

**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 15 ORCHARD PARK ROAD IN THE TOWN
OF MADISON, CONNECTICUT

DOCKET NO. 390

Date: February 3, 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 October 7, 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 100 foot monopole wireless telecommunications facility ("Facility") at 15 Orchard Park Road, Madison, Connecticut ("Property") pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies ("Application"). (*Hearing Exhibit 1, Application at p. 1.*)¹

2. The Facility would sit within a 2,009 square foot area leased by T-Mobile, located in the southeasterly portion of the Property, which is a 3.51 acre parcel owned by 15 Orchard Park Road, LLC ("Site"). (*App. at p.1; App. Ex. B.*)

¹ 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 January 5, 2010, beginning at 3:00p.m., and continued to 7:00p.m., at the Memorial Town Hall, Upper Level, 8 Meetinghouse Lane, Madison, 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 January 5, 2010, at 2:00p.m. (*Hearing Notice.*)

5. T-Mobile conducted a balloon float, with a balloon four feet in diameter, at a height of 100 feet, at the Site from 7:30a.m. to 4:30p.m., on January 5, 2010, in accordance with the Council's instructions. (*Pre-Hearing Conference Results; Hearing Exhibit 9; 3:00p.m. Tr. at pp. 39-40; 7:00p.m. Transcript ["7:00p.m. Tr."] at pp. 43-45.*)

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, 104th 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 in the area surrounding the Site and along the shoreline in Madison ("Town"). (*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. 18-19, 25-27, 29, 64; 7:00p.m. Tr. at p. 58; T-Mobile's Responses to the Council's First Set of Interrogatories ["T-Mobile First Interrog. Resp."].*)

8. The Facility would be an integral component of T-Mobile's wireless network in the Town. The Facility would remedy the existing gap in coverage in this area of the Town, specifically along Route 1, Neck Road, Mungertown Road and Interstate 95, as well as the Amtrak rail line that passes through the area. (*App. at pp. 4-5; App. Ex. H, J; Heffernan at pp.3-4; 3:00p.m. Tr. at pp. 18-19, 25-27; 7:00p.m. Tr. at p. 58; T-Mobile First Interrog. Resp.*)

Coverage

9. To provide effective coverage in the area of the proposed Facility and along the shoreline, T-Mobile must mount its antenna array at 100 feet above grade level ("AGL"). This position would allow T-Mobile to minimize the number and height of future telecommunications facilities in this area of the Town. (*Heffernan at pp. 5-6; 3:00p.m. Tr. at p. 29; T-Mobile First Interrog. Resp.*)

10. An antenna array at 100 feet AGL would allow T-Mobile to overcome the mature vegetation and topography in the area, and provide coverage to the coverage objective. (*Heffernan at pp. 5-6; 3:00p.m. Tr. at p. 29; T-Mobile First Interrog. Resp.*)

Site Search

11. There are no existing towers, transmission line structures or other structures of a suitable height or location in this area of the Town that would be suitable for co-location. (*App. at pp. 7-8; App. Ex. J; Pre-filed Testimony of Raymond Vergati [“Vergati”] at pp. 2-5; 3:00p.m. Tr. at pp. 98-100; 7:00p.m. Tr. at pp. 51-52.*)

12. T-Mobile investigated whether it could co-locate its equipment on Amtrak’s catenaries; however, 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. 19-21.*)

13. The nearby utility poles, which consist of 25 to 30 foot wooden poles, owned by Northeast Utilities, were not suitable structures for co-location. Utility lines are also problematic for co-location because facility maintenance would require shutdowns of utility services. (*3:00p.m. Tr. at pp. 97-99.*)

14. After determining that there were no existing structures suitable for co-location, T-Mobile searched for an appropriate location for a new facility. (*App. at pp. 7-8; App. Ex. J; Vergati at pp. 2-5; 7:00p.m. Tr. at pp. 48-50, 51-52.*)

15. T-Mobile conducted a site analysis of properties within the area to identify the best possible location to address T-Mobile’s coverage need. (*App. at pp. 7-8; App. Ex. J; Vergati at pp. 2-5; Pre-Filed Testimony of Hans Fiedler [“Fiedler”] at pp. 4-5; 7:00p.m. Tr. at pp. 48-50.*)

16. T-Mobile considered several 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; Vergati at pp. 2-5; Fiedler at pp. 4-5; 7:00p.m. Tr. at pp. 48-50.*)

17. T-Mobile also considered several properties at the Town's request, specifically the Sunshine House on Fort Path Road, the bus fueling yard off of Fort Path Road, and the Town owned property on Nathan's Lane. None of those properties were suitable sites. (*Fiedler at pp. 4-5; Vergati at p. 4; 7:00p.m. Tr. at pp. 48-49.*)

