

CONNECTICUT SITING COUNCIL
DOCKET NO. 361

IN THE MATTER OF:

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 OFF
NORFOLK ROAD, WINCHESTER, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

Submitted by:

Joey Lee Miranda, Esq.
Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
(860) 275-8200

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EXECUTIVE SUMMARY

On April 10, 2008, Cellco Partnership d/b/a Verizon Wireless ("Cellco") filed an application ("Application") with the Connecticut Siting Council ("Council") for a Certificate of Environmental Capability and Public Need ("Certificate") to construct a wireless telecommunications facility off Norfolk Road in Winchester, Connecticut ("Winchester Facility"). The proposed Winchester Facility would provide for much needed coverage along the heavily-traveled Route 44 and Route 183, as well as local roads in the northerly portion of Winchester.

Facility Description

Cellco proposes to construct the Winchester Facility in the central portion of the 63-acre heavily-wooded vacant parcel located off Norfolk Road (Route 44) in Winchester. At the Winchester Facility, Cellco would construct a 150-foot tower. At the top of the tower, Cellco would install six Personal Communication Service ("PCS") and six cellular antennas. Cellco would also install a 12' x 30' shelter located near the base of the tower to house its radio equipment and a back-up generator. Access to the Winchester Facility would extend from Norfolk Road following portions of an existing logging road, a distance of approximately 1,268 feet to the cell site.

Public Need

Cellco currently experiences a significant gap in coverage between its existing Colebrook SW cell site at 161 Pinney Street in Colebrook and its existing Winchester East cell site off Oakdale Avenue in Winchester. At PCS frequencies, the proposed Winchester Facility would provide reliable service to a 3.01 mile portion of Route 44, a 1.75 mile portion of Route 183 and

an overall area of 5.0 square miles. At cellular frequencies, the proposed facility would provide reliable service to a 3.4 mile portion of Route 44, a 3.5 mile portion of Route 183 and an overall area of approximately 8.9 square miles.

Nature of Probable Impacts

The only potential adverse impact from the proposed tower involves “scenic values.” The overall area where some portion of the proposed Winchester Facility would be visible is limited to approximately 33 acres. Areas where seasonal views are anticipated comprise an additional four (4) acres and are located within the immediate vicinity of the proposed Winchester Facility and along Route 183, approximately 0.50 miles east of the Winchester Facility. At least partial year-round views may be possible from select portions of five residential properties within the study area. This includes three residences along Route 183 (Colebrook Road) approximately 0.50 miles east of the proposed cell site and two residences off Norfolk Road (Route 44) nearly two miles from the proposed cell site.

During the course of the proceeding, two Colebrook Road property owners expressed concerns about the visibility of the Winchester Facility from their properties. As a result, the Council requested that Cellco evaluate the possibility of relocating the facility to another location on the Property to the west of the proposed cell site location. After evaluating potential alternative locations, Cellco determined that relocating the Winchester Facility to the west would prevent Cellco from satisfying its coverage objectives in the area, would not address the visibility concerns raised at the hearing and would, in fact, increase the overall visibility of the tower from the Colebrook Road properties.

Conclusion

The evidence in the record clearly demonstrates that there is a need for the proposed Winchester Facility and that the limited environmental impacts from the proposed facility would be minimal when considered against its benefits. Therefore, the Council should approve the Application as submitted.

I. INTRODUCTION

On April 10, 2008, Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “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 off Norfolk Road in Winchester, Connecticut (the “Winchester Facility”). (Cellco Exhibit 1 (“Cellco 1”)). Cellco currently experiences a significant gap in coverage between its existing Colebrook SW cell site at 161 Pinney Street in Colebrook and its existing Winchester East cell site off Oakdale Avenue in Winchester. These existing coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted and reliable wireless telecommunications service consistent with its Federal Communications Commission (“FCC”) license and to meet the demands of its wireless telecommunications customers. The Winchester Facility would provide for much needed coverage along the heavily-traveled Route 44 and Route 183, as well as local roads in the northerly portion of Winchester. (Cellco 1).

