

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC
AND OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 425 LITCHFIELD ROAD,
NEW MILFORD, CONNECTICUT

DOCKET NO. 342

APPLICATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE
AND OPERATION OF A WIRELESS
TELECOMMUNICATIONS FACILITY AT 359
LITCHFIELD ROAD IN NEW MILFORD,
CONNECTICUT

DOCKET NO. 355

Date: MAY 5, 2008

**POST- HEARING BRIEF OF OPTASITE TOWERS LLC AND OMNIPOINT
COMMUNICATIONS, INC.**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A."), Optasite Towers LLC (hereinafter "Optasite") and Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., d/b/a T-Mobile (hereinafter "T-Mobile") (collectively the "Co-Applicants") submit this post-hearing brief in support of their application pending in Docket 342 in this consolidated hearing of Dockets 342 and 355. 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. Because the Optasite Site is the

most appropriate alternative between the two sites proposed in Docket 342 and Docket 355, a certificate should issue for the Optasite Site. 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 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 June 22, 2007 for a Certificate of Environmental Compatibility and Public Need ("Certificate") at property located at 425 Litchfield Road in New Milford (the "Optasite Site"). The Council held a public hearing on Docket 342 on September 10, 2007. After the close of the public hearing, Cellco Partnership d/b/a Verizon Wireless ("Verizon") forwarded correspondence to the Council indicating a potential, competing site in the area of 425 Litchfield Road that Verizon was pursuing. Accordingly, the Council agreed to keep Docket 342 open in anticipation of the Verizon filing. On or about December 7, 2007, Verizon filed an application for a telecommunications facility at 359 Litchfield Road in New Milford (Docket 355) (the "Verizon Site"). Subsequently, pursuant to C.G.S. § 16-50p (a)(2)(G), the Council held consolidated hearings on March 11, 2008 and April 4, 2008.

A. The Optasite Site

Co-Applicant Optasite proposes to construct a 140-foot steel monopole telecommunications facility in the central-western portion of a 28.86 acre parcel of land owned by the Estate of Edward J. Drzal known at 425 Litchfield Road,

Assessors Map 80, Lot 1 of the New Milford Tax Assessor's Records (the "Optasite Site" or "Optasite Property"). The Optasite Site is currently undeveloped and in the process of being cleaned up by the Owner for future development. The 100-foot by 100-foot leased area will include a 70-foot by 70-foot fenced compound area at the Site ("Optasite Facility"). The Optasite Facility will be designed to accommodate the antenna arrays and associated equipment of T-Mobile and the equipment of three (3) other telecommunications carriers as well as New Milford emergency services.

The purpose of this Facility is to provide wireless telecommunications services to New Milford, including along Route 202 (Litchfield Road) and surrounding areas. See Pre-filed Testimony of Scott Heffernan ("Heffernan Testimony"). T-Mobile currently experiences significant gaps in coverage and inadequate coverage in the area. In particular, T-Mobile experiences a coverage gap along Route 202, both to the north and to the south of the Site. See Co-Applicants' Exhibit 2; September 10, 2007, 4:00 Transcript ("Tr.") at 48. A Facility at the Optasite Site will provide wireless coverage service to this area which currently suffers from inadequate coverage. Id. T-Mobile could fill its existing coverage gap along Route 202 at a height of 137' AGL at the Optasite Site. See Heffernan Testimony. Verizon testified that the Optasite Site fills its existing coverage gap in this area along Route 202 at a height of 117' AGL. March 10, 2007, 3:00 Tr. at 55.

Construction at the Optasite Site would result in no wetland impact; there are no wetlands located on the 28 plus acre Property. Co-Applicants' Exhibit 1 ("App."); Co-Applicants' Exhibit 14. The closest residence to the Optasite Site is 590 feet to the west and there are only 7 residences located with a 1,000 foot radius of the

Optasite Site. Co-Applicants' Exhibit 2. Construction of the access drive and compound would result in the removal of 23 trees (App. at Exhibit B; April 4, 2008 Tr. at 78-80) and minimal grading and ground disturbance since Optasite will be utilizing an existing driveway. April 4, 2008 Tr. at 86.

