

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

August 16, 2011

APPLICANT NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
PETITION FOR RECONSIDERATION OF
THE SITING COUNCIL DECISION

Pursuant to Section 4-181(a)(a)(1) of the Uniform Administrative Procedure Act (UAPA), New Cingular Wireless, PCS, LLC ("AT&T") by its attorneys, Cuddy & Feder LLP, respectfully submits this petition for reconsideration of the Siting Council's tie vote decision in Docket No. 408 for the reasons set forth herein.

At its July 14, 2011 meeting, the Siting Council deliberated and reviewed Draft Findings of Fact in this proceeding. The Draft Findings of Fact prepared by staff concluded that there was a need for AT&T's Facility and did not identify any significant adverse environmental effects from the Facility at Site B. A majority of the Siting Council members also stated their opinion that the record established a need for AT&T's Facility, that the environmental impacts associated therewith were not significant and that the impacts of the facility did not outweigh the demonstrated public need for a new tower in this area of the State. As such, at its July 14th meeting, a majority of the Council (five members) recommended that Staff draft an Opinion and Decision and Order for the Council's consideration that would result in issuance of a Certificate for the Site B location at 95 Balance Rock Road.

In accordance with Siting Council deliberations and majority's direction to Staff, an Opinion and Decision and Order for issuance of a Certificate for Site B was subsequently prepared. The Opinion stated in relevant part:

Based on the record in this proceeding, the Council finds that the effects associated with the construction, maintenance and operation of a telecommunications facility at Site B, including the effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with policies of the State concerning such effects, and are not sufficient reason to deny this application. Therefore, the Council will issue a Certificate for the construction, maintenance, and operation of a 160-foot monopole telecommunications facility at Site B, with a modified access drive, at 95 Balance Rock Road in Hartland, Connecticut.

At its July 28, 2011 meeting, the draft Findings of Fact, Opinion and Decision and Order were considered by eight members of the Siting Council (with 1 member who had previously stated an opinion in favor of an approval absent from the July 28th meeting).


A motion to approve a Certificate in Docket 408 was made and seconded. On a roll call vote, four members voted in favor of the motion and four against resulting in a tie vote and denial by operation of law. No substantive basis for a "denial" was incorporated into the July 28th tie vote in Docket 408 or any subsequent motions made.

Pursuant to Section 16-50(p)(a)(3) of the Connecticut General Statutes (CGS); Section 4-180(c) of the UAPA and Section 16-50j-32 of the Regulations of Connecticut State Agencies (RCSA), any final decision in a contested case, if adverse to a party, shall include the agency's findings of fact and opinion stating its full reasons for the decision. In Docket 408, the tie vote and lack of any Findings of Fact, Opinion and Decision and Order in support of a denial in this proceeding fails to comply with these legal requirements as required for any final decision. As such, the tie vote in Docket 408

which resulted in a denial of the application by operation of law (and in contravention with the Findings of Fact, Opinion and Decision and Order as drafted) should be reconsidered by the full Siting Council and a final decision rendered based on the record in this Certificate proceeding.

It is respectfully submitted that good cause has been shown for reconsideration in this proceeding as procedural matter. Further, AT&T submits that the Council should approve a Certificate in Docket 408 in accordance with the Draft Findings of Fact, Opinion and Decision and Order as previously drafted at the direction of a majority of the Council's voting members. As such, AT&T respectfully petitions the Siting Council to reconsider its tie vote decision in this proceeding at its first meeting in September and as such, to the extent necessary, an extension of time to decide Docket 408 is granted to September 30, 2011.

Respectfully Submitted,

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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: August 16, 2011



Lucia Chiochio
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cc: Jay Perez, AT&T
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