

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY T-MOBILE  
NORTHEAST, LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED  
FOR A TELECOMMUNICATIONS FACILITY  
AT 123 PINE ORCHARD ROAD IN THE  
TOWN OF BRANFORD, CONNECTICUT

DOCKET NO. 386

Date: January 14, 2010

**THE APPLICANT'S PROPOSED FINDINGS OF FACT**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, T-Mobile Northeast, LLC ("T-Mobile") submits these proposed findings of fact.

**Introduction**

1. On September 11, 2009, T-Mobile filed with the Connecticut Siting Council ("Council") an application for Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a 125 foot monopole wireless telecommunications facility ("Facility") at 123 Pine Orchard Road, Branford, Connecticut ("Property") pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies. (*Hearing Exhibit 1, Application at p. 1.*)<sup>1</sup>

2. The Facility would sit within a 5,625 square foot area leased by T-Mobile, located in the southeasterly portion of the Property, which is a 4.15 acre parcel owned by Malavasi Investments, LLC ("Site"). (*App. at p. 1; App. Ex. B.*)

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<sup>1</sup> For the Council's convenience, all subsequent page references to Hearing Exhibit 1, which is T-Mobile's application, shall be made as "App. at p. \_\_\_." All subsequent references to exhibits attached to the Application shall be made as "App. Ex. \_\_\_."

3. Pursuant to General Statutes § 16-50m, the Council, after giving due notice thereof, held a public hearing on December 15, 2009, beginning at 3:00p.m., and continued to 7:00p.m., at the Branford Community House, 46 Church Street, Branford, Connecticut. (*Hearing Notice; 3:00p.m. Transcript [3:00p.m. Tr.] at p. 3.*)

4. The Council and its staff conducted a field review of the Site on December 15, 2009, at 2:00p.m. (*Hearing Notice.*)

5. T-Mobile conducted a balloon float, with a balloon four feet in diameter, at a height of 125 feet, at the Site from 12:00p.m. to 4:30p.m., on December 15, 2009, in accordance with the Council's instructions. (*Pre-Hearing Conference Results; Hearing Exhibit 5.*)

### **Need**

6. In amending the Communications Act of 1934 with the Telecommunications Act of 1996, the United States Congress recognized the important public need for high quality telecommunications services throughout the United States. The purpose of the Telecommunications Act of 1996 was to "provide for a competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans." H.R. Conf. Rep. No. 104-458, 206, 104<sup>th</sup> Cong., Sess. 1 (1996). The Telecommunications Act of 1996 expressly preserved State and/or local land use authority over wireless facilities, placed several requirements and legal limitations on the exercise of that authority, and preempted State or local regulatory oversight of radio frequency emissions as more fully set forth in 47 U.S.C. § 332(c)(7). In doing so, Congress sought a balance between the public interest in deployment of wireless

services and legitimate areas of State and/or local regulatory control over wireless infrastructure. (*App. at p. 4; 3:00p.m. Tr. at pp. 4-5.*)

7. There is a coverage gap in T-Mobile's network along the shoreline in Branford, as well as within the immediate area of the proposed Facility. (*App. at pp. 4-5; App. Ex. H; Pre-Filed Testimony of Scott Heffernan ["Heffernan"] at pp.3-4; 3:00p.m. Tr. at pp. 48, 50-51, 87-89; 7:00p.m. Transcript ["7:00p.m. Tr."] at pp. 87-90; T-Mobile's Responses to the Council's Interrogatories ["T-Mobile Interrog. Resp."]*.)

8. The Facility would be an integral component of T-Mobile's wireless network in Branford. The Facility would remedy the existing gap in coverage in this area of Branford, specifically along Pine Orchard Road, Route 146, Damascus Road and Meadow Wood Road, just south of Interstate 95 and Route 1, as well as the Amtrak rail line that passes through the area. (*App. at pp. 4-5; App. Ex. H; Heffernan at pp.3-4; 3:00p.m. Tr. at p. 48, 50-51; 7:00p.m. Tr. at pp. 87-89; T-Mobile Interrog. Resp.*)

9. New Cingular Wireless PCS, LLC ("AT&T") also experiences a coverage gap in its network in the area of the proposed Facility, including along Pine Orchard Road, Route 146 and Damascus Road. (*AT&T Responses to the Council's Interrogatories ["AT&T Interrog. Resp."]; 7:00p.m. Tr. at p. 72.*)

10. The Town of Branford has acknowledged the need for improved wireless coverage in this area of Branford, particularly along the shoreline, and the need for enhanced wireless emergency services. (*3:00p.m. Tr. at p. 13; 7:00p.m. Tr. at 58.*)