II. PROCEDURAL BACKGROUND

The Council conducted an evidentiary and public hearing on the Application on July 8, 2008. (July 8, 2008 Transcript (afternoon) (“TR1”) at 2; July 8, 2008 Transcript (evening) (“TR2”) at 2). Prior to the afternoon session of the hearing, the Council and its staff visited the Property. At the Council’s request, Cellco caused a balloon with a diameter of approximately four (4) feet to be flown at the proposed tower location, at 150 feet above ground level (“AGL”) during the site visit. (Cellco 1; TR1 at 24-25).

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. (TR2 at 49). This brief evaluates the Application in light of the review criteria set forth in Section 16-50p of the Connecticut General Statutes and addresses several other issues raised throughout the course of this proceeding.

III. FACTUAL BACKGROUND

A. Pre-Application History

Cellco is licensed to provide both PCS and cellular service throughout Connecticut. Cellco currently experiences a significant gap in coverage between its existing Colebrook SW cell site at 161 Pinney Street in Colebrook and its existing Winchester East cell site off Oakdale Avenue in Winchester. (Cellco 1).

Cellco began a search for an appropriate location for a facility to resolve these significant coverage problems in 2004. (Cellco 3, Response (“Resp.”) 2). As a first step in its site search process, Cellco investigates whether there are existing towers in the area that can be used to satisfy its coverage objectives. There are no other existing towers in the vicinity. Cellco also regularly investigates the use of existing, non-tower structures in an area as an alternative to building a new tower. No existing non-tower structures of suitable height exist, however, in the northerly portion of Winchester. If a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the facility could be reduced to the greatest extent possible. (Cellco 1). Cellco selected the location for the proposed Winchester Facility in such a manner as to allow it to build and to operate a high-quality wireless system with the least environmental impact.

B. Local Contacts

On October 10, 2007, Cellco representatives met with Town Manager, Owen J. Quinn, as designee for Mayor Maryann D. Welcome and Town Planner, Charles Karno to discuss the proposed Winchester Facility. (TR1 at 23-24). At that meeting, Mr. Quinn received copies of technical information summarizing Cellco's plans to establish a telecommunications facility at the Property in Winchester ("Technical Report"). On October 25, 2007, Cellco also sent additional copies of the Technical Report to Mayor Welcome. (Cellco 1.d).

C. Tower Sharing

Consistent with its practice, Cellco regularly explores opportunities to share its facilities with other wireless service providers. Cellco has designed the 150-foot tower so that it could be shared by other carriers. Prior to filing its Application, Cellco contacted representatives for Sprint Nextel Corporation ("Sprint/Nextel"), Omnipoint Communications Inc. d/b/a T-Mobile ("T-Mobile") and New Cingular Wireless PCS LLC d/b/a AT&T ("AT&T") and alerted them of Cellco's plans for the Winchester Facility. (Cellco 1). Although it did not participate in this proceeding due to budget constraints, AT&T submitted a letter indicating that it had a need in the area and intends to co-locate on the proposed facility.

During the course of its meeting with municipal officials in Winchester, Cellco agreed to provide access to the tower, at no cost, to the Town and to emergency service providers in the Town. Cellco would also agree to make ground space in the facility compound available, if needed. (Cellco 1).

D. The Winchester Proposal

The Winchester Facility would be located within a 50' x 75' fenced compound in the central portion of an approximately 63-acre parcel ("Property") owned by Win 21 LLC. The

Property is located north of Route 44 and is a heavily-wooded vacant parcel. (Cellco 1; TR1 at 11). At the Winchester Facility, Cellco would construct a new 150-foot tall tower and install twelve (12) panel-type antennas at the top of the tower – six (6) PCS and six (6) cellular. The top of the Cellco antennas would extend to an overall height of approximately 153 feet above ground level. (Cellco 1; Cellco 4).

