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June 15, 2009

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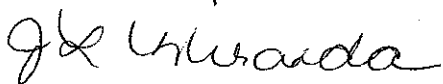
Re: **Docket No. 374 - Application of Cellco Partnership d/b/a Verizon Wireless for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Wireless Telecommunications Facility at 199 Town Farm Road, Farmington, Connecticut**

Dear Mr. Phelps:

Enclosed are an original and twenty (20) copies of Cellco Partnership d/b/a Verizon Wireless' Post-Hearing Brief in connection with the above-referenced proceeding.

Please feel free to contact me if you have any questions or require additional information. Thank you.

Sincerely,



Joey Lee Miranda

Copy to: Parties and Intervenors of Record
Sandy M. Carter



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CONNECTICUT SITING COUNCIL
DOCKET NO. 374

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 AT 199
TOWN FARM ROAD, FARMINGTON, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

Submitted by:

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June 15, 2009

APPLICANT'S POST-HEARING BRIEF

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EXECUTIVE SUMMARY

On January 23, 2009, Cellco Partnership d/b/a Verizon Wireless ("Cellco") filed an Application ("Application") with the Connecticut Siting Council ("Council") for a Certificate of Environmental Compatibility and Public Need ("Certificate") for the construction, maintenance and operation of a wireless telecommunications facility located at 199 Town Farm Road in Farmington, Connecticut ("Farmington N2 Facility"). The proposed Farmington North 2 Facility would provide for much needed coverage along the heavily-traveled Route 10, as well as local roads in the northeasterly portion of the Town of Farmington and the southeasterly portion of the Town of Avon.

Facility Description

Cellco proposes to construct the Farmington North 2 Facility in the westerly portion of a 9.9 parcel owned by the Town of Farmington ("Town") at 199 Town Farm Road (known as the Simmons Family Farm) in Farmington (the "Property"). At the Property, Cellco would construct a 110-foot telecommunications tower disguised as a pine tree. Simulated branches of the "monopine" would extend an additional seven feet from the top of the tower to an overall structure height of 117-feet above ground level ("AGL"). On the monopine, Cellco would install a total of fifteen (15) panel-type antennas (six cellular, six PCS and three 700 MHz) with their centerline at the 110-foot level on the tower. Cellco would also install a 12' x 30' shelter near the base of the tower to house its radio equipment and a back-up generator. Access to the Farmington North 2 Facility would extend from Town Farm Road over a new gravel driveway, a distance of approximately 580 feet to the cell site.

Public Need

Cellco currently experiences gaps in coverage at both cellular and PCS frequencies between its existing Avon cell site, Avon 2 cell site, Talcott Mountain cell site, Talcott 2 cell site, Farmington 3 cell site, Farmington North cell site and New Britain 5 cell site. At cellular frequencies, Cellco would provide coverage to an approximately 4.01 mile portion of Route 10, and approximately 5.1 square miles overall from the Farmington North 2 Facility. At PCS frequencies, Cellco would provide coverage to an approximately 2.56 mile portion of Route 10 and approximately 2.1 square miles overall from the Farmington North 2 Facility.

During the course of the proceeding, it was suggested that Cellco may be able to satisfy its coverage objectives by locating a facility at another location, including potentially the Avon Old Farms School, the Farmington Club or Farmington Polo Grounds. The unrefuted evidence in the record, however, established that none of those locations provide a suitable alternative to the proposed Farmington N2 Facility.

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 Farmington N2 Facility would be visible year round is limited to approximately 102 acres. Areas where seasonal views are anticipated comprise an additional nine (9) acres and are located within the area to the north and east of the tower site in the immediate vicinity of the site location; mainly, along Town Farm Road. These views, whether seasonal or year-round, would be largely mitigated by the monopine tower design.

