

STATE OF CONNECTICUT
SITING COUNCIL

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

ORIGINAL

APPLICATION FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF A
TELECOMMUNICATIONS FACILITY
LOCATED AT 188, ROUTE 7 SOUTH,
FALLS VILLAGE (CANAAN), CONNECTICUT :

DOCKET NO. 360

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CONNECTICUT
SITING COUNCIL

**INTERVENOR JAEGER'S IDENTIFICATION OF ERRORS AND
INCONSISTENCIES IN THE CONNECTICUT SITING
COUNCIL'S DRAFT FINDINGS OF FACT**

Intervenor Jaeger submits the following statement of errors and inconsistencies in the Council's draft Findings of Fact dated February 9, 2009.

Draft Finding 17:

This Finding is inconsistent with Findings 61 and 62.

Draft Findings 18 and 34:

Cellco did not consult with the Town of Canaan, but only met with one member of the Town's three-member Board of Selectmen.

Draft Finding 23:

The Council erroneously fails to address the Inland Wetlands/Conservation Commission's concerns "regarding the possibility of attendees and staff of the school being exposed to 'low intensity, ultra-high frequency radiation.'" The Council also erroneously fails to address the scientific studies contained in Intervenor Jaeger's

following exhibits, set forth in Intervenor Jaeger's Proposed Findings of Fact dated September 2, 2008:

6. In 2005 a scientific study in Austria of a random cross-section of inhabitants living near cell towers ("base stations") showed that people living for more than one year near the towers experienced headaches, vertigo, palpitations, tremors, hot flashes, sweating, loss of appetite, loss of energy, exhaustion, tiredness, difficulties in concentration, and stress. (IJ34)

7. In 2003 a scientific study in France of a random cross-section of inhabitants living near cell towers ("base stations") showed that persons living close to cell towers experienced nausea, loss of appetite, visual disturbances and difficulty in moving. Those living within 100 meters of base stations experienced irritability, depressive tendencies, difficulties in concentration, loss of memory, dizziness, and lowering of libido. For persons living in the zone of 100 to 200 meters from base stations, the symptoms experienced included headaches, sleep disruption, feelings of discomfort and skin problems. Beyond 200 meters, the principle symptom was fatigue. (IJ35)

8. A group of doctors in Bavaria, Germany, reported in 2005 observations of patients living in the vicinity of cell towers ("base stations") experienced the following symptoms: sleep disturbance, tiredness, headache, restlessness, lethargy, irritability, inability to concentrate, forgetfulness, depression, impaired hearing, dizziness, nose bleeds, visual disturbances, joint and muscle pains, palpitations, increased blood pressure, hormone disturbances, nocturnal sweating and nausea. (IJ36)

9. In 2003, in a double-blind study conducted in the Netherlands of subjective complaints of persons exposed to wireless signals found a statistically significant relation between exposure to wireless signal and cognitive impairment including anxiety, inadequacy, reaction time, visual selection. (IJ37)

10. In 2003 a scientific study in Spain of persons exposed to wireless signals for more than six hours a day, seven days a week, at power levels far below safety guidelines, experienced symptoms such as fatigue, irritability, headache, nausea, appetite loss, discomfort, gait difficulty, sleep disturbance, depression, difficulty in concentration, memory loss, dizziness, skin alterations, visual dysfunction, auditory dysfunction and cardiovascular alterations. (IJ38)

11. In 2004 a scientific study in Sweden concluded that there was an increase in malignant melanomas of the skin related to pulsed signals from FM broadcasting antennas in Sweden, Norway and Denmark attributed to impairment of the skin repair mechanism by electronic radiation. (IJ39)

12. In 2000 as a result of scientific studies in the United Kingdom, the UK Department of Health recommended a "precautionary approach" to the placement of base stations "until more research findings become available." (IJ40)