B. The Verizon Site

Verizon proposes to construct a 150-foot steel monopole telecommunications facility on a portion of a 3.85 acre parcel of land owned by the Northville Fire Department, Inc. (the "Verizon Site"). Verizon submitted its application to the Council on or about December 7, 2008. The Verizon Site is zoned residential, R-80 and is currently developed with the Northville Fire Department building and appurtenant structures. The Verizon Site would consist of a 150-foot steel monopole and associated equipment compound within a 100 foot by 100 foot leased area (the "Verizon Facility"). The stated purpose of the Verizon Site is to provide PCS coverage for Verizon along Route 202 and portions of Route 109, as well as local roads in the area. Verizon Application ("Verizon App.") at 1-2.

Construction of the Verizon Site will occur within 30 feet of an existing wetland at the Verizon Site. April 4, 2008 Tr. at 31. The closest residence to the Verizon Site is within 200 feet of the Verizon Facility and at least 5-6 residences within one-half mile of the Verizon Site. March 11, 2008, 3:00 Tr. at 41-42. Two residences will have direct, unobstructed views of the Verizon Facility. March 11, 2008, 3:00 Tr. at 43. Construction of the access drive and compound of the Verizon Site will require the construction of a retaining wall 100 feet in length and 15 feet high, as well as a net cut of 400 cubic yards. April 4, 2008 Tr. at 24-26. In addition, because of the

steep slopes at the Verizon Site, the 160-foot long access drive will be paved. April 4, 2008 Tr. at 19.

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

A. T-Mobile's Need

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 a facility in this area. See App. at Exhibit G. In addition, there can be no dispute that the Optasite Site is better suited to fill that significant public need.

T-Mobile has established that it currently experiences a 18 mile gap in coverage from New Milford center heading north on Route 202. April 4, 2008 Tr. at 36. There are no other telecommunications facilities in this area of New Milford and no utility structures or other suitably tall structures on which to locate a telecommunications facility. In particular, an existing tower located at Chestnut Land Road is located in a different search area and would not fill T-Mobile's existing coverage gap in this area, particularly along Route 202. See September 10, 2007, 4:00 Tr. at 29-30; Co-Applicants' Exhibit 8. Further, a tower proposed by Cellco Partnership d/b/a Verizon Wireless (Docket No. 332) to the north of the proposed Site is located in a different search area and would not fill T-Mobile's existing coverage gap along Route 202, particularly to the south of the Site. September 10, 2007, 4:00 Tr. at 47; Co-Applicants' Exhibit 11; Pre-filed Testimony of Scott Heffernan. In addition, T-Mobile testified that a combination of co-locations on the Chestnut Land

Road tower and the Docket 332 proposed tower would not fill T-Mobile's existing coverage gap along Route 202, particularly to the south of the Site. September 10, 2007, 7:00 Tr. at 33.

T-Mobile has established that it is currently experiencing significant coverage gaps and capacity problems along Route 202 and the surrounding area which result in inadequate coverage in this area. These communications issues can be alleviated with the construction of the Optasite Facility, which will provide benefits for both the residents and businesses in New Milford. A Facility at the proposed Optasite Site will alleviate that inadequacy. While T-Mobile testified that it could utilize the Verizon Facility to provide coverage in this area, T-Mobile also stated that the Optasite Site would provide an additional 2.5 miles of coverage for T-Mobile along Route 202. Co-Applicants' Exhibit 12; April 4, 2008 Tr. at 45. At least one resident living the immediate area expressed his support for the proposed Facility because he does not currently have coverage at his home on Wheaton Road. September 10, 2007, 7:00 Tr. at 17.

B. Need of Other Providers

In addition to the need clearly established by T-Mobile, Verizon Wireless has also expressed its need for a facility in this area. See Verizon App. Verizon testified that the Optasite Site does fill its existing coverage gap in this area of New Milford at a minimum height of 117' AGL, more than 30 feet lower than its minimum required height at the Verizon Site. See Verizon Exhibit 4; March 11, 2008 3:00 Tr. at 54-55. The Town of New Milford has also expressed its interest in locating emergency equipment on the proposed Optasite Facility. Pre-filed Testimony of Keith Coppins at

4. Clearly, the provision of reliable emergency services is important for the community and residents of this area of New Milford and is filling a vital public need.

