

**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 166 PAWCATUCK AVENUE IN THE TOWN
OF STONINGTON, CONNECTICUT

DOCKET NO. 399

Date: May 12, 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 ("T-Mobile") submits this post-hearing brief in support of the above-captioned application. This brief addresses (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 January 29, 2010, 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 120 foot monopole wireless telecommunications facility ("Facility") at 166 Pawcatuck Avenue, Stonington, Connecticut ("Property"), pursuant to General Statutes § 16-50aa and § 16-50j-34 of the

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

Regulations of Connecticut State Agencies (“Application”). (*Hearing Exhibit 1, Application at p. 1; 7:00p.m. Transcript [“7:00p.m. Tr.”] at p. 8.*)²

T-Mobile proposes to construct the Facility in the northeasterly portion of a 5.02 acre parcel owned by Warren D. Main and Patricia L. Main, known as 166 Pawcatuck Avenue, Stonington, Connecticut, and designated as Map 26, Lot 1 in the Town of Stonington’s Tax Assessor’s Records. The Property is used for residential and agricultural purposes. (*App. at pp. 1-2, 9, 17; App. Ex. B; Scott Chasse Pre-Filed Testimony [“Chasse”] at p. 2.*)

The Facility would consist of a 1,800 square foot compound, which would sit within a 2,100 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 Pawcatuck Avenue along an existing gravel driveway and across an existing cleared field. T-Mobile would add a gravel driveway, which would connect the existing driveway to the proposed Facility. Utility service would run from an existing transformer on the Property. (*App. at pp. 1-2, 9-10; 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.

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. ___.”

There is a coverage gap in T-Mobile's network within the area surrounding the Facility. The proposed Facility would be an integral component of T-Mobile's wireless network in the Town of Stonington ("Town"). It would remedy the existing gap in coverage in this area of the Town, specifically along Pawcatuck Avenue, River Road and Greenhaven Road, just south of interstate 95, as well as the surrounding areas and 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. 58-60; T-Mobile's Responses to the Council's First Set of Interrogatories ["T-Mobile First Interrog. Resp."].*)

To provide effective coverage in this area, T-Mobile must mount its antenna array at 117'9" above grade level ("AGL"). This position would allow T-Mobile to minimize the number and height of future telecommunications facilities in this area. Additionally, the 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 p. 9; App. Ex. B, H; Heffernan at pp. 4-6; T-Mobile First Interrog. Resp.; 3:00 p.m. Tr. at pp. 60, 63.*)

Cellco Partnership d.b.a. Verizon Wireless, ("Verizon") also experiences a coverage gap in its network in the area of the proposed Facility, including along Route 1, portions of the Amtrak rail, local roads, marinas and recreational areas along the Pawcatuck River and the Long Island Sound. To address its coverage needs, Verizon would locate its antenna array on the proposed Facility at 107'9" AGL. This position would enable Verizon to remedy its existing coverage gap. (*Verizon's Responses to the Council's Interrogatories; 7:00p.m. Tr. at pp. 25-26.*)

Additionally, T-Mobile met with the Town and some of the members of the public to discuss the Facility. In a letter dated November 25, 2009, the Town stated that it had no objection to the proposed Facility. (App. at p. 18; App. Ex. Q; *Vergati at p. 7; 7:00p.m. Tr. at p. 73.*)

The record establishes that the Facility would alleviate discrepancies in coverage for T-Mobile's network and Verizon'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 provided substantive responses (Exhibit N). T-Mobile also submitted materials regarding the

impact of telecommunications facilities on migratory birds. (*T-Mobile Late-Filing Submission, dated May 12, 2010.*) The environmental analysis concludes that:

- 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 p. 13; 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. The endangered species located in the Town include the Piping Plover. The Piping Plover's habitat is limited to coastal beaches. The proposed Facility would not be situated within the Piping Plover's natural habitat, as it would be located away from any coastal beaches. (*App. at p. 13; App. Ex. P; Chun at p. 3; 3:00p.m. Tr. at pp. 91-95.*)
- The Facility would be designed to minimize any impact on migratory bird species. The Facility would comply with the United States Fish and Wildlife Service interim guidelines because it would be well under 199 feet and without guy wires. (*App. at 13; App. Ex. B; 3:00p.m. Tr. at p. 91; T-Mobile Late-Filing Submission, dated May 12, 2010.*)
- The Facility would not be located in a nominated or existing "important bird area." (*3:00p.m. Tr. at p. 92; T-Mobile Late-Filing Submission, dated May 12, 2010.*)
- There are no known instances of bird strikes and/or bird carcasses at any existing T-Mobile telecommunications facility. (*3:00p.m. Tr. at pp. 94-95.*)
- 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; 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. On September 30, 2009, the State Historic Preservation Officer ("SHPO") determined that the Facility would not have an adverse impact on any such resources. (*App. at pp. 13-14; App. Ex. N, P; Chun at p. 4.*)
- The proposed Facility would not affect any Native American religious sites. T-Mobile consulted with three Native American tribes – the Mashantucket Pequot Tribe, the Mohegan Indian Tribe and the Narragansett Indian Tribe – because they might have had interests impacted by the construction, operation and maintenance of the Facility. All of the Tribes confirmed that they do not have any interests that would be impacted by the Facility. (*App. at p. 14; App. Ex. P; Chun at p. 4.*)

- Although there is a wetland system located on the Property, the Facility would be approximately 165 feet from that wetland system. The proposed gravel driveway, which would connect the existing driveway and the Facility, would be seventy-five feet from the wetland system. The construction, maintenance and operation of the Facility would not have an adverse impact on this wetland system (*App. at pp. 8, 17; App. Ex. B, K; Dean Gustafson ["Gustafson"] at pp. 3-4.*)
- The Facility would have no impact on water flow, water quality, or air quality and would comply with relevant noise regulations. (*App. at p. 9; Gustafson at pp. 3-4.*)
- 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 Pawcatuck River located 3,000 feet east of the proposed Facility. (*App. at p. 14; App. Ex. N; 3:00p.m. Tr. at pp. 79-80.*)
- The Facility would not be located within a flood plain. (*App. at p. 14; 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. 16; 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 sixty-five feet. The Facility would be set back approximately 765 feet from Pawcatuck Avenue and shielded with excellent screening from mature vegetation. It would have a minimal visual impact, if any, on any property with historical significance, scenic roads or hiking trails. Additionally, the Facility would not be visible from the Barn Island Wildlife Area or the Pawcatuck River Wildlife Area. (*App. at pp. 16; App. Ex. B, M; Pre-Filed Testimony of Michael P. Libertine ["Libertine"] at pp. 6-7; 3:00p.m. Tr. at pp. 23-25.*)

The areas from which the Facility would be at least partially visible year round comprise approximately ninety-nine acres, which is just over 1 percent of the 8,042 acre (two mile) study area. The majority of the potential year-round visibility occurs within the general vicinity of the Property and over open water on the Pawcatuck River and its adjacent shoreline to the southeast. The open water views would have a minimal visual impact and would not impact any coastal resources. These views would be distant and limited to the very upper portion of the Facility, which would be difficult to discern above the tree canopy. Areas of seasonal visibility would comprise approximately fifty-one additional acres. These views would be within the general vicinity of the proposed Facility (approximately 0.25 miles) (*App. at pp. 10-11; App. Ex. M; Libertine at pp. 5-7; 3:00p.m. Tr. at pp. 23-24, 57.*)

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 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. Verizon has intervened in this matter and confirmed an interest in co-locating its antennas on the Facility at a height of 107’9” AGL. Therefore approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers. (*App. at p. 8; App. Ex. B; Vergati at p. 7; 3:00p.m. Tr. at pp. 18-19, 73; 7:00pm. Tr. at p. 47; Verizon Interrog. Resp.; 7:00p.m. Tr. at pp. 25-26.*)

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**

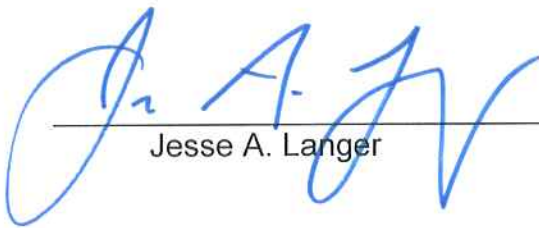
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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by Electronic Mail and regular mail, postage prepaid, to all parties and intervenors of record, as follows:

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