During the course of the proceeding, Susan Edelson, who owns the closest residence to the proposed Farmington N2 Facility, expressed concern about the visibility of the Farmington N2

Facility from her property. Cellco's consultants visited the Edelson property and submitted evidence indicating that, due to both the intervening vegetation and the significant change in ground elevation from the Edelson property to the Property, there would not be any year round or seasonal views of the Farmington N2 Facility from the Edelson property. These conclusions were confirmed by the Department of Environmental Protection and during the visit to the Edelson property on the day of the hearing.

Ms. Edelson also raised concerns about potential adverse historic impacts to the Old Farmington Canal from the Farmington N2 Facility. However, the Deputy State Historic Preservation Officer already took into account the Canal in her review of the proposed facility and determined that the development of a telecommunications tower at the site would have "*no adverse effect*" on historic, architectural, archaeological or cultural resources.

Town Jurisdiction & Actions

Throughout the course of this proceeding, Ms. Edelson also claimed that Cellco was required to obtain a special permit and to receive approval from the Town Conservation Commission for the proposed Farmington N2 Facility. The Council has exclusive jurisdiction over the matters under consideration in this docket. Accordingly, Cellco was not required to obtain a special permit or approval from the Town Conservation Commission for the Farmington N2 Facility.

Ms. Edelson also claims that she was not properly notified of meetings held by the Town Plan and Zoning Commission and the Town Council regarding the lease between the Town and Cellco. The actions taken by the Town in leasing the site to Cellco are not before the Council and are outside the scope of this proceeding. Moreover, Ms. Edelson was not entitled to notice

of the actions taken by the Town in approving the lease. Accordingly, Ms. Edelson's claim is legally insufficient.

Ms. Edelson further claims that, during the sixty day municipal review period, the Town failed to provide an open forum for residents to express concern regarding the proposed Farmington N2 Facility. The actions of the Town are not before the Council and are beyond the scope of this proceeding. Moreover, there is nothing in the General Statutes that requires a Town to hold an open forum regarding a proposed telecommunications facility. Accordingly, Ms. Edelson's claim is legally insufficient.

Conclusion

The evidence in the record clearly demonstrates that there is a need for the proposed Farmington N2 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 January 23, 2009, 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 located at 199 Town Farm Road in Farmington, Connecticut (“Farmington N2 Facility”).¹ (Cellco Exhibit 1 (“Cellco 1”). Cellco currently experiences gaps in coverage at both cellular and PCS frequencies between its existing Avon cell site, Avon 2 cell site, Talcott Mountain cell site, Talcott 2 cell site, Farmington 3 cell site, Farmington North cell site and New Britain 5 cell site. 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 proposed Farmington North 2 Facility would provide for much needed coverage along the heavily-traveled Route 10, as well as local roads in the northeasterly portion of the Town of Farmington and the southeasterly portion of the Town of Avon. (Cellco 1).

II. PROCEDURAL BACKGROUND

The Council conducted an evidentiary and public hearing on the Application on May 14, 2009. (May 14, 2009 Transcript (afternoon) (“TR1”) at 3; May 14, 2009 Transcript (evening)

¹ The Facility proposed in this Application is the same Facility that was the subject of Docket No. 356, which was withdrawn.

("TR2") at 3). Prior to the afternoon session of the hearing, the Council and its staff visited the Property as well as the property of Susan Edelson. At the Council's request, Cellco caused a balloon with a diameter of approximately three to four feet to be flown at the proposed tower location, at 117 feet above ground level ("AGL") during the site visit. (Cellco 1; TR1 at 30).

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 122). 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 gaps in coverage at both cellular and PCS frequencies between its existing Avon cell site, Avon 2 cell site, Talcott Mountain cell site, Talcott 2 cell site, Farmington 3 cell site, Farmington North cell site and New Britain 5 cell site. (Cellco 1).

Cellco began a search for an appropriate location for a facility to resolve these significant coverage problems in 2000. (Cellco 5, Response ("Resp.") 13). 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. Cellco currently uses many of the existing towers in the immediate area, including those sites identified on the coverage maps as the Avon, Avon 2, Talcott Mountain, Talcott 2, Unionville, Farmington 3, New Britain 5 and Farmington North cell sites. None of the

existing towers can help to resolve the existing coverage problems identified along Route 10 and local roads in the area. (Cellco 1, Attachment (“Attach.”) 7).