Cellco would install a 12' x 30' single-story shelter near the base of the tower to house Cellco's receiving, transmitting, switching, processing and performance monitoring equipment and the required heating and cooling equipment. A diesel-fueled back-up generator would be installed within a segregated room in Cellco's equipment shelter for use during power outages and periodically for maintenance purposes. The tower and equipment shelter would be surrounded by an 8-foot high security fence and gate. Vehicular access and utility service to the Winchester Facility would extend from Norfolk Road (Route 44) following portions of an existing logging road, a distance of approximately 1,268 feet to the cell site. (Cellco 1).

IV. 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 ("PUESA"), 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 Winchester 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. 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. (Cellco 1).

Cellco currently experiences a significant gap in coverage between its existing Colebrook SW Site at 161 Pinney Street in Colebrook and its existing Winchester East Site off Oakdale Avenue in Winchester. These existing coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted and reliable wireless telecommunications service consistent with its FCC license and to meet the demands of its wireless telecommunications customers. The Winchester Facility would provide for much needed coverage along the heavily-traveled Route 44 and Route 183 as well as local roads in the northerly portion of Winchester. (Cellco 1).

Cellco is proposing to install both PCS and cellular antennas at the Winchester Facility. (Cellco 1; Cellco 4). During the course of the proceeding, several questions were raised about whether there is a need for both cellular and PCS coverage. Cellco holds licenses for both cellular and PCS service in Litchfield County. (Cellco 4). Cellular and PCS services transmit at different frequencies, which permits more customers to use the same cell site for voice or data services. By installing both PCS and cellular antennas at the Winchester Facility, Cellco can ensure that it has more capacity available to meet the growing demand from its customers for wireless voice and data services. (TR1 at 16-17, 36-40; TR2 at 48).

The record contains ample, written evidence and testimony that a 150-foot tower at the Property would allow Cellco to achieve and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. The Winchester Facility would be incorporated into a network design plan, intended to provide Cellco customers with reliable

wireless service along Route 44 and Route 183 as well as along local roads in the northerly portion of Winchester where coverage is currently unreliable or non-existent. (Cellco 1).

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 the Winchester Facility at the Property has eliminated, to the extent possible, impacts on the natural environment. All Winchester Facility improvements would be located within the 100' x 100' leased area. Access to the Winchester Facility would extend from Norfolk Road (Route 44) following portions of an existing logging road, a distance of approximately 1,268 feet to the cell site. (Cellco 1).

Site topography generally slopes from north to south. Clearing and grading of the facility compound area and portions of the access driveway will be required. Most of the clearing and grading would occur in areas that were previously disturbed from logging operations that were conducted on the Property. (Cellco 1).

Construction of the site compound and access road will require clearing of approximately 30 trees with a six inch (6") diameter at breast height ("dbh"). (TR2 at 41). The average grade of the access road would be sixteen percent (16%). (TR1 at 26, 28). Two sections of the access road, totaling approximately 480 linear feet, would have a twenty-four percent (24%) grade. (TR1 at 28; TR2 at 41). These two portions of the access driveway lead to other areas of the access driveway with gentler slopes at grades of approximately four percent (4%) and are not located proximate to any public roads. (TR1 at 49). All portions of the access driveway with a grade steeper than ten percent (10%) would be paved. (TR1 at 10-11). To avoid adverse impacts

from paving, Cellco would install appropriate drainage features at the site. (Cellco 1; TR1 at 12-13).

Overall, the limited construction activity at the Property would have a negligible environmental impact, especially in light of previous logging activities on the Property. No evidence to refute this conclusion was presented to the Council.

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 facility would be minimal or nonexistent.

First, the potential for the Winchester Facility 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. Other than the proposed equipment shelter, there are no structures within the fall radius of the tower and the fall radius would remain entirely within the limits of the Property. There are no residences within 1,000 feet of the Winchester Facility. The nearest residence is located approximately 1,850 feet to the north of the Winchester Facility. (Cellco 1).

Second, worst-case potential public exposure to RF power density for operation of the Winchester Facility at the nearest point of uncontrolled access (the base of each tower) would be 20.08% of the FCC standard. Power density levels would drop off rapidly as distance from the towers increases. (Cellco 1; Cellco 4).

Overall, the nature and extent of potential, adverse public health and safety impacts resulting from construction and installation of the Winchester Facility would be minimal or nonexistent. No evidence to refute this conclusion was presented to the Council.

