequate wireless coverage. The Applicant has demonstrated that re-locating the Existing Facility on the Property provides the best location for a Facility in this area of Guilford. In addition, the Applicant has indisputably established that there is virtually no adverse environmental impact from the Re-located Facility. This Re-located Facility is the optimal solution for future co-location, to continue to fill the coverage needs of the wireless carriers currently located on the Existing Facility, with the least amount of environmental impact. As such, the Applicant respectfully urges the Council to issue a Certificate for the proposed Re-located Facility.

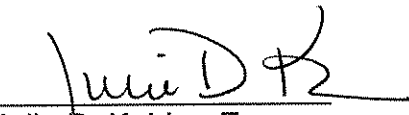
Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

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