Cellco also regularly investigates the use of existing, non-tower structures in an area as an alternative to building a new tower. Cellco was able to determine early in its site search process that no suitable existing structure existed in the northeasterly portion of Farmington or southeasterly portion of the Town of Avon. (Cellco 1, Attach. 9). 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 Farmington N2 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

AT&T had identified the Property as a potential location for a facility and was discussing a lease with the Town of Farmington (“Town”). Due to the Town’s willingness to lease land for a tower site and, based on its review of the coverage that could be achieved from this location, Cellco felt comfortable that the municipal property provided it with an appropriate location for the proposed cell site. (Cellco 5, Resp. 13).

In connection with its lease of the Site, Cellco representatives attended a July 23, 2007 public meeting of the Farmington Town Plan and Zoning Commission (“Commission”) regarding the lease between Cellco and the Town and presented information regarding the proposed Farmington North 2 Facility. At that meeting, the Commission voted to issue a report, pursuant to section 8-24 of the Connecticut General Statutes, recommending approval of the lease to the Farmington Town Council. Cellco representatives also attended an August 14, 2007

public meeting of the Farmington Town Council regarding the lease between Cellco and the Town and presented information regarding the proposed Farmington North 2 Facility. At that meeting, the Farmington Town Council authorized the Town Manager to sign and enter into the lease. (Cellco 1; Cellco 3).

In connection with the Docket No. 356 application, on September 14, 2007, Cellco representatives met with Farmington Town Manager Kathleen A. Eagen and Avon Town Manager Philip K. Schenk, Jr. to commence the sixty (60) day municipal consultation process. At those meetings, both Town Managers received copies of the earlier Technical Report summarizing Cellco's plans to establish a telecommunications facility in Farmington. (Cellco 1; Cellco 3).

On February 14, 2008, Farmington Town Planner Jeffrey Ollendorf contacted Cellco representatives regarding concerns raised by Ronald Simmons about the proposed Farmington North 2 Facility. On March 19, 2008, Cellco sent Mr. Ollendorf a letter addressing those concerns. In February 2008, Mr. Ollendorf also contacted Cellco representatives inquiring about the visibility of the proposed Farmington North 2 Facility from the Devonwood neighborhood. On March 21, 2008, Cellco sent Mr. Ollendorf a letter responding to his inquiry. (Cellco 1; Cellco 3).

On November 6, 2008, Cellco representatives again met with Farmington Town Manager Eagen to commence the sixty (60) day municipal consultation process in connection with the Application. At that meeting, Town Manager Eagen received copies of technical information summarizing Cellco's plans to establish a telecommunications facility in Farmington. Avon Town Manager Schenk requested that Cellco send him copies of the report in lieu of meeting with him to review the materials. Copies of the technical report were mailed to him, via first class mail, on

November 6, 2008. (Cellco 1).

C. Tower Sharing

Consistent with its practice, Cellco regularly explores opportunities to share its facilities with other wireless service providers. Both the tower and leased area have been designed to accommodate additional carriers. (Cellco 1). Cellco originally asked other carriers if they were interested in this site in November 2007 and asked again in March 2008, October 2008 and March 2009. The only response received was from T-Mobile representatives who stated, in November 2007, that T-Mobile was not interested at the time. Representatives of AT&T and Sprint Nextel did not respond. (Cellco 5, Resp. 16).

During the course of its meeting with municipal officials in Farmington, 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. (TR1 at 41).