3. Scenic Values

As noted in the Application, the primary impact of any tower is visual. Cellco's site search methodology, described in the Site Search Summary, is designed in large part to minimize such visual impact. As discussed above, wherever feasible, Cellco avoids construction of a new tower by first attempting to identify existing towers or other tall non-tower structures in or near the search area. Cellco already has antennas located on the four (4) existing towers in the immediate area. No existing non-tower structures of suitable height exist in the northerly portion of Winchester. (Cellco 1).

If it determines that a new tower must be constructed, Cellco attempts 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. There are no commercial or industrial zoned areas proximate to the Property. The Winchester Facility would be located in the center of the Property adequately buffered from adjacent properties. The Property is currently undeveloped and heavily-wooded. The Property is surrounded by the Algonquin State Forest to the north, west and south (across Route 44) and heavily-wooded vacant and low-density residential land to the east. (Cellco 1).

Cellco submitted a Visual Resource Evaluation Report prepared by VHB ("VHB Report") as a part of the Application. Prior to preparing the report, VHB conducted a balloon float at the Property. After conducting this balloon float and field reconnaissance, VHB determined that the proposed towers would be partially visible year-round from approximately 33 acres, or less than one-half of one percent of the 8,042-acre study area. Areas where seasonal views are anticipated comprise an additional four (4) acres and are located within the immediate vicinity of the proposed tower site and along select portions of Route 183, approximately 0.50 miles east of

the Winchester Facility. At least partial year-round views may be possible from select portions of five residential properties within the study area. This includes three residences along Route 183 approximately 0.50 miles east of the site and two residences off Norfolk Road (Route 44) nearly two miles from the site. In the end, VHB concluded that the Winchester Facility will not represent a significant adverse visual impact on the surrounding landscape. (Cellco 1). VHB routinely verifies the results of its visual analyses in the field after a facility has been constructed and has found that its model is ninety-eight percent (98%) accurate. (TR2 at 35).

Nevertheless, during the course of the proceeding, two (2) property owners located on Colebrook Road raised concerns regarding the visibility of the upper portion of the Winchester Facility tower. (TR2 at 9-19). In response to these concerns, the Council asked whether Cellco could relocate the tower further to the west to potentially reduce or eliminate visibility from these residences. (TR2 at 23). In response to the Council's request, Cellco investigated potential alternative locations on the Property where it may be feasible to construct the Winchester Facility. *See* Late-Filed Exhibit of Cellco Partnership d/b/a Verizon Wireless, dated August 7, 2008 ("Cellco LFE").

Based on a review of topographic maps, Cellco initially identified three potential locations to the west of the location originally proposed for the Winchester Facility. Upon investigating these locations in the field, however, one location was determined to be unsuitable because of steep grades and the presence of a seasonal, intermittent watercourse. The two other potential, alternative locations – one approximately 300 feet to the west ("Alternative 1") and one approximately 500 feet to the west ("Alternative 2") of the location originally proposed for the

Winchester Facility – were found to be suitable from a civil engineering perspective and for avoiding impacts to wetlands or watercourses. (Cellco LFE).

Once the Alternative 1 and Alternative 2 sites were determined to be suitable for these purposes, the locations were evaluated to determine if they would meet Cellco’s coverage objectives in the area. Alternative 2 was eliminated as a potential location because it was determined that a tower greater than 200 feet in height would be needed for Cellco to meet its Winchester coverage objectives. Once Alternative 2 was eliminated as a suitable location, the coverage available from a facility at the Alternative 1 location was evaluated at various heights. Cellco determined that it could achieve the best coverage from a facility at the Alternative 1 location at a height of 180 feet. However, even with a facility at 180 feet at Alternative 1, Cellco would experience gaps in coverage, totaling approximately one quarter mile along both Route 44 and Route 183. Cellco then evaluated the possibility of increasing the height of the tower at the Alternative 1 location to 200 feet in an attempt to fill these coverage gaps. Due to severe topography in the area, increasing the height of the facility to 200 feet would not fill the gaps in coverage along Route 44 and Route 183 created by relocating the facility to the west.¹ Thus, Cellco determined that it would not be able to achieve comparable coverage or fulfill its coverage objectives in the area with a facility at the Alternative 1 location. (Cellco LFE).

