

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**RE: APPLICATION OF SBA TOWERS II LLC DOCKET NO. 396  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE AND  
OPERATION OF A TELECOMMUNICATIONS  
FACILITY AT 49 BRAINERD ROAD,  
NIANTIC (EAST LYME), CONNECTICUT**

**Date: June 16, 2010**

**PROPOSED FINDINGS OF FACT**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, applicant SBA Towers II LLC (“SBA”) submits these Proposed Findings of Fact (“Proposed Findings”).

**Introduction**

1. SBA, in accordance with provisions of Connecticut General Statutes (“CGS”) §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies (“RCSA”), applied to the Connecticut Siting Council (“Council”) on December 7, 2009 for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, operation and maintenance of a 170-foot monopole wireless telecommunications facility (“Facility”) at 49 Brainerd Road, East Lyme (Niantic), Connecticut (the “Property”). (SBA Exhibit 1 (“App.”) at 1).
2. The site is located in the northern portion of the Property and consists of a 75-foot by 75 foot equipment compound in a 100-foot by 100-foot leased area (the “Site”). (App. at 2, Exhibit B).
3. The purpose of the proposed Facility is to provide wireless coverage to this area of East Lyme for New Cingular Wireless PCS, LLC (“AT&T”), Cellco Partnership d/b/a Verizon Wireless (“Verizon”) and two other wireless carriers. (App. at 1, Exhibit F; Verizon Exhibits 1 and 2; AT&T Exhibits 1 and 2).
4. Pursuant to General Statutes § 16-50m, the Council, after giving due notice thereof, held a public hearing on Tuesday, February 23, 2010, beginning at 3:00

p.m. and continued at 7:00 p.m., at the Camp Rell Nett Hall, Smith Street, East Lyme, Connecticut ("Hearing"). (Hearing Notice; 3:00 p.m. Transcript ("Tr.") at 3).

5. The Council and its staff made an inspection of the Site on February 23, 2010 at 2:00 p.m. (Hearing Notice).
6. SBA flew a balloon, four feet in diameter, at a height of 170 feet at the Site from 7:00 am to 5:00 pm on February 23, 2010. 37:00 p.m. Tr. at 16).

#### Need

7. In 1996, the United States Congress recognized a nationwide need for high quality wireless telecommunications services. Through the Federal Telecommunications Act of 1996 (the "Act"), Congress seeks to promote competition, reduce regulation to encourage technical innovation, and foster lower prices for wireless telecommunications services. The Act pre-empts any state or local determination of public need. (App. at 5; 3:00 p.m. Tr. at 5-6; Telecommunications Act of 1996).
8. A Facility at the Site will provide coverage for a significant coverage gap experienced by AT&T and Verizon in East Lyme specifically along Route 156 and the surrounding area. (App. at 1, Exhibit F; Verizon Exhibits 1 and 2; AT&T Exhibits 1 and 2).
9. Verizon currently experience a .25 mile gap in cellular coverage and 2.4 mile gap in PCS coverage along State Route 156. (Verizon Exhibit 2).
10. T-Mobile Northeast, LLC ("T-Mobile") has expressed its interest in co-locating on the proposed Facility at the 157 feet AGL centerline. (SBA Exhibit 3).

#### Coverage

11. AT&T has indicated that they need to locate at a minimum height of 167 feet above ground level ("AGL") on the proposed Facility to minimize the number and height of future telecommunications towers in this area. (App. at Exhibit F; AT&T Exhibits 1 and 2).
12. Verizon testified that they need to locate at a minimum height of 147 feet AGL on the proposed Facility to minimize the number and height of future telecommunications towers in this area. (Verizon Exhibits 1 and 2).

13. T-Mobile has indicated its need to locate antennas at 157 feet AGL on the proposed facility. (SBA Exhibit 3 at Exhibit 2).
14. SBA has offered the top of the proposed Facility, free of charge, for the Town of East Lyme's emergency services. (SBA Exhibit 3).
15. A distributed antenna system ("DAS") would not be a viable alternative to provide coverage in this area of East Lyme. (3/23/10 Tr. at 148-156).

