

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
 APPLICATION OF CELCO PARTNERSHIP : DOCKET NO. 360
 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 ON :
 PROPERTY OF THE FALLS VILLAGE :
 VOLUNTEER FIRE DEPARTMENT, INC., :
 188 ROUTE 7 SOUTH, FALLS VILLAGE, :
 CONNECTICUT : JULY 24, 2008

RESPONSES OF CELCO PARTNERSHIP D/B/A VERIZON WIRELESS
TO INTERROGATORIES FROM INTERVENOR, DINA JAEGER

On July 10, 2008, Intervenor, Dina Jaeger issued Interrogatories to the Applicant, Cellco Partnership d/b/a Verizon Wireless ("Cellco"), relating to the above-captioned docket. Below are Cellco's responses.

Question No. 1

Who decided to solely consult with the First Selectman of Falls Village instead of the full Board of Selectmen?

Response

Section 16-50l(e) of the General Statutes states that the "consultation with the municipality shall include, but not be limited to, a good faith effort to meet with the chief elected official of the municipality. At the time of the consultation, the applicant shall provide the chief elected official with any technical reports concerning the public need, the site selection process and the environmental effects of the proposed facility."

As discussed at the July 1, 2008 public hearing and as described in the Docket No. 360 application, Cellco representatives met with Canaan's First Selectman Patricia Mechare on October 23, 2007 in accordance with Connecticut General Statutes Section 16-50l(e). At that meeting Cellco offered to meet with any other municipal boards, commissions or officials that may be interested in hearing more about Cellco's tower proposal.

While Cellco was not invited to attend any additional meetings, the Canaan Board of Selectmen, Planning and Zoning Commission and Inland Wetlands/Conservation Commission all provided comments on Cellco's tower proposal. Those comments have been made a part of the Connecticut Siting Council ("Council") Docket No. 360 record.

Question No. 2

What consideration was given to the possibility of a conflict of interest based on a relationship between the First Selectman and any present or past officer of the Falls Village Volunteer Fire Department?

Response

Cellco has no knowledge of any possible or actual conflict of interest nor does it believe that any such conflict of interest, if one exists, would be relevant to this proceeding.

Question No. 3

Were any inquiries made as to such relationship?

Response

See response to Question No. 2.

Question No. 4

Did you at any time consider expanding your municipal consultation to include the full Board of Selectmen? If not, why not?

Response

No. As discussed in response to Question 1 above, during its initial meeting with the First Selectman on October 23, 2007, Cellco offered to meet with any other municipal boards, commissions and/or officials interested in learning more about the tower proposal. Cellco did not receive a request to attend any additional meetings.

Question No. 5

Has any consideration been given to the possibility of a taxpayer suit to enjoin Cellco's operation and terminate the lease based on the reversion clause in the Town's grant of land to the Falls Village Volunteer Fire Department?

Response

The Council, in making its decision on the Docket No. 360 application, may not consider any issue related to Cellco's lease-hold interest in the Falls Village Volunteer Fire Department ("FVFD") property. *See* Conn. Gen. Stat. § 16-50p(g). Matters related to speculative legal action regarding Cellco's lease are not relevant in this proceeding and are outside the scope of the Council's jurisdiction.

Question No. 6

Has Cellco's attorney reviewed the risk of reversion of the land to the Town once the tower is erected?

Response

The Council, in making its decision on the Docket No. 360 application may not consider any issue related to Cellco's lease-hold interest in the FVFD property. *See* Conn. Gen. Stat. § 16-50p(g). Matters related to the "risk of reversion" of the FVFD's property and its impact on the Cellco lease are not relevant in this proceeding and outside the scope of the Council's

jurisdiction. Further, Cellco objects to this interrogatory to the extent to which it seeks disclosure of an opinion rendered by Cellco's counsel as such information is protected by the attorney-client privilege and the work product doctrine.

Question No. 7

If, in the future, a neighboring resident were to bring suit against Cellco, the Falls Village Fire Department and/or the Town seeking damages for cancer or other illness allegedly caused by the tower operation, who will pay the attorneys' fees to defend the Falls Village Volunteer Fire Department and the Town?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction and irrelevant in this proceeding.

Question No. 8

What is the worst case scenario as to the legal costs of defending such an action?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for

such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction and irrelevant in this proceeding.

Question No. 9

Does the Cellco-Verizon lease provide for insuring the Falls Village Volunteer Fire Department and the Town against such claims? If so, in what amount?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction. Additionally, the Council, in making its decision on the Docket No. 360 application, may not consider any issue related to Cellco's lease-hold interest in the Falls Village Volunteer Fire Department property. *See Conn. Gen. Stat. § 16-50p(g).*

Question No. 10

Does the Federal Migratory Bird Treaty Act preempt the authority of the Connecticut Siting Council in the placement of cell towers where they may adversely impact on migratory birds

- a) in flight?
- b) mating?
- c) nesting?
- d) their food supply?