### Coverage

11. To provide effective coverage in the area of the proposed Facility and along the shoreline, including along Route 146, T-Mobile must mount its antenna array at 122'9" above grade level ("AGL"). This position would allow T-Mobile to minimize the number and height of future telecommunications facilities in this area. (*Heffernan at pp. 3-4; 3:00p.m. Tr. at pp. 48, 50-52; 7:00p.m. Tr. at p. 90; T-Mobile Interrog. Resp.*)

12. An antenna array at 122'9" AGL would allow T-Mobile to overcome the mature vegetation and topography in the area, as well as provide coverage in the area, along the shoreline and along Route 146. (*Heffernan at pp. 3-4; 3:00p.m. Tr. at p. 99; 7:00p.m. Tr. at p. 90; T-Mobile Interrog. Resp.*)

13. AT&T would co-locate its antenna array at 112'9" AGL. This position would enable AT&T to provide coverage to the areas along Pine Orchard Road, Route 146 and Damascus Road, as well as the Amtrak rail line that passes through the area. (*7:00p.m. Tr. at p.72; AT&T Interrog. Resp.*)

### Site Search

14. There are no existing towers, transmission line structures or other structures of a suitable height or location in this area of the Town of Branford that would be suitable for co-location. (*App. at pp. 7-8; App. Ex. J; Supplement to Exhibit J ["Ex. J Supp."]; Pre-filed Testimony of Raymond Vergati ["Vergati"] at pp. 2-5; 3:00p.m. Tr. at pp. 17-29.*)

15. The Town of Branford has not expressed any interest in leasing municipal property to T-Mobile for the purpose of installing a telecommunications facility that would achieve the coverage objective. (3:00p.m. Tr. at pp. 58, 62; Vergati at p. 6.)

16. Amtrak adheres to a policy prohibiting wireless carriers such as T-Mobile from co-locating on any Amtrak catenaries. (3:00p.m. Tr. at pp. 96-97; Raymond Vergati Affidavit, dated January 13, 2010 ["Vergati Affid."] at pp. 1-2.)

17. After determining that there were no existing structures suitable for co-location, T-Mobile searched for an appropriate location for a new telecommunications facility. (App. at pp. 7-8; App. Ex. J; Vergati at pp. 2-5; 3:00p.m. Tr. at pp. 17-29.)

18. T-Mobile conducted a site analysis of properties within the area to identify the best possible location to address T-Mobile's coverage need in the area. (App. at pp. 7-8; App. Ex. J; Ex. J Supp.; Vergati at pp. 2-5; 3:00p.m. Tr. at pp. 17-29.)

19. T-Mobile considered several other properties to determine whether those properties would address T-Mobile's coverage need while also minimizing any environmental impacts. None of those properties were suitable sites. (App. at pp. 7-8; App. Ex. J; Ex. J Supp.; Vergati at pp. 2-5; 3:00p.m. Tr. at pp. 17-29, 59-60; T-Mobile Late-Filing Submission, dated January 14, 2010.)

20. The Property is superior to other parcels in the area. The Property is currently used as a storage facility and garage for tractor truck trailers and has been used for commercial purposes over several decades. Only one tree would need to be removed for the construction of the access to the Facility. It is also set back approximately 485 feet from Pine Orchard Road, with excellent screening from mature

trees. (*App. at pp. 7-10; App. Ex. J; Ex. J. Supp.; Vergati at pp. 4-5; Pre-filed Testimony of Scott Chasse ["Chasse"] at pp. 2-3; 3:00p.m. Tr. at p. 78.*)

### The Site

21. T-Mobile proposes to construct the Facility at the Site located in the southeastern portion of the Property, which is a 4.15 acre parcel of land commonly known as 123 Pine Orchard Road, which is identified as Assessors Tax Map F08, Block 6, Lots 49 and 50. (*App. at pp. 1-2, 9; App. Ex. B; Chasse at p. 2.*)

22. The Property is used for the storage of tractor trailer trucks. The Facility would comport largely with the Stratford Zoning Regulations pertaining to telecommunications facilities. (*App. at pp. 9, 15-16; 3:00p.m. Tr. at p. 78; Branford Zoning Regulations in the Bulk Filing with the Application ["Bulk Filing"].*)

23. The proposed Facility would accommodate T-Mobile and the equipment of three other telecommunications carriers, as well as the Town of Stratford emergency services equipment, if requested. (*App. at p. 8; App. Ex. B; Chasse at p. 3.*)

24. The Facility would accommodate the antennae and equipment of T-Mobile at an antenna centerline of 122'9" AGL, mounted to the tower by T-arms, and three other telecommunications carriers at an antenna centerline of 112'9", 102'9" and 92'9" AGL. (*App. at p. 8; App. Ex. B; 7:00p.m. Tr. at p. 92.*)