#### Site Search

16. SBA determined that there were no existing structures of a suitable height or location from which the existing lack of coverage experienced by licensed telecommunications carriers in this area of East Lyme would be remedied. (App. at 7-8, Exhibit G).
17. Only after determining that any existing structures were unavailable for co-location did SBA search for an appropriate location for a new telecommunications facility. (App. at 7-8; SBA Exhibit 4a).
18. SBA conducted a survey of properties within the area to identify the best possible location to serve the needs of wireless carriers. SBA's site search was limited by the dense residential development in this area of East Lyme. (SBA Exhibit 4a).
19. SBA investigated the property located at Pondcliff Condominiums. However, both AT&T and Verizon determined that this property was located too far away from the target coverage area to fill their respective coverage gaps in this area of East Lyme. (SBA Exhibit 3; Verizon Exhibit 2, AT&T Exhibit 3).
20. SBA investigated the potential of locating the proposed facility at several different locations on property located at Giant's Neck Road, known as assessor's parcel 10.3, 14-1, owned by the State Department of Environmental Protection ("DEP") (the "DEP Parcel"). However, the DEP has indicated that the DEP Parcel is not available for leasing. (SBA Exhibit 7; April 22, 2010 Tr. at 50-52).
21. The Town of East Lyme has indicated that, despite its efforts, it has been unable to obtain the DEP Parcel for the development of a facility. (April 22, 2010 Tr. at 52).

22. Therefore, the DEP Parcel is not an available alternative site for the proposed Facility. (SBA Exhibit 7; April 22, 2010 Tr. at 52).
23. T-Mobile has indicated that it has leased a parcel in the vicinity of the Property located at Indian Woods Road (the "T-Mobile Parcel"). (T-Mobile limited appearance dated April 16, 2010).
24. AT&T indicated that the T-Mobile Parcel would not fill its coverage gaps in this area of East Lyme. (3/23/10 Tr. at 164; AT&T late file exhibit dated 5/14/10).
25. The T-Mobile Parcel is landlocked and has potential access issues. (SBA Exhibit 6; 4/22/10 Tr. at 137).
26. In order to develop a facility at the T-Mobile Parcel, a wetlands crossing would be required. (3/23/10 Tr. at 65; SBA Exhibit 5 at Exhibit 1).
27. The T-Mobile Parcel is not a viable alternative to the proposed Site. (SBA Exhibit 5; 3/23/10 Tr. at 164; AT&T late file exhibit dated 5/14/10).
28. The Property was uniquely suited for the development of a Facility due to its large size and presence of natural screening. (SBA Exhibit 4).

#### The Site

29. SBA proposes to construct the Facility at the Site located in the northern portion of a 51 acre parcel of land owned by Christopher Samuelsen known as 49 Brainerd Road, Assessor's Parcel 7.4-21 of the East Lyme Tax Assessor's Records. (App. at 2, Exhibit B).
30. The Property is located within the R-40 residential zone. The East Lyme Zoning Regulations (the "Regulations") do not prohibit facilities in residential zones. (App. at 2, 9, Exhibit B; Town of East Lyme Zoning Regulations (bulk file)).
31. The Property is currently developed with a residence but is largely undeveloped and wooded. (App. at 2; 2/23/10 Field Review).
32. The area surrounding the Property is primarily residential and includes the Amtrak corridor, the DEP Parcel and the Ravens Wood nature preserve. (App. at Exhibit G).
33. The proposed Facility has been designed to accommodate AT&T, Verizon and the equipment of two (2) other telecommunications carrier as well as the Town of East Lyme emergency services equipment, if requested. (App. at 2, Exhibit B).