18. The Property is superior to other parcels in the area. The Property is zoned as light industrial (LI) and is 3.51 acres. Access to the Property is across an existing bituminous driveway and parking lot. The Property is set back approximately 1,500 feet from Mungertown Road with excellent screening from mature trees. The Property is currently used for commercial storage. (*App. at pp. 7-10; App. Ex. J; Fiedler at p. 2; Vergati at pp. 5-6; Pre-filed Testimony of Scott Chasse ["Chasse"] at pp. 2-3.*)

The Site

19. T-Mobile proposes to construct the Facility at the Site located in the southeastern portion of the Property, which is a 3.51 acre parcel of land commonly known as 15 Orchard Park Road, which is identified as Assessors Tax Map 36, Lot 3. The Property is used for commercial storage. (*App. at pp. 1-2, 10, 17; App. Ex. B; Chasse at p. 2.*)

20. The Facility would accommodate T-Mobile and the equipment of three other wireless carriers, as well as the Town's emergency services equipment, if requested. (*App. at p. 10; App. Ex. B; Chasse at p. 3; 3:00p.m. Tr. at p. 74.*)

21. The Facility would accommodate the antennae and equipment of T-Mobile at an antenna centerline of 100 feet AGL, mounted to the tower by T-arms, and three other telecommunications carriers at antenna centerlines of 90, 80 and 70 feet AGL.

The Facility would be approximately 102 feet AGL with all appurtenances. (*App. Ex. B; 3:00p.m. Tr. at pp. 111-12.*)

22. The Facility would consist of a 1,800 square foot fenced compound area, which would sit within the 2,009 square foot area leased to T-Mobile. (*App. at pp. 1-2, 10; App. Ex. B; Chasse at p. 3.*)

23. 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, 10; App. Ex. B; Chasse at p. 3.*)

24. Vehicular access to the Facility would extend from Orchard Park Road. The access would extend over an existing bituminous driveway and parking area. (*App. at pp. 2, 10; App. Ex. B; Chasse at p. 3.*)

25. Utility service would run from existing utility demarcations currently located on Orchard Park 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, 10, 15; App. Ex. B.*)

26. The estimated cost of the proposed Facility is approximately \$187,000. The duration of the construction would be approximately thirteen weeks, with an additional two weeks for Facility integration and system testing. The estimated cost of the antennae and related equipment for T-Mobile would be approximately \$75,000. (*App. at p. 20; T-Mobile First Interrog. Resp.*)

Municipal Consultation

27. On May 28, 2009, T-Mobile submitted a technical report to the Town regarding the Facility pursuant to General Statutes § 16-50I (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. 18-19; App. Ex. Q; Bulk Filing; Fiedler at pp. 3-4; Vergati at p. 6.*)

28. On July 11, 2009, T-Mobile conducted a second balloon float at the request of the Town. The Town issued a public notice of the second balloon float so that those interested in the proposed Facility could attend and obtain information. (*App. at p. 12; Fiedler at p. 3; Vergati at p. 6; 7:00p.m. Tr. at pp. 43-45.*)

29. On July 27, 2009, T-Mobile also met with the Town's Conservation Commission and provided that Commission with materials regarding the proposed Facility. On August 3, 2009, the Conservation Commission issued a letter recommending that T-Mobile (1) grade the land upon which the tower would sit so that the land would drain to the south away from the wetland system and (2) install a double silt fence during construction. T-Mobile agreed to incorporate these recommendations into its plans. (*App. at p. 18; Fiedler at p. 3; Vergati at p. 6; Pre-Filed Testimony of Dean E. Gustafson ["Gustafson"] at p. 4.*)

30. On August 6, 2009, T-Mobile also appeared before the Town's Planning & Zoning Commission ("PCZ"), submitted written materials for the PZC's review, and responded to questions from the PZC regarding the Facility. The PZC issued a letter with its comments on August 14, 2009. T-Mobile delayed filing the Application until it

could fully evaluate the PZC's comments. (*App. at pp. 18-19; Fiedler at pp. 3-4; Vergati at pp. 6-7; Hearing Exhibit 2.*)

31. At the Town's request, T-Mobile investigated whether it could locate a telecommunications facility on the property owned by the Sunshine House on Fort Path Road. T-Mobile engaged in discussions with Amy Kuhner, the Executive Director of the Sunshine House, and provided requested information. Ms. Kuhner reported back that she circulated the information to the Sunshine House Board and it decided not to pursue a lease with T-Mobile for a facility on its property. (*App. at pp. 18-19; Fiedler at p. 4; Vergati at pp. 6-7; Hearing Exhibit 2; 7:00p.m. Tr. at pp. 48-49.*)