D. The Farmington N2 Proposal

The Farmington North 2 Facility would be located within a 60' x 60' fenced compound in the westerly portion of a 9.9 parcel owned by the Town (known as the Simmons Family Farm) in Farmington (the "Property"). The Property is located in the Town's Residential R-40 zone district and is currently used for residential and agricultural purposes. At the Property, Cellco would construct a 110-foot telecommunications tower disguised as a pine tree. Simulated branches of the "monopine" would extend an additional seven feet from the top of the tower to an overall structure height of 117-feet above ground level ("AGL"). (Cellco 1). Cellco would

install a total of fifteen (15) panel-type antennas (six cellular, six PCS and three 700 MHz)² with their centerline at the 110-foot level on the tower.

Cellco would also 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 propane-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 Farmington North 2 Facility would extend from Town Farm Road, a distance of approximately 580 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

² In March 2008, Cellco purchased additional radio spectrum from the Federal Communications Commission ("FCC") in the 700 MHz frequency range, which it intends to begin to deploy in the near future.

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 Farmington N2 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 gaps in coverage at both cellular and PCS frequencies between its existing Avon cell site, Avon 2 cell site, Talcott Mountain cell site, Talcott 2 cell site, Farmington 3 cell site, Farmington North cell site and New Britain 5 cell site. 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 proposed Farmington North 2 Facility would provide for much needed coverage along the heavily-traveled Route 10, as well as local roads in the area. (Cellco 1).

During the course of the proceeding, it was suggested that Cellco does not have a need for the Farmington N2 Facility because Cellco is already achieving sufficient coverage. (Edelson Brief at 9). However, this claim is based solely on Cellco's dropped call and ineffective attempt data (collectively, "lost calls") provided by Cellco. (*Id.*). In determining the need for a particular site, lost calls are not the only criteria that Cellco considers. In particular, Cellco relies upon baseline drive test data, coverage plots, capacity and interference data as well as the lost call values. Based on this collective information, Cellco has determined that it has the need for the Farmington N2 Facility. (Cellco Late-Filed Exhibit ("LFE")).

It was also asserted, without supporting evidence, that Cellco may be able to satisfy its coverage objectives in the area by the use of another location. (Edelson Brief at 9-10, 20-22). As the exhaustive site search that Cellco conducted demonstrates, that is simply not the case. (Cellco 1, Attach. 9) (identifying 28 alternative sites that were investigated). In particular, it was suggested that Cellco may be able to satisfy its coverage objectives by locating a facility at Avon

Old Farms School.³ (Edelson Brief at 11, 21-22). The evidence in the Record, however, specifically refutes this bald assertion.⁴ (Cellco 4; TR2 at 80-81).

In fact, Cellco representatives visited Avon Old Farms School on March 18, 2009 to determine if there was a suitable site on the Avon Old Farms School property that would allow Cellco to meet its Farmington N2 coverage objectives. Based on its location to the north of the Simmons Family Farm site, Cellco determined that it would need a location on the Avon Old Farms School property with a significant ground elevation. During the site visit, the Assistant Director of Facilities for the Avon Old Farms School took Cellco representatives to the two locations on the property with the highest ground elevation – the field house (Alternative Location A) and the cabin site near Beaver Dam Pond (Alternative Location B). (Cellco 4).

Alternative Location A has a ground elevation of approximately 220 feet above mean sea level (“AMSL”), and Alternative Location B has a ground elevation of approximately 250 feet AMSL. Despite the ground elevation at these locations, Cellco is unable to satisfy its Farmington N2 coverage objectives with a facility at the Avon Old Farms School.⁵ In fact, even with a facility height of greater than 200 feet, there are still significant coverage gaps along Route

³ Ms. Edelson also falsely claims that Cellco may have made misrepresentations about its attempts to contact Avon Old Farms School prior to submitting the Application and that “[t]his essentially constitutes a fabrication of information . . .” (Edelson Brief at 21). These claims are entirely inappropriate, lack *any* basis and, despite Ms. Edelson’s bald assertions to the contrary, are *specifically refuted* by the evidence in this proceeding. (TR2 at 29-30) (providing information regarding the attempts to contact Avon Old Farms School).

