

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY PHOENIX
PARTNERSHIP, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR A TELECOMMUNICATIONS FACILITY
AT 50 DEVINE STREET IN THE TOWN
OF NORTH HAVEN, CONNECTICUT

DOCKET NO. 384

Date: December 30, 2009

**POST-HEARING BRIEF OF
APPLICANT PHOENIX PARTNERSHIP, LLC**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”), Phoenix Partnership, LLC (“Phoenix” or the “Applicant”) submits this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. The Applicant also submits its Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

The Applicant, in accordance with provisions of Connecticut General Statutes (“C.G.S.”) §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies (“R.C.S.A.”), applied to the Connecticut Siting Council (“Council”) on August 20, 2009 for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, operation and

maintenance of a 120-foot monopole wireless telecommunications facility ("Facility") at 50 Devine Street, North Haven, Connecticut.

Phoenix proposes to construct the Facility in the southeasterly portion of a 6.037 acre parcel of land owned by 424 Chapel Street LLC known as 50 Devine Street, Assessor's Map as Parcel 51, Lot 21 of the North Haven Tax Assessor's Records ("Property"). The Property is zoned for industrial use and is currently used for commercial and industrial purposes.

The 4,900 square foot (70 ft. x 70 ft.) compound would be located within a 10,000 square foot area leased by Phoenix. An eight foot chain link fence would secure the equipment at the Facility. Vehicle access to the Facility would extend from Devine Street along an existing paved parking lot. This access would not require any land disturbance or tree removal. Utility service would extend underground from an existing pole to the Facility. Power would be available from a transformer to a point on the Property near the Facility.

Youghiogheny Communications Northeast, LLC d/b/a Pocket Wireless ("Pocket") would be the anchor tenant. Pocket is licensed by the Federal Communications Commission to provide Advanced Wireless Services ("AWS") in the Connecticut marketplace. Pocket currently experiences a coverage gap in this area, as well as along Interstate 91, State Highway 40, State Highway 5 and the Wilbur Cross Parkway (State Highway 15). A Facility at the Site at a minimum height of 117 feet above grade level ("AGL") would remedy this gap. See Pre-filed Testimony of Anthony Wells ("Wells Testimony") at 2-3. Clearwire Communications has also indicated an interest in the Facility. See 3:00 p.m. Transcript ["Tr."] at 20.

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

Connecticut General Statutes §16-50p (a) mandates that 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” C.G.S. §16-50p (a). There can be no dispute that there is a significant public need for this Facility.

There are no other telecommunications facilities in this area of North Haven, no viable utility structures or other suitably tall structures on which to locate a telecommunications facility. Adequate and reliable telecommunication capabilities are beneficial to persons who are traveling through, working, or living in the area. These communications issues can be alleviated with the construction of this Facility, which would provide benefits for both the residents and businesses along I-91 and the surrounding area.

Pocket has established that it is experiencing significant coverage gaps which result in inadequate coverage in this area. A Facility at the proposed Site would alleviate that inadequacy.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, the Applicant has identified “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, aquaculture and wildlife . . .” as required by C.G.S. §16-50p (a). Indeed, the record is replete with evidence demonstrating that the Facility would have a minimal environmental impact on the surrounding areas, and would not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff’d, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

The Applicant conducted a complete and comprehensive environmental analysis of this proposal, which is attached to the Application as Exhibits K (Wetlands Report), M (Tree Removal Analysis), N (Visual Resource Evaluation), O (State Agency Correspondence), and Q (NEPA Compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The Applicant also completed a coastal consistency analysis. The environmental analysis concludes that:

- No wetlands exist on the Property; the closest wetlands are located more than 100 feet from the proposed Facility. Based upon the distance from the nearest wetlands and the relatively minimal disturbance that would be generated by the construction of the Facility, the construction, operation and maintenance of the Facility would have no impact on any wetland system, wetland habitat or other navigable waterway.

- The Facility would not have any impact on any federal regulated wetlands, or other waterways of the United States nor cause any significant changes to surface features, such as wetland fill, deforestation or water diversion. (See Exhibit K);
- Although the proposed Facility would be located within the Coastal Boundary zone as defined by C.G.S. 22a-94 (b), the Facility would not have an adverse impact on any coastal resources. (*Infinigy Coastal Consistency Analysis*).
- Although the Facility would be located within a 100 year flood plain, the proposed Facility would not impact stormwater absorption and groundwater recharge and would have a negligible effect, if any, on hydraulic flows. To minimize any impacts, the carriers that co-locate on the Facility should install their equipment on platforms. (Infinigy Hydraulic Effect Analysis, December 2, 2009).
- No species of concern on the Property (See Exhibit Q);
- The Property is not located in a designated wilderness or wildlife preserve area (See Exhibit Q);
- No listed species or designate critical habitats occur on or near the Property. (See Exhibit Q);
- According to the State Historic Preservation Office, there would be no adverse impact on cultural resources, including historic areas (See Exhibit O);
- The Property is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See Exhibit Q);
- The tower would not be lit (See Exhibit Q).

As far as the Facility's potential visibility, the location of the Facility on the Property has been designed in order to minimize impact to residential receptors. There are several transportation corridors in the immediate area (Interstate 91, Route 40 and Route 5), which limit the amount of residential receptors within the vicinity of the Facility. The topography and the mature vegetation at the Property would also significantly limit the visual impact of the Facility at the Property. (See Exhibit N).

As the foregoing demonstrates, any environmental impacts associated with the Facility would be extremely limited. Further, the Facility would eliminate the need for additional facilities in this area of North Haven, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

IV. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. C.G.S. §16-50aa. In addition, §16-50p (b) directs that, when issuing a certificate for a telecommunications tower, the Council "may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state." "The sharing of facilities is encouraged, if not required by General Statutes §16-50p (b) (1) (A)." Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility would help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which carriers could co-locate to

provide such coverage. Accordingly, the issuance of a Certificate would help avoid the construction of new telecommunications tower(s) in this area of Connecticut. Because all major telecommunications carriers could utilize the Facility as well as local emergency services (if requested), therefore approval by the Council would uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

The record amply supports the approval of the Facility. The Facility is necessary to provide adequate wireless coverage in this area of North Haven. The Applicant has demonstrated that the Property is the best location for a Facility in this area of North Haven from an environmental and technical perspective. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, the Applicant, Phoenix Partnership LLC, respectfully urges the Council to issue a Certificate for the proposed Facility, reflecting in its Decision and Order, consistent with C.G.S. § 16-50x, that such approval satisfies and is in lieu of all local and state approvals and certifications.

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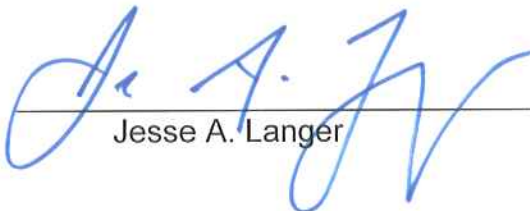
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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

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