25. The Facility would consist of a 2,500 square foot fenced compound area, which would sit within the 5,625 square foot area leased to T-Mobile. (*App. at pp. 1-2, 9; App. Ex. B; Chasse at p. 3.*)

26. The fenced compound area would host T-Mobile's equipment and the equipment of three other telecommunications carriers. The compound would be



enclosed by a new eight foot high security fence. (*App. at pp. 1-2, 9; App. Ex. B; Chasse at p. 3.*)

27. Vehicular access to the Facility would extend from Pine Orchard Road. T-Mobile would add a slight expansion to the existing bituminous driveway and curb cut currently serving the Property. This minor expansion of the existing access is proposed to ensure that T-Mobile's access to the Property is located entirely on the landlord's parcel, and not on any land designated as a common drive/easement. The remainder of the access would remain unchanged and run over the existing paved driveway and gravel parking lot. The expansion would require minimal disturbance and the removal of one mature tree. (*App. at pp. 1, 8; App. Ex. B; Chasse at p. 3.*)

28. Utility service would run from existing utility service currently located on Pine Orchard Road. No water or sanitary facilities would be required and, once built, the Facility would generate minimal traffic because T-Mobile, or any other carrier, would only need to visit the Site approximately once a month to perform routine maintenance and inspection. (*App. at pp. 1-2, 9, 13; App. Ex. B.*)

29. The estimated cost of the proposed Facility is approximately \$198,000. The duration of the construction would be approximately thirteen weeks, with an additional two weeks for Facility integration and system testing. (*App. at p. 19.*)

#### **Municipal Consultation**

30. On May 28, 2009, T-Mobile submitted a technical report to the Town of Stratford (the "Town") regarding the Facility pursuant to General Statutes § 16-50f (e). The technical report, a copy of which is included in the bulk filing accompanying the Application, included specifics about the Property, the Facility, the site selection process

and the environmental effects of the Facility. (*App. at pp. 17-18; App. Ex. Q; Bulk Filing; Vergati at p. 5; 3:00p.m. Tr. at p. 62.*)

31. On June 16, 2009, representatives of T-Mobile met with the First Selectman, the Honorable Anthony DaRos, to discuss the proposed Facility and to answer any questions the Town might have regarding the Facility. The Town did not require a public meeting. (*App. at pp. 17-18; Vergati at 5.*)

### **Environmental Considerations**

32. The Property is not designated as a wilderness area and it is not located in any areas identified as a wildlife preserve or in a U.S. Fish and Wildlife Service National Wildlife Refuge. (*App. at pp. 13-14; App. Ex. P.*)

33. The Facility would not affect threatened or endangered species or designated critical habitats. Although the Roseate Tern is located in Branford, and is an endangered species, the Facility would not impact its natural habitat. The Roseate Tern's habitat is limited to coastal beaches, islands and the Atlantic Ocean. The Facility would be located in a developed and disturbed area and away from the Roseate Tern's natural habitat. (*App. at pp. 13-14, 18-19; App. Ex. P; 3:00p.m. Tr. at pp. 113-14.*)

34. The proposed Facility would not affect any National Parks, National Forests, National Parkways or Scenic Rivers, State Forest, State Designated Scenic Rivers or State Game lands. (*App. at pp. 13-14, 18-19; App. Ex. P.*)

35. The proposed Facility would not impact any recognized districts, sites, buildings, structures or objects of significance in American history, architecture, archeology, engineering or culture as listed on the National Register of Historic Places. In a letter dated May 20, 2009, the State Historic Preservation Officer concluded that



the Facility would have no such impact. (*App. at pp. 13-14, 18-19; App. Ex. N, P; 3:00p.m. Tr. at pp. 40, 43-44; SHPO Supplemental Filing, dated December 21, 2009.*)

36. The proposed Facility would not affect any Native American religious sites. A representative of T-Mobile consulted with two Native American tribes – the Mashantucket Pequot Tribe and the Narragansett Indian Tribe – because the Tribes might have had interests impacted by the construction, operation and maintenance of the Facility. The Mashantucket Pequot Tribe responded that it had no interest exploring further the impact of the Facility. The Narragansett Indian Tribe did not respond to any of the correspondence from EBI regarding the Facility. (*App. at pp. 13-14, 18-19; App. Ex. P.*)

37. There are no wetland systems on or within the immediate vicinity of the Property. The nearest wetland system is a man made pond approximately 150 feet from the Facility located on an adjoining parcel. (*App. at pp. 9, 16-17; App. Ex. K; Pre-Filed Testimony of Dean E. Gustafson [“Gustafson”] at pp. 2-3.*)

38. The Facility would not impact any coastal resources. There are no coastal resources located on or near the Property. The nearest coastal resource is the Branford River located 1,800 feet to the southwest. (*App. at p. 14; App. Ex. N.*)