⁴ Ms. Edelson erroneously claims, without citation, that Cellco’s sworn testimony establishes that the Avon Old Farms School provides “a suitable alternate site . . .” (Edelson Brief at 9). This is simply inaccurate. (TR2 at 80-81) (testifying that Avon Old Farms School does not provide a suitable alternative location even at a height of greater than 200 feet); *see also* Cellco 4.

⁵ In a letter submitted after the close of the hearing in this matter, Avon Old Farms School indicated that it “was willing to consider more than just two locations on . . . campus . . .” (Letter from Avon Old Farms School to Connecticut Siting Council, dated June 3, 2009). Since Cellco already evaluated the two locations with the highest ground elevation and determined that a facility of greater than 200 feet would be needed to satisfy its coverage objectives, the review of other locations at the Avon Old Farms School with lower ground elevations would be fruitless. (Cellco 4; Cellco 6, Resp. 1).

10, which is Cellco's primary coverage objective for the Farmington N2 Facility. (Cellco 4; Cellco 6, Resp. 1; TR1 at 53-54; TR2 at 80-81). Accordingly, the Avon Old Farms School does not provide a suitable alternative location for the proposed Farmington N2 Facility.

It was also claimed, without supporting evidence, that the Farmington Club property may provide a suitable location for a "stealth flagpole alone or as a supplemental tower to the Avon Old Farms School Site A" (Edelson Brief at 12). As the evidence in the Record establishes, the majority of the Farmington Club property is located within the floodway of the Farmington River and the area that is not within the floodway is directly adjacent to Town Farm Road. (TR2 at 46-47, 55-66; Cellco 9). Accordingly, the Farmington Club property does not provide a suitable location either alone or in combination with another location. Moreover, the use of the Farmington Club property as part of a multi-site solution for a coverage gap that can be resolved with a single facility would violate the statutory mandate to avoid the unnecessary proliferation of towers. *See* Conn. Gen. Stat. § 16-50p(b)(2) (requiring the Council to avoid the unnecessary proliferation of towers when issuing a Certificate).

The record contains ample, written evidence and testimony that a 110-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 Farmington N2 Facility would be incorporated into a network design plan, intended to provide Cellco customers with reliable wireless service along Route 10 as well as along local roads in the northeasterly portion of the Town of Farmington and the southeasterly portion of the Town of Avon. (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 Farmington N2 Facility at the Property has eliminated, to the extent possible, impacts on the natural environment. All Farmington N2 Facility improvements would be located within the 100' x 100' leased area. Access to the Farmington North 2 Facility would extend from Town Farm Road over a new gravel driveway, a distance of approximately 580 feet to the cell site. (Cellco 1).

Topography in the site compound area is generally flat and slopes up to the west of the facility location. Minimal clearing and grading of the leased area and access driveway will be required. (Cellco 1; Cellco 5, Resp. 11). The site compound area has been situated so as to minimize, to the extent possible, the clearing of substantial trees. Construction of the site compound and access road will require clearing of approximately twelve (12) trees with a six inch (6") diameter at breast height ("dbh"). (Cellco 1; Cellco 5, Resp. 10).

Overall, the limited construction activity at the Property would have a negligible environmental impact. 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 Farmington N2 Facility tower to fall does not pose an unreasonable risk to health and safety. The proposed tower would be designed and built to meet

Electronic Industries Association (“EIA”) standards. Although there is a residence located on the Property, it is outside the fall radius of the tower. (Cellco 1, Attach 1). The fall radius of the tower would extend beyond the Property line onto other unoccupied property owned by the Town. The closest (off-site) residential home is located approximately 750 feet to the west of the tower site of the Farmington N2 Facility. (Cellco 1).