Response

Cellco objects to this interrogatory on the basis that it calls for a legal conclusion.

Subject to and without waiving this objection, Cellco offers the following.

The federal Migratory Bird Treaty Act of 1918 (“MBTA”) is a law that affirms and implements the various treaties and conventions between United States, Canada, Japan, Mexico, and the former Soviet Union, which call for the protection of migratory birds. The MBTA makes it unlawful to “to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess” any migratory bird, unless permitted by regulation. *16 U.S.C. § 703*.

The MBTA provides that “[n]othing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of this Act, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs...” *16 U.S.C. § 708*. Therefore, under the MBTA, states may regulate the pursuit, hunting, taking, capture, or possession of migratory birds provided that such state regulations are consistent with the Act or give further protection to migratory birds. Furthermore, *16 U.S.C. § 708* implies that the MBTA preempts state law if the state’s laws concerning the protection of migratory birds are inconsistent with the MBTA.

It is also worth pointing out that the design of the proposed Falls Village tower is consistent with guidelines developed by the U.S. Fish & Wildlife Service (“USFWS”) to minimize the potential for impacts to birds. (*See Services Interim Guidelines for Recommendations on Communications Tower Siting, Construction, Operation, and Decommissioning* attached hereto as Exhibit 1; Council Admin. Notice Item 18).

- Cellco, as a matter of practice, seeks to collocate antennas on existing communication towers or other structures wherever possible. As discussed in the Application, Cellco has already collocated antennas on existing towers to the north (Cellco's North Canaan facility) and south (Cellco's Sharon North facility) of the Falls Village facility. No existing towers or other sufficiently tall structures are located in the Falls Village area. (USFWS Guideline No. 1).
- Cellco's Falls Village tower is less than 200 feet in height; is self-supporting; does not require the installation of guy wires; and does not require the installation of FAA lighting. (USFWS Guideline No. 2).
- The Falls Village facility will encompass a small "footprint" of 50 feet by 75 feet and require the removal of only six trees with a diameter of 6" or greater at breast height. The area from which the facility will be accessed is presently cleared and will be developed in the near future as a part of the new FVFD firehouse complex. (USFWS Guideline No. 7).
- The Cellco tower will be designed to accommodate three additional wireless carriers, Town and FVFD antennas. (USFWS Guideline No. 9).
- Security lighting on Cellco's equipment shelter will include down-shielding. (USFWS Guideline No. 10).
- As a matter of practice, the Council includes a condition of approval in all tower dockets that requires a tower be removed if it ceases to provide wireless service for one year. (USFWS Guideline No. 12).

Question No. 11

Did Cellco conduct any investigation of the presence of migratory birds in the proposed coverage area? If so, what species were found to be present?

Response

Cellco's environmental consultant performed investigations of the habitat present at the FVFD property including Cellco's leased area. During the site inspection, various bird species common to Connecticut were observed. Similar investigations were not performed throughout the Falls Village coverage area.

Question No. 12

Are any of the migratory birds found in the proposed coverage area birds protected under the Migratory Bird Treaty Act?

Response

It would come as no surprise that several of the migratory bird species identified in the Migratory Bird Treaty Act occur within the coverage area for the proposed Falls Village facility. The official listing of migratory birds protected under the MBTA includes hundreds of species that are common to Connecticut.

Question No. 13

Do you disagree with the findings of ornithologist John McNeely as to migratory bird sightings in the Beebe Hill vicinity? If so, in what respects?

Response

Cellco's environmental consultants have no reason to disagree with Mr. McNeely's conclusion. It would come as no surprise that several of the migratory bird species identified in the Migratory Bird Treaty Act occur within the coverage area for this proposed site.

Question No. 14

Do you dispute the statements of any of the members of the public at the hearing on July 1, 2008 as to their sightings of birds in the proposed coverage area?

Response

Cellco's environmental consultants have no reason to disagree with statements from the general public regarding bird sightings. It would come as no surprise that several of the migratory bird species identified in the Migratory Bird Treaty Act occur within the coverage area for this proposed site.

Question No. 15

Does the federal Bald Eagle Protection Act preempt the authority of the Connecticut Siting Council in the placement of cell towers where they may adversely impact on Bald Eagles,

- a) in flight?
- b) mating?
- c) nesting?
- d) their food supply?