Nevertheless, Cellco evaluated the expected visibility of a 180-foot tower at Alternative 1. This analysis determined that a 180-foot tower at Alternative 1 would be visible from 37 acres in the study area – an increase in four (4) acres from the originally, proposed location. Moreover, the Winchester Facility tower would still be visible from the residential properties along

¹ Cellco determined that a tower of 225 feet in height at the Alternative 1 location would be needed to fill the gaps along Routes 44 and 183.

Colebrook Road. Thus, relocating the Winchester Facility to Alternative 1 would not address the concerns raised by the two property owners on Colebrook Road and would actually increase the overall visibility of the Facility. (Cellco LFE).

As the record indicates, the location of the proposed tower has allowed Cellco to propose a structure at the minimum height required to satisfy its coverage needs in the area while eliminating, to the extent possible, visual impact on the surrounding area. (Cellco 1; Cellco LFE).

Nevertheless, if the Council finds that a stealth installation at the site would further mitigate the visibility of the Winchester Facility, Cellco would be willing to install a monopine tower. (TR2 at 33).

4. Historical Values.

As it does with all of its tower applications, prior to filing the Application with the Council, Cellco requested that the State Historic Preservation Office (“SHPO”) of the Connecticut Historical Commission (the “Commission”) review the proposed facility and provide a written response. Based on his review of the information submitted by Cellco, the Deputy State Historic Preservation Officer determined that the development of a telecommunications tower at the site would have “no adverse effect” on historic, architectural, archaeological or cultural resources. (Cellco 1). No evidence to the contrary was presented to the Council. Furthermore, Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission’s review.

5. Recreational Values.

There are no recreational activities or facilities at the Property that would be impacted by development of the site. (Cellco 1). Nevertheless, during the course of the proceeding, concerns were raised about the use of the Property as well as the abutting Algonquin State Forest for hunting.

(TR1 at 31-32). As part of its D&M Plan for the Winchester Facility, Cellco is willing to include additional protective measures to ensure that the development of the site does not foster access to the Property for hunting to help protect the safety of the public and its employees who would service the facility. (TR1 at 32-34).

6. Forests and Parks.

The Property is surrounded by the Algonquin State Forest to the north, west and south (across Route 44). (Cellco 1). However, there are no developed recreation areas within the state forest. (Cellco 1; TR1 at 23).

During the course of the proceeding, questions were raised about the ability to lease state forest land, such as the Algonquin State Forest, for construction of a wireless telecommunications facility. Connecticut General Statutes § 23-20 vests the DEP with the general authority to lease state forest property. Conn. Gen. Stat. § 23-20 (“The commissioner may rent state forest property . . . for a period not exceeding twenty-five years”) However, Connecticut General Statutes § 23-25 states: “The Commissioner of Environmental Protection may, with the approval of the Governor, grant leases for *public purposes* to any *public authority* for any portion of any state forest or state park if said commissioner finds that such purposes are not in conflict with park or forest purposes.” Conn. Gen. Stat. § 23-25 (emphasis added).

It is a basic tenet of statutory construction that general and specific statutory provisions “should be harmoniously construed so the more specific statute controls.” *Longley v. State Employees Retirement Comm’n*, 284 Conn. 149, 177 (2007) (quoting *State v. Whitford*, 260 Conn. 610, 640-41 (2002)). Although Connecticut General Statutes § 23-20 appears to give the DEP the general authority to grant leases on state forest land, Connecticut General Statutes § 23-25 limits that authority to specific circumstances; namely, for public purposes to a public authority.

Indeed, the DEP's own regulations specifically prohibit, except for uses permitted by temporary, revocable licenses, "[t]he use of state park or forest lands or any improvements thereon for private gain or *commercial purposes*" R.C.S.A. § 23-4-1(h) (emphasis added). Although there has been significant dispute in recent years over what constitutes a public purpose, a private wireless telecommunications company is not a public authority. Thus, the DEP does not have the authority to grant leases to private companies for use of state forest land for construction of wireless telecommunications facilities.

