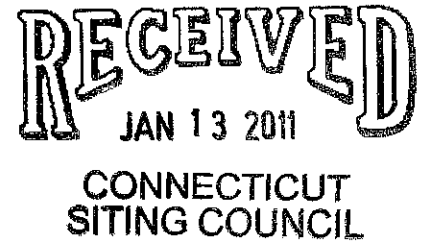


STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL



IN RE:

APPLICATION OF NEW CINGULAR,
WIRELESS PCS, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF A
TELECOMMUNICATIONS FACILITY AT
95 BALANCE ROCK ROAD, HARTLAND,
CONNECTICUT

DOCKET NO. 408

January 13, 2011

APPLICANT NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
OBJECTION TO ADMINISTRATIVE NOTICE BY THE SITING COUNCIL OF
PARTY SIRMAN'S DOCUMENTS

Pursuant to Section 4-178(7) of the Uniform Administrative Procedure Act (UAPA) and Section 16-50j-28(e) of the Regulations of Connecticut State Agencies ("RCSA"), New Cingular Wireless, PCS, LLC ("AT&T") by its attorneys, Cuddy & Feder LLP, respectfully submit this objection to Party Sirman's request for Administrative Notice of excerpts from four documents listed in Party Sirman's Hearing Information in this proceeding for the reasons set forth herein.

Party Sirman does not state nor provide the purpose for administrative notice of any of the information included in the excerpts from the documents that he seeking administrative notice from the Council. Two of the documents listed in Party Sirman's list of documents for which he seeks administrative notice include excerpts from publications by the Connecticut Department of Environmental Protection (DEP) (documents 1 and 4 in Party Sirman's Hearing Information). These excerpts include general statements with no indication of the relevance of the information contained therein to this proceeding. As such, AT&T objects to the Siting Council granting administrative notice of these excerpts in this proceeding under its authority to exclude irrelevant and immaterial evidence under Section 4-178(1) of the UAPA.

AT&T objects to granting of administrative notice of the non-governmental documents in Party Sirman's Hearing Information, which include excerpts from a study by Albert M. Manville ("Manville study") and excerpts from a birding guide (documents 2 and 3 in Party Sirman's Hearing Information). Pursuant to UAPA Section 4-178(6) and RCSA Sections 16-50j-28(d)

and 16-50j-28(e), the Council may take notice of judicially cognizable facts, including prior decisions and orders of the Council and the Council may take notice of generally recognized technical or scientific facts within the Council's specialized knowledge. It is respectfully submitted that the excerpts from the study and guide that Party Sirman seeks notice of do not constitute judicially cognizable facts or generally recognized technical or scientific facts and as such, the Council should not take notice of these documents.

Indeed, the excerpt from the Manville study listed as document number 2 in Party Sirman's Hearing Information includes citations to other studies regarding migratory birds and communication towers and asserts health effects from radio frequency energy. As the Council is aware, it is preempted by Telecommunications Act of 1996 (TCA) from consideration of the environmental effects of radio frequency emissions as long as the applicant demonstrates compliance with the Federal Communication Commissions (FCC) guidelines for radio frequency emissions. 47 USC §332(c)(7)(B). Moreover, the United States District Court held that the Council is preempted under the TCA from rendering a siting decision on the basis of any purported health effects from radio frequency emissions on wildlife, including migratory birds and bald eagles. *See: Jaeger v. Cellco Partnership, et al.*, 2010 WL 965730 (D. Conn. 2010), affirmed *Jaeger v. Cellco Partnership, et al.*, 10-1347-cv (2nd Cir. 2010). In fact, the Siting Council has taken administrative notice of the TCA and its preemption provisions with respect to environmental effects of radio frequency energy and the holding in the *Jaeger v. Cellco Partnership* case in this proceeding and other communication facility proceedings. In addition, with respect to the siting of telecommunication towers and migratory birds, the Council has taken administrative notice of the Service Interim Guidelines for Recommendations On Communications Tower Siting, Construction, Operation and Decommissioning by the U.S. Fish and Wildlife Service (USFW), Division of Migratory Bird Management.

Given that the Council is preempted from consideration of environmental effects of radio frequency energy and has taken administrative notice of the USFW guidelines on communication tower siting, the information in the excerpts from the Manville study should not be administratively noticed by the Council as judicially cognizable facts or generally recognized technical or scientific facts.

In addition, AT&T objects to administrative notice of documents 2 and 3 in Party Sirman's Hearing Information on the grounds that the authors of the study and guide are not

available for cross examination and as such, the information contained therein cannot be evaluated by the Council, the applicant or any other party in this proceeding for a full disclosure of the facts as provided in Section 16-50o of Connecticut General Statutes (CGS), Section 4-178(5) of UAPA and Section 16-50j-28 of RCSA.. Moreover, the complete documents and studies have not been provided and full citations of the studies referenced therein are not listed. As such, the documents listed as 2 and 3 in Party Sirman's Hearing Information should not be administratively noticed as the information contained therein cannot be evaluated by the Council or the Applicant for a full disclosure of the facts as provided in CGS 16-50o, UAPA 4-178(5) and RCSA 16-50j-28 or to determine whether the information can be considered generally recognized technical or scientific fact.

For the foregoing reasons, AT&T objects to the Council taking administrative notice of the four documents listed in Party Sirman's Hearing Information.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was submitted electronically and by hand to the Connecticut Siting Council and to:

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Dated: January 13, 2011



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