32. At the Town's request, T-Mobile investigated whether it could locate a telecommunications facility on the property owned by the Town on Nathan's Lane. T-Mobile determined that this parcel is located too far to the west of the coverage objective. The coverage from this parcel would provide approximately 50 percent redundant coverage with T-Mobile's on air site CT11028A, located at 119 Tanner Marsh Road in Guilford. Thus, even with a site at Nathan's Lane, the Facility would still be needed to satisfy T-Mobile's coverage objectives in this area of the Town. (*App. at pp. 18-19; Fiedler at p. 4; Vergati at pp. 6-7; Hearing Exhibit 2; 7:00p.m. Tr. at pp. 48-49.*)

33. At the Town's request, T-Mobile investigated whether it could locate a telecommunications facility at the Bus Fueling Yard (off of Fort Path Road). This location, however, is adjacent to T-Mobile's on air site CT11167A, a monopole located at 8 Old Route 79 in Madison, Connecticut. T-Mobile is located at 120 feet on this 148 foot tower. The majority of coverage potential from this candidate is redundant coverage with T-Mobile's existing on air coverage footprint and is not an appropriate

candidate for the coverage objective intended for the proposed Facility. (*App. at pp. 18-19; Fiedler at p. 5; Vergati at pp. 6-7; Hearing Exhibit 2; 7:00p.m. Tr. at pp. 48-49.*)

34. At the Town's request, T-Mobile also confirmed that the proposed Facility would not be visible from the Madison Historic District. (*Fiedler at p. 5; Pre-filed Testimony of Michael Libertine ["Libertine"] at pp. 6-7; Hearing Exhibit 2.*)

35. At the Town's request, T-Mobile obtained a geo-technical report to determine whether the Property could support a facility greater than the proposed height of 100 feet. According to the report, the Property could support a facility up to 160 feet AGL. (*Fiedler at p. 5; Chasse at p. 5; Hearing Exhibit 6; 3:00p.m. Tr. at p. 75.*)

36. At the Town's request, T-Mobile also performed additional in-field reconnaissance to assess further the potential visual impact of the proposed Facility on the surrounding area as well as the visual impact of the proposed Facility at different heights. (*Fiedler at pp. 5-6; T-Mobile's Responses to the Council's Second Set of Interrogatories ["T-Mobile Second Interrog. Resp."].*)

Environmental Considerations

37. 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. 15-16; App. Ex. P; Pre-Filed Testimony of Michael Chun ["Chun"] at p. 3.*)

38. The Facility would not affect threatened or endangered species or designated critical habitats. The endangered species located in the Town include the Piping Plover and the Roseate Tern. The former resides along coastal beaches and the

latter resides along coastal beaches, islands and the Atlantic Ocean. The proposed Facility would be located in a cleared area with sparse vegetation and immediately adjacent to developed and disturbed areas. (*App. at pp. 15-16, 19-20; App. Ex. P; Chun at p. 3; 3:00p.m. Tr. at pp. 102-03.*)

39. 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. 15-16, 19-20; App. Ex. P; Chun at p. 3.*)

40. 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. The only property listed on the National Register is the Shelley House, located at 248 Boston Post Road. The Facility would not adversely impact this property. In a letter dated January 9, 2009, the State Historic Preservation Officer ("SHPO") concluded that the Facility would have no such impact. (*App. at pp. 15-16, 19-20; App. Ex. N, P; Chun at p. 4; 3:00p.m. Tr. at pp. 47-48.*)

41. The proposed Facility would not affect any Native American religious sites. T-Mobile consulted with two Native American tribes, the Mashantucket Pequot Tribe and the Narragansett Indian Tribe, because they might have had interests impacted by the construction, operation and maintenance of the Facility. Both Tribes confirmed that they do not have any interests that would be impacted by the Facility. (*App. at pp. 15-16, 19-20; App. Ex. P; Chun at p. 4.*)

42. Although there is a wetland system located on the southeastern edge of the Property, the proposed Facility would not adversely impact that wetland system.

