

CONNECTICUT SITING COUNCIL

DOCKET NO. 358

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IN THE MATTER OF:

CONNECTICUT
SITING COUNCIL

AN APPLICATION OF MCF COMMUNICATIONS bg, INC. AND 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
IN THE TOWN OF THOMPSON, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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POST-HEARING BRIEF

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I. INTRODUCTION

On February 22, 2008, MCF Communications bg, Inc. ("MCF") and Celco Partnership d/b/a Verizon Wireless ("Celco") (collectively the "Applicant") filed with the Connecticut Siting Council ("Council") an application (the "Application") for a certificate of environmental compatibility and public need ("Certificate"), pursuant to Sections 16-50g *et seq.* of the Connecticut General Statutes ("Conn. Gen. Stat."), for the construction, maintenance and operation of a wireless telecommunications facility at one of two proposed locations in the Town of Thompson, Connecticut. (Applicant Exhibit 1 ("App. 1")). The "Thompson 2 Facility" would provide Celco customers with much needed cellular and personal communication system ("PCS") coverage in the area and fill significant coverage gaps along Interstate 395 ("I-395") and along State Routes 200, 193 and 12, as well as local roads in the southerly portion of the Town of Thompson ("Town" or "Thompson"). (App. 1, pp. 1-4 and 11-12). These significant coverage problems must be resolved in order for Celco to continue to provide high-quality, uninterrupted wireless telecommunications coverage within its service area consistent with its Federal Communications Commission ("FCC") license and the demands of its customers. (App. 1, pp. 6-8).

The Applicant has presented, for the Council's consideration, two alternative sites, both of which would satisfy Celco's coverage objectives in the area. Either of the proposed towers would be capable of supporting antennas of additional carriers. (App. 1, pp. 2-4 and 11-12).

The Council commenced a public hearing on the Application on June 10, 2008 (6/10/08 (afternoon) Hearing Transcript ("Tr. 1"), p. 2). Prior to the afternoon session of the hearing, the Council and its staff visited each of the proposed cell sites. At the Council's request, the Applicant

caused balloons to be flown during the June 10, 2008 site visits between 8:00 a.m. and 5:00 p.m. (App. 1, p. 15; Tr. 1, pp. 19-20).

This Post-Hearing Brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”) and the Council’s directives. (6/10/08 (evening) Hearing Transcript (“Tr. 2”), p. 5). This brief evaluates the Application in light of the review criteria set forth in Section 16-50p of the Connecticut General Statutes.

II. FACTUAL BACKGROUND

A. Pre-Application History

Cellco is licensed to provide both cellular and PCS service throughout Connecticut. (App. 1, p. 8). Cellco’s existing cellular and PCS coverage in the southerly portions of Thompson extends from its existing Thompson facility to the north, an existing 250-foot lattice tower at 61 Lowell Davis Road in Thompson; and existing Putnam facility to the south, an existing 180-foot monopole tower at 154 Sayle Avenue in Putnam. (App. 1, pp. 1-2; Tab 8). Neither of these existing facilities, however, can resolve the PCS and cellular coverage problems in the area the proposed facilities would serve. (App. 1, pp. 2, 11-13; Tab 8).

MCF began searching for a cell site in the southerly portion of Thompson in 2000. At that time, MCF was working with Nextel Communications as a carrier interested in providing coverage in the area. (App. 7, pp. 1-2). Shortly after its search began, MCF secured lease agreements for the use of the property at 347 Riverside Drive (the “Site A Property”), 407 Riverside Drive (the “Site B Property”) and the Thompson Hill West Condominium Association (the “Condominium Association”) property to the north of the Site B Property. In 2003, the owners of the Site A Property and Site B Property agreed to renew and extend the land lease agreements for the proposed

tower site. The Condominium Association did not, however, agree to renew and extend its lease with MCF. (App. Exh. 7).

In accordance with the pre-filing notice requirement on February 15, 2008, the owners at the Condominium Association, as an abutter to the Site B Property, were notified of the Applicant's intent to file the Application. (App. 1; Tab 6). Shortly thereafter, the President of the Condominium Association contacted MCF regarding his desire to have the Condominium Association property considered as a third alternative. MCF declined and explained that by doing so, the pending application would be unfairly delayed. (App. 4, Resp. 8; App. 7). The Condominium Association then intervened in the Docket No. 358 proceeding and asked the Council to consider its property as a third alternative site location. If the Council was unwilling to do so, the Condominium Association asked the Council to approve Site A and deny Site B. (Tr. 1, pp. 74-75).

