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July 12, 2010

***VIA FEDERAL EXPRESS***
***AND ELECTRONIC MAIL***

Mr. S. Derek Phelps
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

***Re: Docket No. 399,***
***Application by T-Mobile Northeast LLC for a Certificate of Environmental Compatibility and Public Need for a Telecommunications Facility at 166 Pawcatuck Avenue in the Town of Stonington, Connecticut***

Dear Mr. Phelps:

I write on behalf of the Applicant, T-Mobile Northeast LLC ("T-Mobile"), regarding the proposed findings of fact issued by the Connecticut Siting Council ("Council") for the proposed telecommunications facility at 166 Pawcatuck Avenue in Stonington, Connecticut ("Facility"). T-Mobile respectfully submits the following proposed changes to the findings of fact. The proposed language is underlined.

1. **Finding of Fact 15**. On November 15, 2009, T-Mobile representatives met with the Town of Stonington's First Selectman, Director of Public Works, and Town Engineer to discuss the proposed facility. Town officials also invited property owners abutting the proposed facility to participate in the meeting. Some of the abutting property owners attended the meeting.

2. **Finding of Fact 60**. The proposed facility would be located at 166 Pawcatuck Avenue on a 5.02 acre parcel owned by Warren D. Main and Patricia L. Main (the Main property) and used for a single family residence and a farm. The Amtrak rail line right-of-way abuts the Main property to the north.

3. **Finding of Fact 89**. T-Mobile's proposed tower would comply with recommended guidelines of the United States Fish and Wildlife Service for minimizing the potential for telecommunications towers to impact bird species. These guidelines recommend that towers be less than 200 feet tall and that they do not use guy wires.

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4. **Findings of Fact 96-97, 101**. The reference to Route 184 should be revised so that it reads "Pequot Trail" in accordance with Mr. Libertine's testimony during the hearing. *(See April 13, 2010 3:00p.m. Tr., pp. 11-12.)*

5. **Finding of Fact 58.** T-Mobile respectfully requests that the Council revise this finding of fact to read as follows: "An Outdoor Distributed Antenna System (DAS) would not achieve T-Mobile's coverage objectives in this area of Stonington. (T-Mobile Responses to CSC Post-Hearing Interrogatories, A1)"

* * *

After the hearing, the Council propounded interrogatories regarding the deployment of Outdoor Distributed Antenna Systems ("DAS"). T-Mobile responded to the interrogatories; however, T-Mobile also reiterated its objection to such requests as preempted by federal law. Specifically, the consideration of any particular form of deployment technology, such as DAS, as a potential alternative to the Facility proposed in Docket 399, exceeds the scope of the Council's authority over wireless carriers and services under federal law. In addition, selecting or encouraging particular technologies conflicts directly with the Federal Communication Commission's ("FCC") goal of encouraging maximum flexibility on the part of personal wireless service providers in selecting the technology that they wish to use to deploy their federally-licensed services.

In a *per curiam* opinion, the Second Circuit recently reaffirmed these principles. *New York SMSA Ltd. P'ship v. Town of Clarkstown*, No. 09-1546-cv, 2010 WL 2598310 (2d. Cir. June 30, 2010). The Second Circuit affirmed the District Court's decision that a local law regulating radio frequency interference and implementing a preference for certain deployment technologies, such as DAS, was preempted by federal law. *Id.*, at *6. The Second Circuit agreed "that federal law occupied the fields of (1) regulation of radio frequency interference and (2) the regulation of the technical and operational aspects of wireless telecommunications service." *Id.* (Internal quotations omitted.)

The Second Circuit explained that "Congress intended the FCC to possess exclusive authority over technical matters related to broadcasting and that Congress's grant of authority to the FCC was intended to be exclusive and to preempt local regulation." *Id.* (Internal quotations omitted.) More specifically, state and local regulations "setting forth a preference for alternate technologies are also preempted because they interfere with the federal

government's regulation of technical and operational aspects of wireless telecommunications technology, a field that is occupied by federal law." *Id.*, at *7. (Internal quotations omitted.) While the Telecommunications Act of 1996 preserves the authority of State and local governments over zoning and land use matters . . . this authority does not extend to technical and operational matters, over which the FCC and the federal government have exclusive authority . . . ." *Id.*, at *8. (Internal quotations omitted.)

Please contact me if you have any questions.

Very truly yours,

Jesse A. Langer

*cc:* Service List *(Via First Class U.S. Mail)*