

**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

**POST-HEARING BRIEF OF
APPLICANT T-MOBILE NORTHEAST, LLC**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, T-Mobile Northeast, LLC, a subsidiary of T-Mobile USA, Inc. d.b.a. T-Mobile (“T-Mobile”) 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) the facility’s consistency with the legislative mandate to avoid the unnecessary proliferation of towers in the State of Connecticut (“State”).¹

I. BACKGROUND

On September 1, 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

¹ T-Mobile submits its Proposed Findings of Fact contemporaneously with this Post-Hearing Brief.

("Property"), pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies.

T-Mobile proposes to construct a Facility in the southeasterly portion of a 4.15 acre parcel owned by Malavasi Investments, LLC, known as 123 Pine Orchard Road and designated as Map F08, Block 6, Lots 49 and 50 on the Branford Tax Assessor's Records ("Property"). The Property is used as a storage facility for tractor-trailer trucks and has been used for commercial purposes for several decades. (*Hearing Exhibit at pp. 1-2, 9, and Exhibit B; Scott Chasse Pre-Filed Testimony ["Chasse"] at p. 2; App. at pp. 9, 15-16; 3:00p.m. Transcript ["3:00p.m. Tr."] at p. 78.*)²

The Facility would consist of a 2,500 square foot compound, which would sit within a 5,625 square foot area leased by T-Mobile. An eight foot high chain link fence would secure the equipment at the Facility. Vehicular access to the Facility would extend from Pine Orchard Road.³ Utility service would also extend from Pine Orchard Road. (*App. at pp. 1, 8-9, 13; App. Ex. B; Chasse at pp. 2-3.*)

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR THE FACILITY

General Statutes § 16-50p (a) (3) (A) mandates that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and

² 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 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.*)

determine . . . [that] a public need for the facility and the basis of the need” The record amply demonstrates that there is a significant public need for the Facility.

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. 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. This antenna height would enable T-Mobile to overcome the existing topography and mature vegetation and provide coverage in this area of Branford and down to the shoreline. (*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, 50-52, 87-89, 99; 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.”].*)

The Facility would also alleviate coverage gaps existent in the networks of other wireless carriers. New Cingular Wireless PCS, LLC (“AT&T”), who has intervened in the proceedings, experiences a coverage gap in its network in the area of the proposed Facility, including along Pine Orchard Road, Route 146 and Damascus Road, as well as the Amtrak rail line that passes through the area. (*AT&T Responses to the Council’s Interrogatories [“AT&T Interrog. Resp.”]; 7:00p.m. Tr. at p. 72.*) AT&T would co-locate its antenna array at 112’9” AGL, which would enable AT&T to provide coverage to these areas in Branford. (*7:00p.m. Tr. at p.72; AT&T Interrog. Resp.*)

Clearwire Communications (“Clearwire”) and Youghiogheny Communications Northeast, LLC d/b/a Pocket Wireless (“Pocket”) have also indicated an interest in the Facility. 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; Raymond Vergati Affidavit [“Vergati Affid.”] at p. 2.*)

Moreover, the Town of Branford has acknowledged the need for improved wireless coverage in the areas surrounding the Facility. The Town has recognized that it needs enhanced coverage for its emergency services and that the shoreline currently receives inadequate wireless coverage. (*3:00p.m. Tr. at p. 13; 7:00p.m. Tr. at 58.*)

The record establishes that the Facility would alleviate discrepancies in coverage for T-Mobile’s network as well as other wireless carriers. The Facility, therefore, would meet a significant public need for improved wireless telecommunications in Branford.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, T-Mobile must identify “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” General Statutes § 16-50p (a) (3) (B). 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.

T-Mobile conducted a comprehensive environmental analysis of the Facility, which is attached to the Application as Exhibit K (Wetlands Report), Exhibit M (Visual Resource Evaluation Report), Exhibit N (Coastal Consistency Analysis) and Exhibit P (NEPA Compliance Documentation). State and Federal authorities also provided substantive responses (Exhibit N). The environmental analysis concludes that:

- The Property is not designated as a wilderness area and it is not located in a wildlife preserve or in a U.S. Fish and Wildlife Service National Wildlife Refuge. (*App. at pp. 13-14; App. Ex. P.*)
- The Facility would not affect threatened or endangered species or designated critical habitats. (*App. at pp. 13-14, 18-19; App. Ex. P; 3:00 Tr. at pp. 113-14.*)
- 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.*)
- 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.*)⁴
- The proposed Facility would not affect any Native American religious sites. (*App. at pp. 13-14, 18-19; App. Ex. P.*)

⁴ On December 21, 2009, a representative of T-Mobile submitted a supplemental filing to the Connecticut Commission on Culture and Tourism ("SHPO"). The filing advised SHPO that its data incorrectly located the Norton House, a property on the National Register of Historic Places, within 0.5 miles of the proposed Facility. Based upon the Branford Assessor's Office and T-Mobile's field survey, the Norton House is located more than 0.5 miles from the Facility. SHPO has not responded to the supplemental filing. It is important to note that there would be no views of the Facility from the Norton House. (*3:00p.m. Tr. a p. 41.*)