34. The proposed Facility will accommodate the antennas and equipment of AT&T at an antenna centerline of 167 feet AGL, Verizon at an antenna centerline of 147 feet AGL and two (2) other wireless carriers at antenna centerline heights of 157 feet AGL and 137 feet AGL. T-Mobile has expressed its interest in locating at the 157 feet AGL centerline (App. at 2, Exhibit B; SBA Exhibit 3 at Exhibit 2).
35. The compound area at the base of the Facility will include locations for AT&T, Verizon and the equipment of two (2) other telecommunications carriers. The compound will be enclosed by a new eight-foot security fence. (App. at 2, Exhibit B).
36. SBA has offered space, free of charge, at the top of the tower for the Town of East Lyme emergency services. (SBA Exhibit 3).
37. Vehicular access is proposed from Brainerd Road over a new gravel access driveway. (App. at 2, Exhibit B; SBA Exhibit 4d).
38. Utility service will run underground from existing utility service currently located on Brainerd Road. No water or sanitary facilities are required and, once built, the Facility will generate minimal traffic because each of the co-locating entities will only need to visit the Site about once a month to perform routine maintenance and inspection. (App. at 9-12, Exhibit B).
39. SBA's total estimated cost of the proposed Facility is approximately \$195,000. The total duration of the construction would be approximately eight weeks. (App. at 18).

#### Alternate Locations on the Property

40. SBA identified three alternative locations on the Property for the proposed Facility. These three locations are known as Russell Brown's Option 1, Russell Brown's Option 2 and the SBA Hybrid location. (SBA late file micro-aerial photograph; Brown Exhibit 1).
41. The Russell Brown Option 1 would have a greater wetland impact than the proposed facility and may interfere with an existing well on the Property. (2/23/10 3:00 Tr. at 52; 3/23/10 Tr. at 34, 45).
42. Moving the facility to the Russell Brown Option 1 would increase the visibility over open water. (3/23/10 Tr. at 31-32).

43. Russell Brown's Option 2 would have a similar wetland impact as the proposed Facility with the closest wetlands approximately 50 feet from a facility at Option 2 (2/23/10 Tr. at 33).
44. Moving the proposed Facility to either Russell Brown Option 2 or the SBA Hybrid location would further reduce any visual impact to the abutting property to the north. (3/23/10 Tr. at 31; 4/22/10 Tr. at 100).

#### **Municipal Consultation**

45. SBA filed its technical report with the Town of East Lyme on September 10, 2009. (App. at 16, Bulk Filing, Technical Report).
46. SBA met with First Selectman Paul Formica along with Chris Taylor, Deputy Fire Marshal and Brooks Gianakos, the Town's emergency services consultant on September 24, 2009 to discuss the proposed Facility. (App. at 15; SBA Exhibit 4).
47. In additional follow-up with the Town of East Lyme, SBA representatives attended a public informational meeting on November 18, 2009. (App. at 16-17).

#### **Environmental Considerations**

48. No known existing populations of Federal or State Endangered, Threatened or Special Concern Species, were found on the Property, although several species are known to exist in the vicinity of the Site. (App. at Exhibit J, Exhibit K; 4/22/10 Tr. at 120-124).
49. The proposed development will not directly or indirectly affect any wetlands or watercourses. (App. at Exhibit J; SBA Exhibit 4c).
50. The proposed Facility is not located in a floodplain or a floodway. (App. at 15-16).
51. The State Historic Preservation Officer ("SHPO") has determined that the construction of the Facility will have no adverse effect on historic, architectural, or archaeological resources listed on or eligible for the National Register of Historic Places. (App. at Exhibit K).
52. According to an aeronautical study conducted by the Federal Aviation Administration (FAA), the proposed Facility would not require marking or lighting. (App. at Exhibit O).