39. The Facility would not be located within a 100 or 500 year flood plain. (*App. at pp. 14, 18-19; App. Ex. P.*)

40. According to an aeronautical study conducted by a representative of T-Mobile, in accordance with the regulations promulgated by the Federal Aviation Administration, the proposed Facility would not require marking or lighting. (*App. at p. 18; App. Ex. R.*)

41. The Facility's maximum emissions levels would be approximately 12.336 percent of the safety criteria adopted by the Federal Communications Commission. (*App. at pp. 12-13, App. Ex. O.*)

### Visibility

42. Existing topography and mature vegetation would reduce some of the potential visual impacts of the proposed Facility on the surrounding areas. The average height of the tree canopy within a two mile radius of the Facility is approximately 50 to 55 feet. (*App at pp. 1, 10; App. Ex. M; Michael Libertine Pre-filed Testimony ["Libertine"] at p. 5; 7:00p.m. Tr. at p. 77.*)

43. The Facility would be set back approximately 485 feet from Pine Orchard Road and shielded with excellent screening from mature vegetation. (*App at pp. 1, 10; App. Ex. B, M; Libertine at p. 5; 7:00p.m. Tr. at p. 77.*)

44. The areas from which the Facility would be at least partially visible year round comprise approximately 683 acres of the 8,042 acre (two mile) study area. (*App at pp. 10-11; App. Ex. M; Libertine at p. 4.*)

45. Approximately 633 acres of the 683 acres of year round visibility (93 percent) consist of open water views from the Long Island Sound and the Branford Harbor. (*Libertine at pp. 4-5; App. Ex. M.*)

46. The open water views would have a minimal visual impact and would not impact any coastal resources. These views would be at a distance of at least one mile and would be limited to the very upper portion of the Facility, which would be difficult to discern above the tree canopy. (*3:00p.m. Tr. at pp. 39-40, 104-05.*)

47. The Facility would be partially visible to some areas within the immediate area along Pine Orchard Road and Knollwood Drive. These partial views would be limited to select portions of the yards of approximately eight residences. (*App. at p. 11; App. Ex. M; Libertine at 5; 3:00p.m. Tr. at pp. 73-74.*)

48. The Facility would have a minimal visual impact, if any, on Route 146 or on any hiking trails in the area of the Facility or elsewhere in the Town of Branford. (*Libertine at p. 6; 3:00p.m. Tr. at pp. 39, 84-87, 110.*)

49. Areas of seasonal visibility would comprise approximately thirty-three additional acres, which overlap the areas where year-round visibility is anticipated. These seasonal views would consist of the upper portion of the tower. (*App at pp. 10-11; App. Ex. B, M; Libertine at p. 5; 3:00p.m. Tr. at 34.*)

#### **Tower Sharing**

50. The Facility would provide co-location opportunities for public safety communications systems and three telecommunications carriers, which would limit the proliferation of telecommunications facilities. (*App at p. 8; App. Ex. B.*)

51. The Facility would be designed to maximize co-location opportunities and coverage area because carriers would be able to mount antenna arrays with T-arms, which would provide more space and flexibility with positioning. (*3:00p.m. Tr. at pp. 50-53; 7:00p.m. Tr. at pp. 92-93; App. Ex. B.*)

52. AT&T, Clearwire Communications ("Clearwire") and Youghiogheny Communications Northeast, LLC d/b/a Pocket Wireless ("Pocket") have indicated an interest in the Facility. AT&T is interested in co-locating at a height of 112'9" AGL; Pocket is interested in co-locating at a height of 102'9" AGL; and Clearwire is interested



in co-locating at a height of 92'9" AGL. (*App. at p. 6; 3:00p.m. Tr. at pp. 52-55; 7:00p.m. Tr. at p. 93; Vergati Affid. at p. 2.*)

53. T-Mobile has offered the Town of Branford space to locate its emergency services on the proposed monopole tower at no charge, but has not yet received a reply from the Town. (*App. at p. 8; Vergati at p. 6; 3:00p.m. Tr. at p. 62.*)

Dated at Bridgeport, Connecticut this 14<sup>th</sup> day of January, 2010.

**THE APPLICANT,  
T-MOBILE NORTHEAST, LLC**

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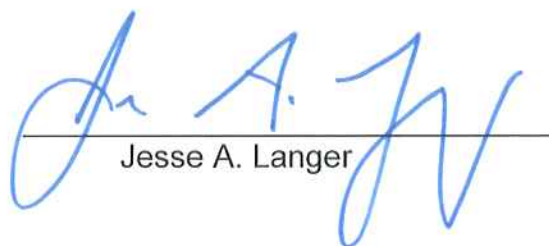
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

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