B. The Facility Location

The Site A Facility is located on a 1.98 acre parcel in the Town's Commercial zone district. This site is currently the home of D&R Tire and Masonry Supply Company. (App. 1; Tab 1, pp. 1 and 4). The Site A Property is surrounded by commercial/industrial land uses to the south, low-density residential uses to the north, I-395 to the east and open agricultural land to the west. Cellco determined that a 140-foot tower at this location would satisfy its coverage objectives in the area. (App. 1, pp. 2-4; Tab 1; Tab 10). The Site B Property is located on a 3.43 acre parcel in the Town's R-20 (Residential) zone district. This site is currently used for residential purposes by the landowner. The Site B Property is surrounded by single-family and multi-family residential uses to the north and south, I-395 to the east and a medical office

building to the west. Cellco determined that a 140-foot tower at this location would satisfy its coverage objectives in the area. (App. 1, pp. 2-4; Tab 1; Tab 2 and Tab 8; App. 5).

C. Local Contacts and Municipal Preference

On December 7, 2007, Cellco representatives met with Thompson First Selectman, Lawrence Groh, Jr. At this meeting, Mr. Groh received copies of technical information summarizing Cellco's plans for the telecommunications facility at either Site A or Site B. (App. 1, pp. 19-20; Tab 10; App. 1.d. (Bulk File)). In the technical information filed with the Town, Cellco also presented a third alternative tower site located on property at the Marianopolis School in Thompson. This alternative location was located in the Town's historic district and, according to the State Historic Preservation Officer, would have an "adverse effect" on existing historic resources in the area. After receiving the SHPO determination, the Marianopolis School site was rejected by Cellco and removed from further consideration. (App. 1.d. (Bulk File); App. 1; Tab 10).

The Applicant also appeared before the Thompson Planning and Zoning Commission ("PZC") on March 24, 2008, to discuss the Docket No. 358 Application. Following its review of the Application, the PZC determined that "Site A (347 Riverside Drive) would be a preferred location. This position is primarily due to the existing underlying commercial zoning and existing commercial/industrial uses which surround the property". (App. 3).

D. Tower Sharing

Consistent with its practice and its overall business purpose, MCF regularly explores opportunities to share its facilities with other wireless service providers, emergency service providers and municipalities. The proposed Thompson 2 tower would be designed and constructed

so that it could be shared by other carriers, known and unknown at the time of the Council's decision. (App. 1, p. 12).

E. The Thompson 2 Facility Proposal

MCF proposes to construct a tower at one of two locations, either of which would satisfy Cellco's coverage objectives in the southerly portion of Thompson. (App. 1, pp. 2-4 and 8). The first alternative cell site (Site A) would be located on a 1.98 acre parcel on the east side of Riverside Drive in the Town's Commercial zone district. The Site A Property is currently used by the owner as a masonry products supply business. At Site A, MCF would construct a 140-foot monopole telecommunications tower. Cellco would install a total of twelve (12) panel-type antennas with their centerline at the 137-foot level on the tower. The top of Cellco's antennas would not extend above the top of the tower. Equipment associated with the antennas would be located in a 12' x 30' shelter located near the base of the tower. All improvements associated with the Site A Facility would be located within the 100' x 100' leased area. Access to the Site A Facility would extend directly from Riverside Drive over the landowner's existing paved and gravel driveway and parking areas, a distance of approximately 225 feet. Both the tower and leased area have been designed to accommodate additional carriers and municipal antennas. (App. 1, pp. 2-4; Tab 1).

The second alternative location (Site B) would be located on a 3.43 acre parcel in the Town's R-20 (Residential) zone district. At Site B, MCF would construct a 140-foot monopole telecommunications tower. Cellco would install a total of twelve (12) panel-type antennas with their centerline at the 137-foot level on the tower. The top of Cellco's antennas would not extend above the height of the proposed tower. Equipment associated with the Cellco antennas would be located in a 12' x 30' shelter located near the base of the tower. All improvements associated

with the Site B Facility would be located within a 100' x 100' leased area. Access to the Site B Facility would extend from Riverside Drive along a portion of an existing paved driveway servicing the landlord's residence a distance of approximately 230 feet then along a new gravel driveway an additional distance of 235 feet. Both the tower and leased area are designed to accommodate additional carriers and municipal antennas. (App. 1, pp. 3-4; Tab 2).

III. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50p FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act (the "Act"), Conn. Gen. Stat. §16-50g *et seq.*, sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate . . . The council shall file, with its order, an opinion stating in full its reasons for the decision. 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, 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 and wildlife; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application. . . .

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a "public need for the facility." Conn. Gen. Stat. § 16-50p(a)(1). Second, the Applicant must identify "the nature of the probable environmental impact" of the proposed facility through

review of the numerous elements specified in Conn. Gen. Stat. § 16-50p(a)(2), and then demonstrate that these impacts “are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for the Thompson 2 Facility

The first step in the review of the pending Application addresses the public need for the proposed facility. As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and a degree of competition in mobile telephone service. (App. 1, pp. 6-9). More recently, the Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to encourage the rapid deployment of new telecommunications technologies. The Council took administrative notice of the Telecommunications Act in this docket. (App. 1, pp. 6-9; Council Adm. Notice 7).

Cellco currently provides no reliable PCS service along I-395 and Routes 200, 193 and 12 and spotty cellular service in the southerly portion of the Town. What coverage Cellco provides in this area today extends from its existing Thompson and Putnam cell sites. (App. 1; Tab 8). The record evidence in this docket clearly demonstrates the need for wireless service and, therefore, a wireless facility in southern Thompson.

The record in this docket also contains ample written evidence and testimony that Celco antennas at the 140-foot level on either the Site A or Site B towers would allow Celco to achieve its coverage objectives along I-395 and Routes 200, 193 and 12 in Thompson and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. (App. 1, pp. 2-4, 8-9 and 11-12; Tab 8). Site A at 140 feet would provide reliable coverage to an approximately 2.86 mile portion of I-395, an approximately 1.51 mile portion of Route 200, an approximately 0.85 mile portion of Route 193, an approximately 3.28 mile portion of Route 12, and an overall area of 7.3 square miles at cellular frequencies. At PCS frequencies the Site A Facility would provide approximately 2.66 miles of coverage along I-395, an approximately 1.2 mile portion of Route 200, an approximately 0.6 mile portion of Route 193, an approximately 2.65 mile portion of Route 12, and an overall area of 3.0 square miles. (App. 1, pp. 3-4).

The Site B Facility at 140 feet would provide coverage at cellular frequencies to an approximately 3.12 mile portion of I-395, an approximately 1.0 mile portion of Route 200, an approximately 1.2 mile portion of Route 193, an approximately 3.3 mile portion of Route 12, and an overall area of 7.0 square miles. At PCS frequencies the Site B Facility would provide coverage to an approximately 2.75 mile portion of I-395, an approximately 0.89 mile portion of Route 200, an approximately 0.8 mile portion of Route 193, an approximately 2.88 mile portion of Route 12, and an overall area of 3.1 square miles. This evidence and testimony remains unrefuted and would clearly support a finding that there is a need for the proposed Thompson 2 Facility. (App. 1, pp. 3-4).

B. Nature of Probable Impacts

The second step in the statutory review procedure addresses the probable environmental impacts of the proposed facility and particularly the following factors:

1. Natural Environment and Ecological Balance

The proposed development of either Site A or Site B has eliminated, to the extent possible, impacts to the natural environment. At Site A, Cellco intends to use the owner's existing driveway and parking area to access the cell site. The rear portion of the Site A Property has been previously cleared by the owner. No substantial trees would need to be removed to construct the Site A Facility. Construction activity of the Site A Facility will be restricted to the 70' x 70' tower compound. (App. 1, pp. 2-4, Tabs 1 and 2; App. 4, Resp. 34).

At Site B, Cellco would enter the site from Riverside Drive, then proceed along an approximately 230-foot portion of the landlord's existing driveway. A new gravel driveway extension an additional 235 feet will need to be constructed between the ground shelter and the site compound to the cell site. (App. 1, pp. 2-4; Tab 2).

If deemed appropriate by the Council, MCF could limit its ground disturbance and compound construction to only that area needed for Cellco's equipment shelter and the proposed tower. Future expansion of the compound to accommodate other carriers would then occur as needed. (App. 4, Resp. 34).