Second, worst-case potential public exposure to radio frequency (“RF”) power density for operation of the Farmington N2 Facility at the nearest point of uncontrolled access (the base of each tower) would be 23.94% of the FCC standard. Power density levels would drop off rapidly as distance from the towers increases. (Cellco 1). Despite Cellco’s compliance with the FCC requirements, Ms. Edelson asserts that the proposed Farmington N2 Facility may pose adverse health effects from radiofrequency emissions. (Edelson Brief at 22). As the Council is aware, Section 704(a) of the Telecommunications Act expressly pre-empts state and local government regulation of the placement, construction or modification of wireless facilities on the basis of RF health effects to the extent a proposed facility complies with the FCC regulations. (TR1 at 5; TR2 at 5). Since Cellco has presented unrefuted evidence that the Farmington N2 Facility will comply with the FCC regulations, Ms. Edelson’s claims regarding the health effects associated with RF emissions are outside the jurisdiction of the Council and cannot form a basis for denying Cellco’s Application. 47 U.S.C. § 332(c)(7)(B)(iv).

Overall, the nature and extent of potential, adverse public health and safety impacts resulting from construction and installation of the Farmington N2 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 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 seven (7) existing towers in the immediate area. No existing non-tower structures of suitable height exist in the area. (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 Farmington N2 Facility would be located in the westerly portion of the Property adequately buffered from adjacent properties. The Property is currently used for residential and agricultural purposes and is surrounded by agricultural land to the north, south and east and undeveloped woodlands to the west. (Cellco 1, Attach. 10).

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 tower would be partially visible, from only 102-acres, just over one percent of the two mile radius (8,042-acre) study area. This "year round" visibility is limited to the area to the north and east of the tower site in the immediate vicinity of the site location; mainly, along Town Farm Road. Seasonal views, through the trees, of the tower would be available from an additional approximately nine (9) acres of land, generally limited to the area immediately east of the tower site. In the end, VHB concluded that the Farmington N2 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 113).

Nevertheless, during the course of the proceeding, unsupported concerns were raised regarding the visibility of the Farmington N2 Facility tower from the Edelson property. (Edelson Prefiled Testimony at 5). In response to these concerns, Cellco representatives visited the Edelson property during “leaf off” conditions to evaluate the potential views of the proposed Farmington N2 Facility. (Cellco 8). Based on observations made during the visit, it was determined that there would not be any year-round or seasonal views of the proposed Farmington N2 Facility from the Edelson property due to both the intervening vegetation, which is comprised of dense woodlands that extend well over 700 feet from the Edelsons’ eastern property line to the proposed Facility, and the significant change in ground elevation from the Edelson property, located at roughly 250 feet AMSL, to the proposed Facility, located at approximately 189AMS. (Cellco 8; *see also* TR2 at 112-13). These conclusions were confirmed by the Department of Environmental Protection (“DEP”) in its comments on the proposed Facility. (Cellco 1, Attach. 11) (concluding that the two nearest homes to the Property would not have views of the Farmington N2 Facility because of the forest screening even during periods without foliage).

Despite this evidence, Ms. Edelson claims that “it could be *assumed* that during the months, November to April, the residents of Belgravia Terrace and Exeter park will have seasonal views of the tower.” (Edelson Brief at 12) (emphasis added). Conjecture and speculation are not sufficient to support a finding that the proposed Farmington N2 Facility would be visible from the Edelson property, especially in light of evidence to the contrary. *See*

River Bend Associates, Inc. v. Conservation & Inland Wetlands Comm'n, 269 Conn. 57, 71 (2004) ("[e]vidence of general environmental impacts, *mere speculation* or general concerns do not qualify as substantial evidence") (emphasis added).

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. No *evidence* to refute this conclusion was presented.

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 her 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, Attach 11). Furthermore, Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission's review.

Despite the SHPO's determination and her admission that the Property is not on the National Registry of Historic Places, Ms. Edelson asserts that the Simmons Family Farm has "significant local, regional and state scenic and historic value." (Edelson Brief at 12-13). In support of this assertion, Ms. Edelson attempts to rely on the proximity of the Old Farmington Canal ("Canal"). However, scenic and historical values, including the proximity of the Canal to the proposed facility, were already taken into consideration by the SHPO. (Cellco 1, Attach. 11; TR2

at 100-105). The SHPO's finding of "*no adverse effect*" provides adequate support for a finding that the Farmington N2 Facility will not create a significant adverse impact to historical values in the area. Indeed, there is no credible evidence that would support a contrary finding.

