STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC (AT&T) FOR A CERTIFCATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A TELECOMMUNICATIONS TOWER FACILITY AT 8 BARNES ROAD IN THE TOWN OF CANAAN (FALLS VILLAGE), CONNECTICUT

DOCKET: 409A

April 22, 2013

PRE-HEARING SUBMISSION OF TOWN OF CANAAN (FALLS VILLAGE)

INLAND WETLANDS/CONSERVATION COMMISSION

The Town of Canaan (Falls Village) Inland Wetlands/Conservation Commission ("IW/CC") hereby provides the Connecticut Siting Council with the following pre-hearing information available at this time regarding the above referenced proceedings.

A. List of Witnesses

Walter Cooper, Radio Frequency Planning & Consultation

Richard Calkins, PE, Northeast Consulting, LLC

Greg Marlowe, General Manager, Century Acquisitions, Inc.

David Gumbart, Assistant Director of Land Management, The Nature Conservancy

Starling W. Childs, MFS, EECOS Environmental Consultants, Inc. and President of BLEC, Inc.

B. Pre-Filed Testimony of Witnesses

Attached hereto.

C. Exhibits to be Offered

The Commission intends, at this time, to offer the following Exhibits:

See attached Exhibit List with Exhibits

The Commission reserves the right to offer additional exhibits, testimony, witnesses and administratively noticed materials as new and pertinent information and materials come to its attention.

Respectfully submitted,

Ellery W. Sinclair, Chairman
Inland Wetlands/Conservation Commission
Town of Canaan (Falls Village)
201 Under Mountain Road
Falls Village, CT 06031
(860) 824-7454
WML61@comcast.net

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of the foregoing was served on the Connecticut Siting Council by hand and copy of same was sent postage prepaid to:

Christopher B Fisher, Esq.
Lucia Chiocchio, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601

Michele Briggs
AT&T
500 Enterprise Drive
Rocky Hill, CT 06067-3900

A copy was also delivered by hand to:

Patty and Guy Rovezzi
36 Barnes Road
Falls Village, CT 06031

Town of Canaan Planning & Zoning Commission
Town Hall, Main Street
Falls Village, CT 06031

Ellery W. Sinclair

Dated: April 22, 2013

Walter A. Cooper
Radio Frequency Planning & Consultation
117 Walnut Hills Drive
Williamsburg, VA 23185
757-220-9442
917-843-9088

April 23, 2013

State of Connecticut
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Docket 409A AT&T's Motion to the Siting Council to Reverse its Final Decision in Docket No. 409 (Application of New Cingular Wireless PCS, LLC (AT&T) for the Construction of a Telecommunications Facility Located at 8 Barnes Road, in the Town of Canaan (Falls Village)) and Issue a Certificate for a Modified Tower Facility

The following testimony is intended to bring to the Council's attention certain issues and concerns regarding the proposed construction of a cell tower at 8 Barnes Road in Falls Village. I have reviewed the records pertaining to the original application and the proposed changes contained in the settlement motion. I have also conducted computer modeling and other analyses to determine if the applicant's assumptions, assertions and conclusions are accurate and if the proposed facility represents the least obtrusive option for providing service in the area. I have identified apparent errors, omissions and discrepancies in the applicant's proposal which, in my opinion, clearly demonstrate that the application and settlement motion are not entirely accurate or complete and they do not represent the least obtrusive options potentially available. Because of these issues, the Council should not reverse its decision to deny the application.