2. Public Health and Safety

Cellco has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the proposed Thompson 2 Facility would be minimal or nonexistent.

First, the potential for the proposed Site A or Site B towers to fall does not pose an unreasonable risk to health and safety. The proposed towers would be designed and built to meet Electronic Industries Association ("EIA") standards adopted for the State of Connecticut as part of

the State Building Code. (App. 1; Tab 1, p. 6; Tab 2, p. 6). At Site A the tower radius¹ extends onto adjacent properties to the north and south. (App. 1; Tab 1). MCF is willing to design a yield point into either proposed tower at 80 feet above ground level. (App. 4, Resp. 7). The tower radius at Site B remains entirely within the owner's parcel. (App. 1; Tab 2).

Second, worst-case potential public exposure to radio-frequency ("RF") power density for Cellco operations at the nearest point of uncontrolled access (the base of each tower) would be 8.33% of the FCC standard for Site A and Site B. Power density levels at each site would drop off rapidly as the distance from the tower increases. (App. 1, p. 16; Tab 1, p. 8; Tab 2, p. 8).

3. Scenic Values

As noted in the Application, the primary impact of any tower facility is visual. (App. 1, p. 14). The Applicant's site search methodology, described in the Site Search Summary, is designed in large part to minimize the overall visual impact of such facilities. (App. 1, Tabs 10 and 11). As discussed above, wherever feasible, Cellco attempts to avoid the construction of a new tower by first attempting to identify existing towers or other tall non-tower structures in or near its search area. (App. 1; Tab 10). In its site search summary, Cellco identified four existing tower sites and one recently approved tower site within four miles of the proposed Thompson 2 cell site. Cellco already has antennas on two of these existing structures (Cellco's Thompson and Putnam cell sites mentioned above) and intends to share the recently approved MCF tower off Rich Road, approved in Council Docket No. 344. (App. 1, p. 10; Tabs 8 and 10).

If it determines that a new tower must be constructed, MCF and Cellco first attempt to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the site would be reduced to the greatest extent possible. The Site A

¹ The tower radius is a distance, measured from the base of the tower, equal to the overall height of the tower.

Facility, for example, is located on a parcel used for commercial/industrial purposes (masonry sales and storage) in the Town's Commercial zone district. The closest residence, also in the Commercial zone, and is approximately 200 feet to the north of the Site A tower at 353 Riverside Drive. The Site A Property is surrounded by commercial/industrial and some residential land uses. (App. 1; Tab 1; App. 5).

The Site B Facility is located on a parcel used for residential purposes in the Town's R-20 (Residential) zone district. The closest residence is located approximately 210 feet to the southwest of the Site B tower site on an adjacent parcel at 403 Riverside Drive. The closest residential building in the Thompson Hill West Condominium development is located approximately 250 feet north of the Site B tower location. (App. 1; Tab 1; App. 5). The Site B Facility is surrounded primarily by single-family and multi-family land uses. A medical office building abuts the Site B Property to the west.

As the record indicates, the location of the proposed Site A or Site B towers has allowed Celco to propose structures at the minimum height required to satisfy its capacity needs in the area while eliminating, to the extent possible, visual impact on the surrounding landscape. The visual impact of either the Site A or Site B Facilities is significantly reduced or eliminated completely by (1) changes in area topography; (2) screening provided by the substantial forested area surrounding each site; and (3) the location of the tower. Overall, the Site A Facility will have less of a visual impact than the Site B Facility. (App. 1; Tab 11).

4. Historical Values

As it does with all of its tower applications, prior to filing the Application with the Council, the Applicant requested that the State Historic Preservation Office ("SHPO") of the Connecticut Historical Commission (the "Commission") review the proposed sites. (App. 1; Tab 12). Based on

her review of the information submitted by the Applicant, the Deputy State Historic Preservation Officer determined that the development of a telecommunications tower at either Site A or Site B would have “no effect” on historic, architectural or archaeological resources listed on or eligible for the National Register of Historic Places. (App. 1, p. 22; Tab 12). Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission’s review that are sufficient to warrant a denial of this Application. There is no evidence in the Docket No. 358 record that would suggest otherwise.