7. Air and Water Quality

a. Air Quality.

The equipment at the site would generate no air emissions under normal operating conditions. During power outage events and periodically for maintenance purposes, Cellco would utilize an on-site diesel-fueled back-up 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. (Cellco 1).

b. Water Quality.

The proposed Winchester Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private sewage system. Dean Gustafson, Professional Soil Scientist with VHB, Inc., conducted a field investigation and completed a Wetlands Delineation Report (the "Wetlands Report") for the Winchester Facility. According to the Wetlands Report, a small wetland system and associated intermittent watercourse occurs in the north-central portion of the Property to the north of the Winchester

Facility location. The intermittent watercourse system is located a minimum of 50 feet north of the northernmost portion of the access drive, including associated grading. An additional bedrock controlled wetland depression occurs northwest of the proposed Winchester Facility more than 100 feet northwest of the facility compound. No direct wetland or watercourse impacts are proposed as part of the Winchester Facility development. Due to proposed separation distance and erosion and sedimentation controls to be installed and maintained during construction, the Winchester Facility will likewise not result in any indirect adverse impacts to these wetland or watercourse resources. (Cellco 1). No evidence to refute these conclusions was presented to the Council.

8. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, Cellco received comments on the proposed facility from the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and the Environmental and Geographic Information Center of the DEP. The USFWS has determined that there are no federally-listed or proposed, threatened or endangered species or critical habitat known to occur in the Winchester project area. (Cellco 1).

In a comment letter dated December 4, 2007, the DEP indicated that a threatened species, the Roadside Skipper (a butterfly) occurs in the vicinity of the Property. If the habitat for the Roadside Skipper is going to be impacted, the DEP suggests that a survey for the species be conducted. Based on VHB’s initial investigation of the site to determine if suitable habitat exists for the Roadside Skipper, it was determined that it is unlikely that such habitat exists. (Cellco 1; Cellco 3, Resp. 14).

Due to seasonal constraints, grass and wildflower identification preferred by the Roadside Skipper was difficult during VHB’s initial investigation. (Cellco 1). Thus, VHB conducted a

follow-up inspection prior to the hearing in this matter to determine if there was suitable habitat for the common Roadside Skipper. Based on this follow-up investigation, VHB determined that there is some habitat on Department of Transportation land near the entrance to the Property that may provide some suitable habitat for the Roadside Skipper. However, there is not any significant habitat for the Roadside Skipper along the proposed access road or in the compound area. (TR1 at 13-14).

Nevertheless, as part of its construction activities at the Property, the seed mix that Cellco would use to stabilize the edges of the proposed access road would provide additional habitat if indeed the Roadside Skipper is utilizing the area. Furthermore, once VHB completes its report, if the DEP determines that further measures are necessary to protect any potential Roadside Skipper habitat, Cellco will implement those recommendations as well. (TR1 at 13-14).

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, the Winchester Facility would have minimal impacts on scenic values in the area. (Cellco 1). 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 facility can be further mitigated by the sharing of the facility. Cellco has designed the 150-foot tower so that it could be shared by other carriers. Although it did not participate in this proceeding, AT&T submitted a letter indicating that it was interested in the proposed facility. During the course of its meeting with municipal officials in Winchester, Cellco also agreed to provide access to the tower, at no cost, to the Town and to emergency service providers in the Town.


In sum, the potential environmental impacts from the proposed facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the Application. The site, 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.

V. CONCLUSION

Based on the overwhelming evidence in the record, the Applicant has established that there is a need for the proposed Winchester Facility and that the environmental impacts associated with

the Application would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application. Therefore, the Council should approve the Application as submitted.

Respectfully submitted,
CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

By: 

Kenneth C. Baldwin
Joey Lee Miranda
ROBINSON & COLE LLP
280 Trumbull Street
Hartford, CT 06103-3597
Its Attorneys