53. There would be no impact on any known scenic, historic or recreational areas.. (App. at Exhibit I).
54. A study prepared by AT&T indicates that maximum emissions levels by AT&T antennas from the proposed Facility would be 4.8% of the safety criteria adopted by the FCC. (App. at Exhibit M).
55. A study prepared by Verizon indicates that the maximum emissions levels by Verizon antennas from the proposed Facility would be 16.8% of the safety criteria adopted by the FCC (Verizon Exhibit 2 at Tab 4).
56. The proposed Facility will have no impact on migratory bird populations in the area, including the black duck. (SBA late file exhibit dated May 5, 2010).
57. The proposed Facility will comply with State noise regulations (3/23/10 Tr. at 98, 146).
58. The proposed Facility will comply with the United States Fish and Wildlife Service's applicable guidelines on the Siting, Construction, Operation and Decommissioning of Communications Towers. (SBA late file exhibit dated May 5, 2010).

#### Visibility

59. The Facility is proposed to be located at the Property in order to minimize impact to residential receptors; the Facility will be as short as it can be while still providing the necessary coverage to the area. The topography and the mature vegetation at the Property will significantly limit the visual impact of the Facility. (App. at 9-11; Exhibit I).
60. The proposed Facility at the Site will be visible from 2,282 acres within a two-mile radius of the tower, with 97% of those acres occurring over open water. Only 63 acres occur over land. (App. at 10-11, Exhibit I; SBA Exhibit 6).
61. The compound area will have a de minimis visual impact as it will be screened by the proposed fencing as well as the existing vegetation at the Property. (App. at 12; Exhibit I).
62. SBA has further agreed to provide additional screening on the proposed equipment compound in order to further reduce any visual impact the equipment compound may have. (2/23/10 3:00 Tr. at 63).

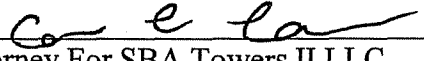
63. The proposed Facility will be partially visible year-round from approximately fifty-three (53) residences and partially visible seasonally from an additional twenty (20) residences. (App. at 11, Exhibit I).
64. The proposed Facility would be partially visible from the trail on at the Raven's Wood Nature Preserve for several hundred feet on that trail. (2/23/10 3:00 Tr. at 18; App. at Exhibit I (photo #10).
65. Visibility of the proposed Facility from Long Island sound will not degrade the visual quality through the significant alteration of the natural features of vistas and viewpoints. (SBA Exhibit 5, 8).
66. Existing telecommunications facilities, the Amtrak corridor equipment and the Millstone power plant with associated smokestacks are currently visible from Long Island Sound looking back at the East Lyme coastline. (SBA Exhibit 8).

#### Towersharing

67. This Facility will provide co-location opportunities for public safety communications systems and four (4) wireless carriers, thus avoiding the proliferation of towers. (App. at Exhibit B).
68. AT&T, Verizon and T-Mobile have all expressed their desire to locate on the proposed Facility. (AT&T Exhibits 1 and 2; Verizon Exhibits 1 and 2; SBA Exhibit 3).
69. Sprint Nextel Corporation has expressed an interest in the proposed Facility. (SBA Exhibit 6).



Respectfully Submitted,

By:   
Attorney For SBA Towers II LLC  
Carrie L. Larson, Esq.  
clarson@pullcom.com  
Pullman & Comley, LLC  
90 State House Square  
Hartford, CT 06103-3702  
Ph. (860) 424-4312  
Fax (860) 424-4370

Certification

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

Kenneth Baldwin  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103

Russell L. Brown  
41 Brainerd Road  
Niantic, CT 06357

Edward B. O'Connell  
Tracy Collins  
Waller, Smith & Palmer, P.C.  
52 Eugene O'Neill Drive  
P.O. Box 88  
New London, CT 06320

Daniel M. Laub  
Christopher B. Fisher  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14<sup>th</sup> Floor  
White Plains, NY 10601

Keith Ainsworth  
Evans Feldman & Ainsworth, LLC  
261 Bradley Street  
P. O. Box 1694  
New Haven, CT 06505

Joseph Raia  
97 West Main Street, Unit 9  
Niantic, CT 06357

  
Carrie L. Larson