Response

Cellco objects to this interrogatory on the basis that it calls for a legal conclusion. Subject to and without waiving this objection, Cellco offers the following: The federal Bald Eagle Protection Act ("BEPA") makes it unlawful for anyone (including associations, partnerships and corporations) in the U.S. or within its jurisdiction to "knowingly, or with wanton disregard for the consequences of his act, take, possess, sell, purchase, barter...transport, export, or import" any bald eagle or its parts, nests, or eggs. *See 16 U.S.C. § 668.* BEPA defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

16 U.S.C. § 668(c). BEPA also defines “transport” as “ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation.” *Id.*

BEPA authorizes the Secretary of Interior to enforce its provisions. 16 U.S.C. § 668(b). If compatible with the preservation of bald and golden eagles, the Secretary of the Interior has the authority to issue regulations that permit the taking, possession and transportation of bald eagles for scientific or exhibition purposes, for religious purposes of Indian tribes or for the protection of wildlife, agricultural or other interest. 16 U.S.C. § 668a. If requested by a state governor, the Secretary may authorize the taking of eagles to protect the domesticated flocks and herds in such state.

As previously discussed, the proposed Falls Village facility design is consistent with the guidelines established by the USFWS to minimize impacts to birds. The proposed cell site is more than 0.2 mile from the Housatonic River (a potential food supply source) and the habitat at the FVFD property is not ideal for eagle nesting. In New England, the eagle nest tree is typically a tall white pine that extends above the surrounding tree canopy generally within 120 feet from water.¹ The FVFD property does not support such nesting habitat. More suitable nesting habitat exists elsewhere in the larger geographic region.

Bald eagles build their nests in large trees near rivers or coasts. A nest is between 5 and 9 feet in diameter. Eagles often use the same nest year after year. No such nests have been observed at the FVFD property or in the immediate vicinity. Even when a nest tree falls or a strong wind blows a nest down, the established pair usually rebuilds at or near the site within a few weeks if it is near the breeding season.

¹ Bevier, L.R. (1994). The Atlas of Breeding Birds of Connecticut. State Geological and Natural History Survey of Connecticut, Bulletin 113.

Question No. 16

Does Cellco's environmental consultant have any understanding or explanation as to why Bald Eagles have been observed in the proposed coverage area?

Response

Bald Eagles have made a strong comeback in several areas of Connecticut over the past 15 years. The return of these birds in the Falls Village area may be associated with the presence of the Housatonic River, a river that offers potential areas for nesting and a food supply for the Bald Eagle.

Question No. 17

What is the primary food source for Bald Eagles?

Response

Bald eagles which live along the coast and on major lakes and rivers feed mainly on fish. Even though they are fish eaters, they are known to take ducks, birds or other prey that is available and easiest to obtain. The hunting area or home range patrolled by a bald eagle varies from 1,700 to 10,000 acres. Home ranges are smaller where food is present in great quantity.

Question No. 18

Are there any such food sources for Bald Eagles in the proposed coverage area? If so, please identify their location.

Response

We would expect that suitable fish species are present in area watercourses and water bodies. The Housatonic River would, for example, be considered a potential resource for these species.

Question No. 19

What endangered and listed species have been identified by Cellco's environmental consultant as found in the proposed coverage area?

Response

As discussed in the Docket No. 360 application, Cellco, as a part of its National Environmental Policy Act ("NEPA") checklist, solicits comments on the proposed facility from the USFWS and the Connecticut Department of Environmental Protection ("DEP") regarding potential impacts on known populations of Federal and State Endangered, Threatened or Special Concern species occurring at the proposed tower site. In response to this solicitation, the USFWS determined that there are no federally listed or proposed, threatened or endangered species or critical habitat known to occur at the FVFD property. In its response, the DEP indicated that there were "records for State Endangered *Lota lota* (burbot) from the nearby Hollenbeck River" and "historic records for the State Special Concern *Passerculus sandwichensis* (savannah sparrow) from this part of Canaan." In subsequent correspondence, dated March 18, 2008, the DEP determined that "there will be no conflict with the State Endangered burbot" due to the fact that the Hollenbeck River is located more than two miles from the proposed FVFD property. In a letter dated November 27, 2007, the DEP also confirmed that "the project is unlikely to have a direct negative impact" on the savannah sparrow. (See Cellco Application, Tab 11).

Cellco's environmental consultant did not perform an evaluation of areas beyond the property for the presence of endangered and/or listed species. It is Cellco's opinion that if such species are present within the proposed coverage area, construction and operation of the facility would have no direct impact upon such species.

Question No. 20

Has Celco's consultant determined whether the Blue Spotted Salamander has been found in the proposed coverage area?