5. Recreational Values

There are no recreational activities or facilities at either Site A or Site B that would be impacted by the proposed tower development. (App. 1; Tab 11). There is no contrary evidence in the record to support a claim that either the Site A or Site B tower locations would impact recreation resources in the area.

6. Forests and Parks

There are no State Forests located within a two-mile radius of the cell site locations. The proposed towers will, therefore, have no impact on any State Forest lands or any of the hiking trails located therein. (App. 1; Tab 11).

7. Air and Water Quality

a. Air Quality. The equipment associated with the proposed Thompson 2 Facility would generate no air emissions under normal operating conditions. (App. 1; Tab 1, p. 7; Tab 2, p. 7). During power outage events and periodically for maintenance purposes, Cellco would utilize an on-site emergency backup generator to provide emergency power to the facility. The use of the generator during these limited periods would result in minor levels of emissions. Pursuant to R.C.S.A. § 22a-174-3, Cellco will obtain an appropriate permit from the Connecticut Department

of Environmental Protection (“DEP”) Bureau of Air Management prior to installation of the proposed generator. (App. 1; Tab 1, p. 7; Tab 2, p. 7).

b. Water Quality. The proposed Thompson 2 Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private sewage system. There are no lakes, ponds, rivers, streams, wetlands or other regulated water bodies located at either the Site A or Site B Facility locations. Thus, the proposed facility would not impact local water quality. (App. 1; Tab 1, p. 7; Tab 2, p. 7).

Cellco proposes to install a diesel-fueled back-up generator within its equipment building for use during power outages. (App. 1, pp. 2-4 and 17).

8. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, the Applicant has received comments on the proposed facility from the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and reviewed information publicly available through the Environmental and Geographic Information Center of the DEP. This information confirms that no known populations of Federal or State Endangered, Threatened or Special Concern Species occur at the site. (App. 1, pp. 15-16; Tab 12).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the proposed facility, Connecticut General Statutes § 16-50p requires that the Applicant demonstrate why these impacts “are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts associated with the proposal would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application.

As discussed above, the only potential adverse impact from the proposed towers involves "scenic values." As the record overwhelmingly demonstrates, both Site A and Site B Facilities would have minimal impacts on scenic values in the area. (App. 1, pp. 14-15; Tab 11). These limited aesthetic impacts may be, and in this case are, outweighed by the public benefit derived from the establishment of this facility. Unlike many other types of development, telecommunications facilities do not cause indirect environmental impacts, such as increased traffic and related pollution.

The limited aesthetic and environmental impacts of the proposed Thompson 2 Facility can be further mitigated by the sharing of the facility. The proposed facility is capable of supporting additional carriers and municipal antennas.

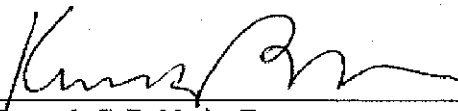
In sum, the potential environmental impacts from the proposed facility would be minimal when balanced against the significant benefits the facility would provide to the public. These impacts do not provide a sufficient basis to deny the Application. The proposed Thompson 2 Facility, therefore, satisfies the criteria for a Certificate pursuant to Connecticut General Statutes § 16-50p, and the Applicant's request for a Certificate should be granted.

Lastly, there is no evidence in the record that an alternative cell site at the Condominium Association property would have any fewer or less substantial environmental impacts than the Site A or Site B Facilities. At best, the impacts of a tower site on the Condominium Association property would be comparable, in many respects to the Site B Facility. Further pursuit of a third alternative site at this late stage of the siting process would unfairly burden MCF and delay the much needed improvement to Cellco's coverage in the Thompson area.

IV. CONCLUSION

Based on the unrefuted evidence contained in the record and the arguments presented above, Cellco has satisfied the criteria in Connecticut General Statutes Section 16-50p. Accordingly, the issuance of a Certificate to the Applicant is appropriate and fully consistent with the Act.

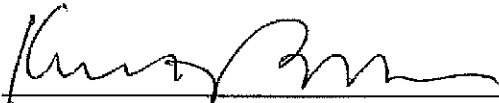
Respectfully submitted,
CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2008, a copy of the foregoing was mailed,
postage prepaid, to:

Richard W. Thunberg, Jr.
Board President
Thompson Hills West Condominium Association
Board of Trustee's
13 Westside Drive, Suite 92
North Grosvenordale, CT 06255



Kenneth C. Baldwin