C. The Optasite Site Provides the Optimal Solution for the Coverage Gaps in this area of New Milford, is Preferred by the Town

As discussed above, both T-Mobile and Verizon testified that co-location at the Optasite Site would fill their respective coverage gaps. In addition, in order to fill its existing coverage gap, Verizon would need a height 30 feet lower at the Optasite Site than the height it would require to provide comparable coverage at the Verizon Site. March 11, 2008 3:00 Tr. at 55. In addition, T-Mobile testified that the Optasite Site will provide an additional 2.5 miles of coverage for T-Mobile along Route 202 as compared to the Verizon Site. Co-Applicants' Exhibit 12; April 4, 2008 Tr. at 45. In addition, the Optasite Site is located at a ground elevation more than 200 feet higher than the Verizon Site. Co-Applicants' Exhibit 15. As T-Mobile testified, the ground elevation difference makes the Optasite Site preferable from a radio-frequency perspective. September 10, 2007, 7:00 Tr. at 46-47.

In addition to providing superior radio frequency coverage, the Optasite Site is also preferred by the Town of New Milford. In reference to the combined hearing on Docket 342 and Docket 355, on March 10, 2008, the Council received correspondence from the Mayor of New Milford stating the following: ". . . I'm inclined to support whichever tower provides the greater radio frequency coverage, providing increased safety response, incident reports and emergency responder efficiencies." Clearly, based on the above, the Optasite Site will provide greater radio frequency coverage. Therefore, the Optasite Site is preferred by the Town.

III. THE OPTASITE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT AND WILL HAVE LESS ENVIRONMENTAL IMPACT THAN THE VERIZON FACILITY.

In addition to demonstrating the public need for the Optasite Facility and the superiority of the Optasite Site over the Verizon Site from a radio frequency coverage perspective, 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). The Optasite Site will have extremely limited environmental impact and will have far less environmental impact than the Verizon Site.

A. The Optasite Site Will Have Minimal Environmental Impact

The record in this matter convincingly demonstrates that the Optasite 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 (Visual Resource Evaluation), K (Preliminary NEPA documentation), Co-Applicants' Exhibit 6 (Final NEPA Compliance documentation), Co-Applicants' Exhibit 4 (FAA Determination). 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 within 650 feet of the Optasite Site; neither the access nor the compound area is located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See Exhibit K, App. at 10);
- ii. No species of concern exist on the Optasite Site (See Exhibits K, Co-Applicants' Exhibit 6);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (Co-Applicants' Exhibit 6);
- iv. No listed species or designate critical habitats occur on or near the Optasite Site. (Co-Applicants' Exhibit 6);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (Co-Applicants' Exhibit 6);
- vi. The Optasite Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (Co-Applicants' Exhibit 6);
- vii. The Optasite Facility will be located outside of the 100 year flood zone; (Co-Applicants' Exhibit 6); and
- viii. The tower will not be lit (Co-Applicants' Exhibit 4).

As far as the Optasite Facility's potential visibility, the Optasite Facility is proposed to be located on the Optasite 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 or undeveloped and therefore there will be minimal visual impact on residential areas. Even the planning and zoning commission of the Town of New Milford acknowledged that the proposed Optasite Facility will have a minimal visual impact. See Co-Applicants' Exhibit 7.

Views of the Optasite Facility are expected to be limited to primarily within 0.5 miles of the Optasite Facility. The proposed Optasite Facility will be visible from only 38 acres within a two-mile radius of the proposed Optasite 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 Optasite Facility will be visible from approximately twenty-five (25) residences year-round and an additional ten (10) residences will experience limited seasonal views of the Facility. Of note, the closest residence to the Optasite Facility is 590 feet away. Co-Applicants' Exhibit 2.

Finally, construction of the Optasite Facility will utilize an existing access driveway, resulting in minimal tree removal, cut and fill and ground disturbance. Co-Applicants' App. at Exhibit B; April 4, 2008 Tr. at 79, 86. There will be virtually no drainage impacts associated with the construction of the Optasite Site because of the utilization of the existing access driveway. April 4, 2008 Tr. at 86.

As the foregoing demonstrates, any environmental impacts associated with the Optasite Facility will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of New Milford, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

B. The Verizon Site

As the record in this consolidated proceeding demonstrates, the Verizon Site will have a far greater environmental impact than the Optasite Site.

First, construction of the Verizon Site will result in activities within 30 feet of an existing wetland. See Verizon Exhibit 4 at Tab 2; April 4, 2008 Tr. at 30-31. In fact, the New Milford Inland Wetlands Commission raised concerns about the close proximity of the Verizon Site to the existing wetlands. See correspondence from New Milford dated January 16, 2008. The Inland Wetlands Commission requested that Verizon shift the proposed compound 40 feet to the south in order to reduce any impact to the wetlands on the Verizon Site and Verizon refused to do so. Verizon Exhibit 4. In addition, despite the proximity to the existing wetlands and despite the concerns raised by the Inland Wetlands Commission, Verizon did not conduct a wetlands impact analysis. April 4, 2008 Tr. at 31.