The area proposed for development is within a cleared area and immediately adjacent to existing developed and disturbed areas associated with the storage facility located on the Property. T-Mobile would install a double silt fence during construction of the Facility to avoid any temporary impacts on the wetland system. T-Mobile would also stabilize the Facility with loam and a New England Conservation / Wildlife seed mix. These measures would provide a permanent cover of grasses, forbs, wildflowers, legumes and grasses, which would add wildlife habitat value and good erosion control. This mix would not require maintenance. (*App. at pp. 8, 17-18; App. Ex. B, K; Gustafson at pp. 2-3; 3:00p.m. Tr. at pp. 38, 46-47, 100-01.*)

43. As stated in Paragraph 29, above, the Town's Conservation Commission issued a letter recommending that T-Mobile (1) grade the land upon which the tower would sit so that the land would drain to the south away from the wetland system and (2) install a double silt fence during construction. T-Mobile agreed to incorporate these recommendations into its plans. (*App. at p. 18; Fiedler at p. 3; Vergati at p. 6; Gustafson at p. 4.*)

44. The access would not impact any wetlands as it would cross over an existing bituminous driveway and parking lot. The location of the utility easements would prevent the utility routing from impacting any wetland system. (*App. Ex. B, K; Gustafson at p. 4.*)

45. The Facility would not impact any coastal resources. There are no coastal resources located on or near the Property. The nearest coastal resource consists of tidal wetlands associated with Bailey Creek located 2,000 feet to the southwest. (*App. Ex. N.*)

46. The Facility would not be located within a flood plain. (*App. at pp. 15, 19-20; App. Ex. P; Chun at p. 4.*)

47. According to an aeronautical study conducted by 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. 19; App. Ex. R.*)

48. The Facility's maximum emissions levels would be approximately 10.6219 percent of the safety criteria adopted by the Federal Communications Commission. (*App. at p. 14, App. Ex. O.*)

Visibility

49. T-Mobile conducted an extensive visual analysis of the proposed Facility on the surrounding area, including four balloon floats, which evaluated the visual impact of the Facility during leaf-on and leaf-off conditions. (*App. at pp. 12-13; App. Ex. M; T-Mobile Second Interrog. Resp.; 3:00p.m. Tr. at pp. 39-40; 7:00p.m. Tr. at pp. 43-45.*)

50. 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 at least 60 feet. (*App at p. 12; App. Ex. M; Libertine at p. 6; 3:00p.m. Tr. at p. 31.*)

51. The Facility would be set back approximately 1,500 feet from Mungertown Road and shielded with excellent screening from mature vegetation. (*App. Ex. B, M; Libertine at p. 6.*)

52. The areas from which the Facility would be at least partially visible year round comprise approximately 712 acres of the 8,042 acre (two mile) study area. (*App at pp. 12-13; App. Ex. M; Libertine at p. 5.*)

53. Approximately 690 acres of the 712 acres of year round visibility (97 percent) consist of open water views from the Long Island Sound, as well as the Ceder Island, East River and Neck River tidal marshes. (*Libertine at p. 5; App. Ex. M.*)

54. The open water views would have a minimal visual impact and would not impact any coastal resources. These views would be distant 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. 104-05.*)

55. The Facility would be partially visible to some areas within the immediate area along Route 1, Johnson Lane, Stony Lane, Fort Path and Rowell Lane. Approximately twelve residential properties within the immediate area of the Facility would have limited year round views of portions of the proposed Facility, including three properties on Johnson Lane, three properties on Stony Lane, three properties on Rowell Lane, two properties on Fort Path Road and one property on Route 1. These views would be limited and generally through the existing mature vegetation. (*3:00p.m. Tr. at pp. 42-44; 7:00p.m. Tr. at pp. 54-56.*)

56. Approximately ten properties within the immediate area of the proposed Facility would have limited seasonal (leaf-off) views of the Facility through the existing vegetation, including six properties along Johnson Lane, two along Route 1 (limited views from the yard), and two properties along Stony Lane. (*3:00p.m. Tr. at pp. 42-44.*)

57. The Facility would have a minimal visual impact, if any, on any properties with historic significance, scenic roads or hiking trails. This determination is consistent with SHPO's conclusion. The Facility would not be visible from the Madison Green Historic District. (*App. Ex. M; Libertine at pp. 6-7; 3:00p.m. Tr. at pp. 105-07.*)

Tower Sharing

58. 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. 10; App. Ex. B; 7:00pm. Tr. at p. 52.*)

59. 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. (*7:00p.m. Tr. at p. 52; App. Ex. B.*)

60. T-Mobile has offered the Town 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. 10; Vergati at p. 7; 3:00p.m. Tr. at p. 74.*)

Dated at Bridgeport, Connecticut this 3rd day of February, 2010.

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

By: 

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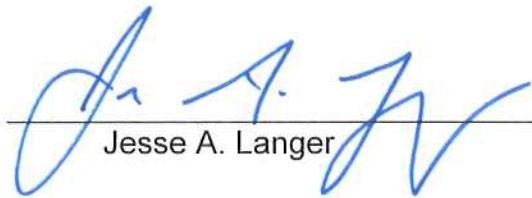
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CERTIFICATE OF SERVICE

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

The Town of Madison
c/o Ms. Marilyn Ozols
Planning and Zoning Administrator
Town of Madison
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Madison, CT 06443



Jesse A. Langer