Response

The Blue-spotted salamander (*Ambystoma laterale*) is considered a State threatened species and is not a federally listed rare species. This species was not identified by the DEP as a species that occurs on or proximate to the subject property or would be impacted by the proposed Falls Village tower project. See Celco Application Tab 11. Celco's environmental consultants have completed an extensive review of wildlife habitat on the property and have found no evidence of the existence of Blue-spotted salamanders. Blue-spotted salamanders utilized a wide variety of habitats in and near wooded swamps² and favor grassy, floodplain wetlands for breeding (Klemens 1993) but will also use ponds or semi-permanent water for breeding³. No wetlands (e.g., wooded swamps, etc.) are located on or adjacent to the subject property. Two seasonal intermittent watercourse features are located along the north and south property boundaries, respectively. These seasonal intermittent watercourses do not support Blue-spotted salamander habitat. The Housatonic River, located approximately 1,200 feet southwest of the proposed facility, may provide suitable habitat for the Blue-spotted salamander. Therefore, the subject property does not support habitat for the Blue-spotted salamander and the proposed development will not result in an adverse impact to the Blue-spotted salamander.

²Klemens, M. W. (1993). Amphibians and Reptiles of Connecticut and Adjacent Regions. State Geological and Natural History Survey of Connecticut, Bulletin 112.

³DeGraaf, R.M. and M. Yamasaki. (2001). New England Wildlife: Habitat, Natural History, and Distribution. University Press of New England, Hanover, NH.

Question No. 21

What personnel are on duty at the Falls Village Volunteer Fire Department head quarters during the course of a 24-hour day? What are their responsibilities?

Response

Cellco objects to this question as irrelevant. Subject to and without waiving this objection, Cellco states that it is not familiar with personnel staffing practices at the FVFD headquarters.

Question No. 22

Have you considered the effect of any of the following conditions (reported in European studies of health effects from RF emissions) on the effectiveness of such Fire Department personnel in performing their responsibilities?

- a) headaches
- b) fatigue and urge for sleep
- c) inability to concentrate
- d) short-term memory loss

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction.

Question No. 23

Specifically would any of those symptoms affect the efficiency and reliability of persons acting as dispatchers to provide accurate directions and prompt communications to first responders?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction.

Question No. 24

Are you familiar with the 2004 resolution of the International Association of Fire Fighters objecting to cell tower siting on or near firehouses?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction.

Question No. 25

What is your understanding of the basis for the IAFF resolution?

Response

Objection. Pursuant to the provisions of the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B)(iv), the Council is preempted from regulating the placement, construction or modification of telecommunications facilities on the basis of concerns for the environmental effects of radio frequency emissions, provided the facility conforms to the FCC guidelines for such emissions. Questions directly or indirectly related to such environmental effects are, therefore, outside the scope of the Council's jurisdiction.

Question No. 26

Is there any possibility that use of either of the proposed frequencies on the Celco tower will interfere with transmission of radio communications from Police, Fire or Safety personnel during emergencies?

Response

Objection. Issues related to Radio Frequency Interference ("RFI") are preempted by Federal law and are therefore outside the scope of the Council's jurisdiction. Subject to and without waiving this objection, Celco offers the following: Any communications devices operating in proximity to each other have the potential to interfere with each other. Proper equipment specifications, proper maintenance, separation of antennas and adherence to FCC specifications all serve to minimize the probability of interference. As the Council is aware, Celco and other wireless service providers regularly collocate on towers with public safety communications facilities throughout the state, without issue. If, in the rare instance, an interference issue were to arise, Celco would work with the emergency service provider to correct the problem.

Question No. 27

Is there any possibility that use of either of the proposed frequencies on the Cellco tower will interfere with proper transmission of radio communications by Police, Fire or Safety vehicles?

Response

Issues related to RFI are preempted by Federal law and are therefore outside the scope of the Council's jurisdiction. Subject to and without waiving this objection, Cellco offers the following: Any communications devices operating in proximity to each other have the potential to interfere with each other. Proper equipment specifications, proper maintenance, separation of antennas and adherence to FCC specifications all serve to minimize the probability of interference. As the Council is aware, Cellco and other wireless service providers regularly collocate on towers with public safety communications facilities throughout the state, without issue. If, in the rare instance, an interference issue were to arise, Cellco would work with the emergency service provider to correct the problem.

Question No. 28

What percentage(s) of the FCC regulated power level will exist at the new Firehouse (located 90 feet from the tower) when the cell tower is at full operation with all antennas in use?

Response

The cumulative percentage of the FCC's maximum permissible exposure level at a point approximately 90 feet from the base of the tower would be 13.8% of the FCC standard.


CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of July, 2008, a copy of the foregoing was sent via

Federal Express and by electronic mail to:

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