



Daniel F. Caruso
Chairman

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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August 14, 2008

To: Parties & Intervenors

From: Daniel F. Caruso, Chairman

Re: **DOCKET NO. 360** - Cellco Partnership d/b/a Verizon Wireless 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.

During the recently-concluded hearing on the above-captioned docket before the Connecticut Siting Council ("Council"), a number of legal issues were raised. In addition to any matters that the parties and intervenors wish to include in their briefs, it would be particularly helpful to the Council if the briefs included:

- 1) A discussion of the standard which must be applied by the Council in approving or denying the subject application, including, but not limited to the issue of public need (what constitutes public need) as it is used in Conn. Gen. Stat. § 16-50p;
- 2) A discussion of the requirements of municipal consultation, as it is referenced in Conn. Gen. Stat. § 16-50l;
- 3) A discussion of the issue of preemption as to whether 47 U.S.C. § 332 (c)(7)(B)(iv) preempts Council consideration of issues of the effects of "radio frequency emissions" on human health if the levels of such emissions are within the levels set by the Federal Communications Commission (FCC), and whether it makes a difference whether the effects are thermal effects or not;
- 4) A discussion of the issue of preemption as to whether 47 U.S.C. § 332 (c)(7)(B)(iv) preempts Council consideration of issues of the effects of "radio frequency emissions" (RF emissions) on wildlife if the levels of such emissions are within the levels set by the FCC;
- 5) A discussion of whether any other Federal statutes or any treaties (including any treaties related to migratory birds) affect the applicability of 47 U.S.C. § 332 (c)(7)(B)(iv) to the case at hand;
- 6) A discussion of whether there is field preemption of the radio frequency area, namely, whether, even if 47 U.S.C. § 332 (c)(7)(B)(iv) or any other statutory provision does not specifically preempt Council consideration of the effects of RF emissions that are within FCC established limits, Congress preempted the field of RF emissions. (Note: as to items 3-6, the legislative history of any relevant Federal statutes, including the Telecommunications Act of 1996 and the specific provision of 47 U.S.C. § 332 (c)(7)(B)(iv), as well as any ratification proceedings of any relevant treaties would be helpful.);
- 7) A discussion of the relevance (or lack of relevance) of any speculation of future litigation and the costs thereof regarding the municipality;



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- 8) A discussion of the relevance (or lack of relevance) of issues raised regarding the relationship of the volunteer fire department with the town, including on matters concerning any lease;
- 9) A discussion of any effects not related to radio frequency emissions that the proposed facility may have on wildlife, including, but not limited to, bird strikes;
- 10) A discussion of whether the evidence in the record indicates that Verizon calls can "roam" on other carrier networks.

The deadline to submit briefs for this proceeding is September 2, 2008. Please notify the Council if more time is needed.

The Council thanks you for your thoughtful consideration of these matters.