Second, construction of the Verizon Site will result in excessive excavation activities due to the steep slopes at the Verizon Site. April 4, 2008 Tr. at 24. In addition, because of the steep slopes, construction at the Verizon Site will require the construction of a 100 foot by 15 foot retaining wall. April 4, 2008 Tr. at 26.

Finally, while the visual impact analysis for the Verizon Site and Optasite show similar acreages of visibility, the Verizon Site will have a far greater visual impact on

adjacent residential properties when compared to the Optasite Site. Unlike the Optasite Site, which is located in the interior of a 28 plus acre parcel and almost 600 feet away from the closest residence (App. at Exhibit B; Co-Applicants' Exhibit 2), the Verizon Site is located within 200 feet of the closest residence and at least two residences will have direct, unobstructed views of the Verizon Facility. March 11, 2008, 3:00 Tr. at 43.

Clearly, the Verizon Site will have a far greater, negative environmental impact compared to the Optasite Site.

IV. THE OPTASITE SITE IS THE MOST APPROPRIATE ALTERNATIVE TO PROVIDE COVERAGE TO THIS AREA OF NEW MILFORD

C.G.S. § 16-50p (a)(2)(F) provides that, in making a determination during a consolidated hearing process, the Council must find that the approved application "represents the most appropriate alternative among such applications based on the findings and determinations. . ." Here, as discussed above, Verizon has testified that both the Verizon Site and the Optasite Site will satisfy its coverage objectives in this area of New Milford. See Verizon Exhibit 4; March 11, 2008 3:00 Tr. at 54-55. In addition, T-Mobile has established its need for a facility in this area of New Milford and has also established that the Optasite Site will provide an additional 2.5 miles of coverage for T-Mobile on Route 202. Co-Applicants' Exhibit 12; April 4, 2008 Tr. at 45. In addition to providing greater coverage, the Optasite Site's minimal environmental impact will be far less than the environmental impact of the Verizon Site.

C.G.S. § 16-50p (a)(2) establishes the criteria by which the Council must render a decision on a certificate application, which includes balancing the public

need for a facility and the environmental impacts. Here, the members of the Northville Fire Department and several members of the public have argued that the Verizon Site should be approved because it would provide lease revenue to the Northville Fire Department. March 10, 2008 Tr. at 18, 23. Nothing in C.G.S. § 16-50p (a) permits the Council to consider the lease revenue benefits when making a determination on an application and therefore this argument should not be considered.

V. 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 Optasite 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. In addition, Verizon has testified that the Optasite Facility will fill its coverage objectives in this area of New Milford. Verizon Exhibit 4. Both T-Mobile and Verizon have established that only one facility is

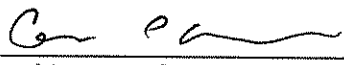
required between each carrier's existing coverage in New Milford center and the facility approved by the Council in Docket 332. April 4, 2008 Tr. at 46; March 11, 2008, 3:00 Tr. at 59. Therefore, since the Optasite Site will provide greater radio frequency coverage and will have far less environmental impact than the Verizon Site, the Optasite Site should be approved.

Accordingly, the issuance of a Certificate in Docket 342 will help avoid the construction of new telecommunications tower(s) in this area of Connecticut. Because all major telecommunications carriers could utilize the Optasite 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 this consolidated docket that approval of the Optasite Facility in this area of New Milford is necessary to provide adequate wireless coverage. The Co-Applicants have demonstrated that utilization of the Property provides the best location for a facility in this area of New Milford. In addition, the Co-Applicants have indisputably established that the Optasite Site is not only superior from a coverage and public need perspective but will also have far less environmental impact than that Verizon Site. The Optasite Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. In addition, the proposed Optasite Facility will provide co-location opportunities for Verizon, who testified that the Optasite Site would fill its coverage gap, and the Town of New Milford. As such, the Co-Applicants, Optasite and T-Mobile respectfully urge the Council to issue a Certificate for the proposed Facility in docket 342.

**OPTASITE TOWERS LLC AND
OMNIPOINT COMMUNICATIONS, INC.**

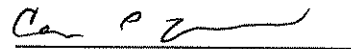
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CERTIFICATE OF SERVICE

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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