13. In 2004 the International Association of Firefighters (IAFF) reported that some firefighters with cell towers currently located on their fire stations are experiencing symptoms that "put our first responders at risk." The IAFF specifically referred to headaches, slow response and clouded ability to make decisions caused by "a sort of brain fog" they attributed to the presence of these cell towers. At their 2004 annual convention, the IAFF members passed a resolution to study the health effects of cell towers located on fire stations and urged a moratorium on the placement of new cell towers on fire stations until the completion of the study. (IJ41)

14. In 2006 a group of scientists meeting at Benevento, Italy adopted a resolution urging a "precautionary approach" to the exposure of people to EMF and RF radiation. The resolution specifically stated: "Based on our review of the science, biological effects can occur from exposures to both extremely low frequency fields (ELF EMF) and radiation frequency fields (RF EMF)." The scientists added that "epidemiological and laboratory studies that show increased risks for cancers and other diseases from occupational exposures to EMF cannot be ignored." (IJ43)

15. In 2007, The Sunday Times in the United Kingdom reported that study of sites around mobile phone masts show "high incidences of cancer, brain haemorrhages, and high blood pressure within a radius of 400 yards of mobile phone masts." The news report stated "a quarter of the 30 staff at a special school within sight of the 90 ft high mast have developed tumors since 2000, while another quarter have suffered significant health problems." (IJ44)

16. A statement filed by the EMR Policy Institute in this proceeding under date of August 25, 2008 attaches a report on a study conducted at the request of the Federal Agency for radiation protection in Germany based on data of approximately 1,000 patients showing that the proportion of newly developing cancer cases was significantly higher among those patients who had lived during the past ten years at a distance of up to 400 metres from a cellular transmitter site, compared to patients living further away. The patients living within 400 metres of the transmitter tended to develop cancers at a younger age, and the risk of developing cancer for those living within 400 metres of the cell tower was three times higher than the rate of developing cancer for those living at a greater distance. (Ex. E to EMRPI August 25, 2008 statement.)

Draft Finding 26:

This Finding is inconsistent with Connecticut C.G.S. § 16-50p and the Council's obligation to find and determine "public need for the facility and the basis of the need."

Draft Finding 28:

The Council has erroneously failed to make any Finding concerning the environmental effects of radiofrequency emissions "to the extent that" the environmental effects of such emissions are not covered by the FCC's existing regulations -- i.e., biological effects.

Draft Finding 34 and 39:

Draft Finding 34 erroneously states that the property belongs to the Town instead of the FVFD. (see IJ 57)

Both Findings erroneously indicate that the First Selectman had authority to lease property owned by the FVFD, which is not supported anywhere in the record.

Draft Findings 43 and 44:

These Findings erroneously fail to state that the proposed monopole disguised as a tree is contrary to the recommendation of the Town Planning and Zoning Commission, as noted in Draft Finding number 22.

Draft Findings 39 to 54, Inclusive:

These Findings are inconsistent with the terms of the deed which provide for automatic reversion to the Town if the FVFD "shall sell or otherwise transfer the property." (see IJ 57)

Draft Finding 55:

This Finding omits any reference to the scientific studies referred to in the following Proposed Findings submitted by Intervenor Jaeger:

15. In 2007, The Sunday Times in the United Kingdom reported that study of sites around mobile phone masts show "high incidences of cancer, brain haemorrhages, and high blood pressure within a radius of 400 yards of mobile phone masts." The news report stated "a quarter of the 30 staff at a special school within sight of the 90 ft high mast have developed tumors since 2000, while another quarter have suffered significant health problems." (IJ44)

16. A statement filed by the EMR Policy Institute in this proceeding under date of August 25, 2008 attaches a report on a study conducted at the request of the Federal Agency for radiation protection in Germany based on data of approximately 1,000 patients showing that the proportion of newly developing cancer cases was significantly higher among those patients who had lived during the past ten years at a distance of up to 400 metres from a cellular transmitter site, compared to patients living further away. The patients living within 400 metres of the transmitter tended to develop cancers at a younger age, and the risk of developing cancer for those living within 400 metres of the cell tower was three times higher than the rate of developing cancer for those living at a greater distance. (Ex. E to EMRPI August 25, 2008 statement.)