- There are no wetlands 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.*)
- 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.*)
- The Facility would not be located within a 100 or 500 year flood plain. (*App. at pp. 14, 18-19; App. Ex. P.*)
- 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 pp. 17-18; App. Ex. R.*)

Additionally, the existing topography and mature vegetation would reduce some of the potential sensitive visual receptors. The average height of the tree canopy within a two mile radius of the Facility is approximately 50 to 55 feet. 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; Michael Libertine Pre-filed Testimony ["Libertine"] at p. 5; 7:00p.m. Tr. at p. 77.*) The Facility would have a minimal visual impact, if any, on Route 146 and on any hiking trails. (*Libertine at p. 6; 3:00p.m. Tr. at pp. 39, 84-87, 110.*)

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. Approximately 633 acres (93 percent) consist of open water views from the Long Island Sound and the Branford Harbor. 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 from that distance. (*App at pp. 10-11; App. Ex. M; Libertine at pp. 4-5; 3:00p.m. Tr. at pp. 39-40, 104-05.*)

The Facility would be partially visible year round 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 on those routes. 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 be limited to the upper portion of the tower. (*App at pp. 10-11; App. Ex. M; Libertine at p. 5; 3:00p.m. Tr. at pp. 34, 73-74.*)

Ultimately, the design and location of the Facility would minimize the Facility's environmental impact while addressing the coverage discrepancies in the area.⁵ The existing case law supports the approval of T-Mobile's application for a certificate as 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. *See generally Westport v. Connecticut Siting Council*, 47 Conn. Sup. 382, 797 A.2d 655 (2001), *Aff'd*, *Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002); *Nobs v. Connecticut Siting Council*, No. CV 980492714S, 2000 WL 675643 (Conn. Super. Ct. April 28, 2000).

⁵ T-Mobile considered co-locating on the Amtrak catenaries. Amtrak, however, maintains a policy which prohibits wireless providers from doing so. (*Vergati Affid. at pp.1-2.*) T-Mobile also assessed the property at 308 East Main Street in response to the owner's letter of January 4, 2010. This property is located almost adjacent to T-Mobile on-air site CT 11025B. A facility at that address would duplicate coverage in the area of CT 11025B and would not meet the coverage objective of the proposed Facility.

Thus, any environmental impacts associated with the Facility would be limited. The Facility would also eliminate the need for additional facilities in this area of Branford, thereby reducing the cumulative environmental impact on the Town.

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

The Connecticut legislature has determined that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. General Statutes § 16-50aa. General Statutes §16-50p (b) (1) (A) requires the Council to consider the feasibility of tower sharing to avoid the unnecessary proliferation of telecommunications facilities. “The sharing of facilities is encouraged, if not required by General Statutes §16-50p (b) (1) (A).” *Nobs*, 2000 WL 675643, at *2 n.1.

Certification of the proposed Facility would be in the public interest. The Town has acknowledged the need for better wireless services. (3:00p.m. Tr. at p. 13; 7:00p.m. Tr. at 58.) There are no other existing facilities or structures in this area from which wireless carriers could co-locate. The Facility, therefore, is necessary to provide effective wireless service in this area of Branford, including reliable emergency services.

The Facility would also accommodate three additional wireless carriers. As discussed above, three wireless providers are interested in the Facility. AT&T has intervened in the proceedings and demonstrated a need for the Facility. (7:00p.m. Tr. at p.72; AT&T Interrog. Resp.) Clearwire and Pocket have also expressed an interest in co-locating on the Facility. (App. at p. 6; 3:00p.m. Tr. at pp. 52-55; 7:00p.m. Tr. at p. 93; Vergati Affid. at p. 2.) Accordingly, the issuance of a certificate would help avoid the construction of new telecommunications facilities in this area of Connecticut. Therefore

approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

The record amply supports the approval of a certificate for the Facility. The Facility is necessary to provide adequate wireless coverage in this area of Branford. T-Mobile has demonstrated that the Property is the best location for a facility which would address the coverage issues in this area with the least amount of environmental impact. T-Mobile requests that the Council issue a certificate for the Facility, reflecting in its Decision and Order, consistent with General Statutes § 16-50x, that such approval satisfies and is in lieu of all local and state approvals and certifications.

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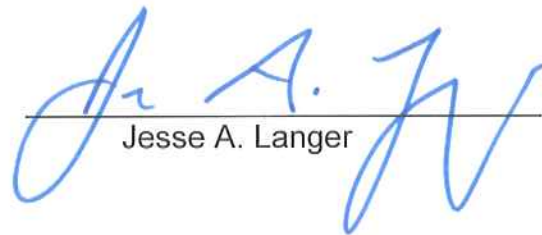
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CERTIFICATE OF SERVICE

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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