

**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

**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 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,

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

pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies.

T-Mobile proposes to construct the Facility in the southeasterly portion of a 3.51 acre parcel owned by 15 Orchard Park Road, LLC, known as 15 Orchard Park Road and designated as Map 36, Lot 3 on the Town of Madison Tax Assessor's Records ("Property"). The Property is used as a storage facility. (*Hearing Exhibit 1 at pp. 1-2, 10, 17, and Exhibit B; Scott Chasse Pre-Filed Testimony ["Chasse"] at p. 2.*)²

The Facility would consist of a 1,800 square foot compound, which would sit within a 2,009 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 Orchard Park Road. Utility service would also extend from Orchard Park Road. (*App. at pp. 1-2, 10; App. Ex. B; Chasse at p. 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 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 within the area surrounding the Facility as well as along the shoreline in Madison ("Town"). The Facility would remedy the existing coverage gap in this area, specifically along Route 1, Neck Road,

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. ___."

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; Pre-Filed Testimony of Scott Heffernan [“Heffernan”] at pp.3-4; 3:00p.m. Tr. at pp. 18-19, 25-27; 7:00p.m. Tr. at p. 58; T-Mobile’s First Responses to the Council’s Interrogatories [“T-Mobile Interrog. Resp.”].*)

To provide effective coverage in this area, 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. This antenna height would enable T-Mobile to overcome the existing topography and mature vegetation and provide coverage in these areas of the Town. (*App. at pp. 4-5; App. Ex. H; Heffernan at pp. 5-6; 3:00p.m. Tr. at pp. 18-19, 25-27, 29, 64; 7:00p.m. Transcript [“7:00p.m. Tr.”] at p. 58; T-Mobile First Interrog. Resp.*)

Additionally, T-Mobile engaged in a lengthy and comprehensive municipal consultation with the Town. Although the Town requested information regarding the proposed Facility and intervened in the proceedings, the Town never rejected T-Mobile’s position that the intended coverage area needs better wireless service. (*App. at pp. 12, 18-19; App. Ex. Q; Bulk Filing; Hearing Exhibit 2; Hearing Exhibit 6; Pre-Filed Testimony of Hans Fiedler [“Fiedler”] at pp. 3-5; Pre-Filed Testimony of Raymond Vergati [“Vergati”] at pp. 6-7; Pre-Filed Testimony of Dean E. Gustafson [“Gustafson”] at p. 4; Chasse at p. 5; 3:00p.m. Hearing Transcript [“3:00p.m. Tr.”] at pp. 8-9, 75; 7:00p.m. Tr. at pp. 43-45, 48-49; T-Mobile’s Responses to the Council’s Second Set of Interrogatories [“T-Mobile Second Interrog. Resp.”].*)

The record establishes that the Facility would alleviate discrepancies in coverage for T-Mobile's network. The Facility, therefore, would meet a significant public need for improved wireless telecommunications in the Town.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating a 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. 15-16; App. Ex. P; Pre-Filed Testimony of Michael Chun ["Chun"] at p. 3.*)
- The Facility would not affect threatened or endangered species or designated critical habitats. (*App. at pp. 15-16, 19-20; App. Ex. P; Chun at p. 3; 3:00 Tr. at pp. 102-03.*)

- 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.*)
- 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 January 9, 2009, the State Historic Preservation Officer 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.*)
- The proposed Facility would not affect any Native American religious sites. (*App. at pp. 15-16, 19-20; App. Ex. P; Chun at p. 4.*)
- Although there is a wetland system located on the southeastern edge of the Property, the proposed Facility would not impact that system. T-Mobile would implement measures to avoid any impacts. (*App. at pp. 8, 17-18; App. Ex. B, K; Fiedler at p. 3; Gustafson at pp. 2-4; Vergati at p. 6; 3:00p.m. Tr. at 38, 46-47, 100-01.*)
- The Facility would not impact any coastal resources. There are no coastal resources located on or near the Property. The nearest coastal resource are tidal areas associated with Bailey Creek located 2,000 feet to the southwest. (*App. at p. 14; App. Ex. N.*)
- The Facility would not be located within a flood plain. (*App. at pp. 15, 19-20; App. Ex. P; Chun at p. 4.*)
- 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.*)

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 at least 60 feet. The Facility would be set back approximately 1,500 feet from Mungertown Road and shielded with excellent screening from mature vegetation. (*App at p. 12; App. Ex. B, M; Michael Libertine Pre-filed Testimony ["Libertine"] at p. 6; 3:00p.m. Tr. at p. 31.*) The Facility would have a minimal

visual impact, if any, on any property with historical significance, scenic roads or hiking trails. (*Libertine at pp. 6-7; 3:00p.m. Tr. at pp. 105-07.*)

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. 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. 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. (*App at pp. 12-13; App. Ex. M; Libertine at p. 5; 3:00p.m. Tr. at pp. 104-05.*)

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. These views would be limited and generally through the existing mature vegetation. Areas with seasonal views would overlap those areas where year round visibility is anticipated. These seasonal views would be limited to select portions of the Facility.³ (*3:00p.m. Tr. at pp. 42-44; 7:00p.m. Tr. at pp. 54-56.*)

Ultimately, the design and location of the Facility would minimize the Facility's environmental impact while addressing the coverage discrepancies in the area. The existing case law supports the approval of T-Mobile's application for a certificate as

³ On January 20, 2010, the property owners of 301 Boston Post Road, an undeveloped parcel abutting the Property, inquired as to whether T-Mobile would provide additional screening measures because the property owners intend to build a residence on the vacant lot. They voiced concerns over the visibility of the Facility compound. T-Mobile conducted additional visual analysis and confirmed that the compound area would not be visible from the proposed site of the new residence. There is approximately 365 feet of mature vegetation separating the proposed Facility and the proposed residence. Accordingly, additional screening measures are not warranted.

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).

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 the Town, 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. There are no other existing facilities or structures in this area from which wireless carriers could co-locate. The Facility would provide co-location opportunities for public safety communications systems and three telecommunications carriers, which would limit the proliferation of telecommunications facilities. 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. Therefore approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers. (*App at p. 10; App. Ex. B; 7:00pm. Tr. at p. 52.*)

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 the Town. 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.

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

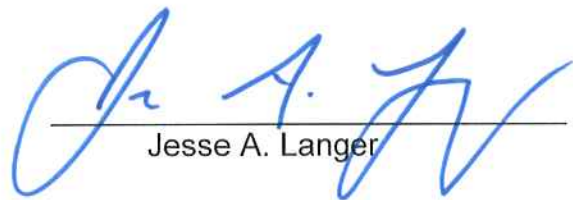
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CERTIFICATE OF SERVICE

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.

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



Jesse A. Langer