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 that the Property was designated Open Space and, as a consequence, could not be developed with the proposed Farmington N2 Facility. (Edelson Brief at 6-7; Letter from Governor Rell to Chairman Caruso, dated May 14, 2009). These concerns, however, are unfounded.

As the evidence in the record establishes, although the Property is adjacent to land that has been designated as Open Space, the Property itself was *not* included in the Conservation and Public Recreation Easements purchased with the use of funding from the Open Space and Watershed Lands Acquisition Program. (Cellco 1, Attach. 11; Cellco 10). Accordingly, there are no restrictions on the development of the Property as proposed in the Application.

It was also asserted, without any supporting evidence, that due to the proximity of the existing Open Space adjacent to the Property and of the Old Farmington Canal, "the *potential exists* for the former Canal path . . . to become a . . . pedestrian walkway and recreational value." (Edelson Brief at 13) (emphasis added). This assertion is based on utter speculation. Conjecture and speculation are not sufficient to support a finding that the proposed Farmington N2 Facility would have an adverse impact on recreational values in the area. *See* River Bend Associates, 269 Conn. at 71 ("[e]vidence of general environmental impacts, *mere speculation* or general concerns do not qualify as substantial evidence") (emphasis added).

As the evidence in the record demonstrates, the proposed Farmington N2 Facility would not have an adverse impact on any recreational values in the area. No *evidence* to refute this conclusion was presented.

6. Forests and Parks.

The Metacomet Trail follows the ridge of Talcott Mountain. While there are views from the trail of the existing towers on Talcott Mountain, there would be not any views of the Farmington N2 Facility from this area. (TR1 at 41, 58). Accordingly, the Farmington N2 Facility would not have any impact on state forests or parks in the area. No contrary evidence was presented to refute this conclusion.

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 propane-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 DEP Bureau of Air Management prior to installation of the proposed generator. (Cellco 1, Attach. 1).

b. Water Quality.

The proposed Farmington N2 Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private sewage system. (Cellco 1, Attach. 1). Thomas W. Pietras, Professional Wetland and Soil Scientist, conducted a field investigation and completed a Wetlands/Watercourses and Soil Report (the "Wetlands Report")

for the Farmington N2 Facility. According to the Wetlands Report, there are no wetlands or watercourses on or near the proposed tower site or access drive area. (Cellco 1, Attach. 12). No evidence to the contrary 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. Based on the USFWS and DEP responses, no suspected habitats for listed or endangered species were identified at the Property and no known populations of Federal or State Endangered, Threatened or Special Concern Species occur at the proposed cell site location. (Cellco 1, Attach. 11). No contrary evidence was presented to the Council.

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 proposed Farmington N2 Facility 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 Farmington N2 Facility would have minimal impacts on scenic values in the area. (Cellco 1, Attach 10). 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 117-foot monopine so that it could be shared by other carriers. During the course of its meeting with municipal officials, 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. THE COUNCIL HAS EXCLUSIVE JURISDICTION OVER THE PROPOSED FARMINGTON N2 FACILITY AND ANY ACTIONS TAKEN BY THE TOWN IN LEASING THE SITE TO CELLCO ARE NOT PROPERLY BEFORE THE COUNCIL