Draft Finding 56:

This Finding erroneously omits any mention of the fact that Intervenor Jaeger jointly owns the extensive parcel of property located directly across Route 7 from the proposed tower. (IJ 48)

Draft Finding 60:

The word "at" is incorrect. The correct word is "on."

Draft Finding 62:

This Finding erroneously omits reference to Intervenor Jaeger's testimony concerning the natural vegetation maintained on her Route 7 property, as well as any reference to scientific studies showing threats to bird propagation and habitat caused by RF emissions. (IJ 5, IJ 6)

Draft Finding 63:

The statement that "the proposed facility would not affect this endangered species" is unsupported by any scientific evidence in the record. This Finding also omits any reference to DEP NDDDB maps showing the presence of the following additional State-listed species in the coverage area: Blue spotted salamander; Red-bellied snake; Northern leopard frog; Cerulean warbler; Bobolink; Meadowlark; Raven. (IJ 9, IJ 10, IJ 11)

Draft Finding 65:

The second sentence of this Finding is directly contrary to the explicit statements on page 2 of IJ 51.

Draft Finding 73:

This Finding incorrectly interprets the Migratory Bird Treaty Act (MBTA). The Act does not only prohibit the direct killing of birds, but also prohibits the taking or killing of "any part, nest, or eggs of any such bird." (16 U.S.C. §703) In addition, the Draft Finding fails to mention the studies in the record showing the killing of migratory birds by interfering with their natural navigation systems. (IJ 1, IJ 2, IJ 3)

The Finding also wholly omits reported and recorded sightings of more than 200 birds protected under the MBTA in the proposed coverage area. (IJ 49)

Draft Finding 84:

This Finding fails to describe the intended use, coverage or public need for the 700 MHz signals to be used at some unspecified future time and is therefore inconsistent with the statute and the record. The Finding does not discuss any of the other issues required to obtain certification under the statute with regard to this frequency, for which

there is no supporting evidence in the record. The Council may not permit use for 700 MHz without full statutory compliance.

Draft Finding 88:

This Finding supplies a standard for the public that is inconsistent with the findings concerning testimony by Cellco's witnesses. The Finding implies that statements by members of the public are not truthful or credible and fails to state that the Council had the power to administer oaths and conduct cross-examination of the public witnesses if it wished to do so. The Council also erroneously omits the Council's failure to call any of these witnesses at its public hearing on July 31, 2008.

Draft Finding 88 is also inconsistent with the other Findings concerning the proposed tower site, by failing to state that the Mountainside Cafe and Torrington Savings Bank are located near the proposed tower along Route 7, each within 1/2 mile of the tower site, and that both provide parking areas open to the public with easy off-road access.

Finding 88 also is erroneous by not taking administrative notice of the identity of existing carriers providing cell phone coverage within the proposed Cellco coverage area, and by not noting that the Council failed to ask members of the public testifying at the public hearing which carriers they were using.

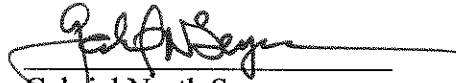
Draft Findings 89, 90 and 96:

These Findings fail to note that state law prohibits drivers from using cell phones while operating motor vehicles on these roads.

Draft Findings 93 to 95, Inclusive:

These Findings incorrectly equate Cellco's commercial needs with "public need." The Findings also fail to mention cell service provided by other carriers available for co-locating and roaming. These Findings also fail to establish "public need" for other carriers to use the proposed antennas Cellco plans to place on this tower, thereby increasing the volume of RF radiation emissions and attendant risks to humans, endangered species, and migratory birds.

Respectfully submitted,



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Attorneys for Intervenor Dina Jaeger

Falls Village, CT, February 19, 2009

CERTIFICATION

I certify that on February 19, 2009, an original and twenty copies of the foregoing Intervenor Jaeger's Identification of Errors and Inconsistencies in The Siting Council's Draft Findings of Fact were mailed by prepaid First Class mail to Connecticut Siting Council offices at 10 Franklin Square in New Britain, Connecticut, and that a copy was mailed prepaid first class mail to the following:

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February 19, 2009