Throughout the course of this proceeding, Susan Edelson has claimed that Cellco was required to obtain a special permit and to receive approval from the Town Conservation Commission for the proposed Farmington N2 Facility. (Edelson Prefiled Testimony at 3-5; Edelson Brief at 4-6). Ms. Edelson also claimed that the Application violates the Town's Zoning Regulations. (Edelson Prefiled Testimony at 2, 4, 5-6). The provisions of Connecticut General Statutes section 16-50g *et. seq.* establish that the Council has *exclusive* jurisdiction over the matters under consideration in this docket and that the Council's jurisdiction pre-empts local land use regulations. *See* Conn. Gen. Stat. Section 16-50x(a); Conn. Gen. Stat. § 16-50i(a)(6); *see*

also *Town of Westport v. Connecticut Siting Council*, 260 Conn. 266 (2002); *Sprint Spectrum LP v. Connecticut Siting Council*, 274 F.3d 674 (2001); *Corcoran v. Connecticut Siting Council*, 50 Conn. Supp. 443, 449-49 (2006), *aff'd*, 284 Conn. 455 (2007) (“The courts have interpreted this provision as giving the council the power to override municipal zoning provisions”).

Accordingly, Cellco was not required to obtain a special permit or approval from the Town Conservation Commission for the Farmington N2 Facility.

Ms. Edelson also claims that she was not properly notified of meetings held by the Town Plan and Zoning Commission and the Town Council regarding the lease between the Town and Cellco. (Edelson Prefiled Testimony at 3; Edelson Brief at 5, 20). The actions taken by the Town in leasing the site to Cellco are not before the Council and are outside the scope of this proceeding. Indeed, Connecticut General Statutes section 16-50p provides that, in making its decision on an application for a Certificate, the Council is not to consider whether an applicant has acquired property rights for the purpose of constructing the facility. Conn. Gen. Stat. § 16-50p(g). As a consequence, the Town’s actions in approving the lease and the validity of the lease are beyond the scope of this proceeding.

Moreover, Ms. Edelson was not entitled to notice of the Town’s actions. Connecticut General Statutes § 8-24 addresses the procedural requirements associated with, *inter alia*, the sale or lease of municipal property. *See, generally*, Conn. Gen. Stat. § 8-24. Connecticut General Statutes § 8-24 provides, in relevant part: “No municipal agency or legislative body shall . . . lease any . . . municipally owned property . . . until the proposal to take such action has been referred to the [planning] commission for a report.” Conn. Gen. Stat. § 8-24. Connecticut General Statutes § 8-24 does *not* require that anyone be given notice of such a referral or any

proceedings conducted by a planning commission in acting upon same. *See, generally*, Conn. Gen. Stat. § 8-24; *see also Podzunas v. Town of Wolcott*, No. CV044000802S, 2005 Conn. Super. LEXIS 2162, at *8 (2005) (“There is simply *no* public notice requirement for action under Connecticut General Statutes § 8-24.”) (emphasis added). Accordingly, Ms. Edelson was not entitled to any notice of the Commission’s actions approving the execution of the lease between Cellco and the Town.

Ms. Edelson further claims that, during the sixty day municipal review period, the Town failed to provide a forum for “concerned individuals . . . to voice their opinions and concerns” regarding the proposed Farmington N2 Facility. (Edelson Prefiled Testimony at 8; *see also* Edelson Brief at 5). The actions of the Town are not before the Council. As a consequence, those actions are beyond the scope of this proceeding.


Moreover, the Town was not required to take any actions during the sixty day municipal consultation period. Connecticut General Statutes section 16-50l(e) specifically provides that “[t]he municipality *may* conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendations concerning the proposed facility.” Conn. Gen. Stat. § 16-50l(e) (emphasis added). By its plain language this statutory provision does not *require* a Town to hold an open forum regarding a proposed telecommunications facility.

V. CONCLUSION

Based on the overwhelming evidence in the record, the Applicant has established that there is a need for the proposed Farmington N2 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. Moreover,

claims regarding the actions taken or required by the Town of Farmington are beyond the scope of this proceeding and are legally insufficient to support denying the Application. Accordingly, the Council should approve the Application as submitted.

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

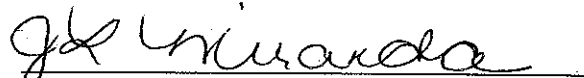
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CERTIFICATION

I hereby certify that on the 15th day of June 2009, a copy of the foregoing was sent via electronic mail and mailed, postage prepaid, to:

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