1. The applicant's propagation maps are inaccurate and potentially misleading. While it is recognized that computer propagation models are not perfect, such modeling, if based on valid assumptions and done with reasonable care, should be reasonably accurate. In this case, the number of apparent errors and discrepancies in the applicant's maps suggest that the maps are unreliable. For example, the Existing AT&T Coverage Map cited in the CSC Decision (AT&T 1, Tab 1) shows strong coverage (-82 dBm, -74 dBm and higher) for about three miles along the central and southern portions of Under Mountain Road, a small part of Cobble Road and approximately 1/2 mile of Barnes Road south of Under Mountain Road. On the other hand, the applicant's Existing Coverage Drive Test Map (Exhibit B, AT&T Response to Siting Council Interrogatories dated January 26, 2011) shows *no* coverage in these areas. The lack of coverage in these areas was further confirmed by test calls made by Falls Village citizens on April 19, 2013. Callers were unable to make or receive calls at multiple locations in these areas (See Exhibit 1). Although the Existing AT&T Coverage Map *overstated* available coverage in these areas, it *understated* coverage in others. For example, it shows no coverage above -82 dBm for about 1 mile of Page Road and no coverage along about 1 mile of Johnson Road south of Route 126, while the Existing Coverage Drive Test Map shows uninterrupted coverage at -82 dBm or greater in these areas. This coverage was also confirmed by the April 19 test calls.

2. Except for the Existing Coverage Drive Test Map, the applicant did not present other measured data to substantiate the purported areas of inadequate coverage and verify the accuracy of the predictive propagation model. The applicant could have submitted dropped call records, customer complaint logs, traffic records from adjoining facilities or similar statistical data. The applicant could also have installed a test transmitter at the proposed site to further verify predicted coverage. Given the apparent inaccuracy of its propagation maps and the discrepancies between predicted and observed coverage, additional substantiation of this type should have been provided.

3. The applicant did not comply with, or otherwise address Section 9.2.6.b of the Town of Canaan's Zoning Regulations, which requires provisions to reduce tower height and visibility if future technologies make the original height unnecessary. In fact, the site plans and elevations appear to indicate that the monopole is not a flange type structure and thus would be incapable of future height adjustments.

4. The applicant's January 26, 2011 response to the CSC's interrogatory regarding the feasibility of using existing CL&P structures was inadequate. AT&T stated that the height was insufficient but provided no propagation maps or other objective data to support this statement.

5. The applicant's January 26, 2011 response to the CSC's interrogatory regarding its minimum signal strength requirements was inadequate. By addressing only in-vehicle (-82 dBm) and in-building (-74 dBm) signal strength requirements in its narrative and drive test submissions, the applicant's propagation maps promote the impression that there is no coverage below -82 dBm when, in fact, there is "street level" (outdoor) coverage at lower signal strengths. This is substantiated by Falls Village residents who reported "great" or "excellent" service within purported areas of "no service." In other communities similar to Falls Village, AT&T has used a signal strength standard of -92 dBm for street level coverage. (See for example, Special Permit Application for New Cingular Wireless/Florida Tower Partners/North Atlantic Towers (North Atlantic/AT&T) Wireless Service Facility at 580 Oblong Road, Williamstown, MA dated June 23, 2011).

6. The applicant's February 10, 2011 response to an IWCC interrogatory about post-installation monitoring of power densities was inaccurate and misleading. The applicant's statement that "... post install (sic) monitoring is not required and cannot be legally required," is not substantiated by a careful reading of the TCA, the FCC regulations and the case cited in the response (Cellular Phone Taskforce v. FCC). The TCA provides that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (Emphasis added). If the Town or the State cannot legally require the applicant to demonstrate compliance with FCC emission regulations by monitoring or other means, how can the Town or State know that the facility is, and remains, in compliance?

7. The applicant's February 10, 2011 response to an IWCC interrogatory failed to provide a good faith estimate of the cumulative power density, including future co-locators. The applicant stated that "...details of future co-locators facilities are not available at this time, a cumulative calculation is not feasible." As a co-locator itself on its own and other service providers' towers

throughout the region, the applicant should have a good understanding of the other service providers' typical installations. AT&T has readily provided these types of calculations previously and should be able to do so in this case. (See for example, Special Permit Application for New Cingular Wireless/Florida Tower Partners/North Atlantic Towers (North Atlantic/AT&T) Wireless Service Facility at 580 Oblong Road, Williamstown, MA dated June 23, 2011).

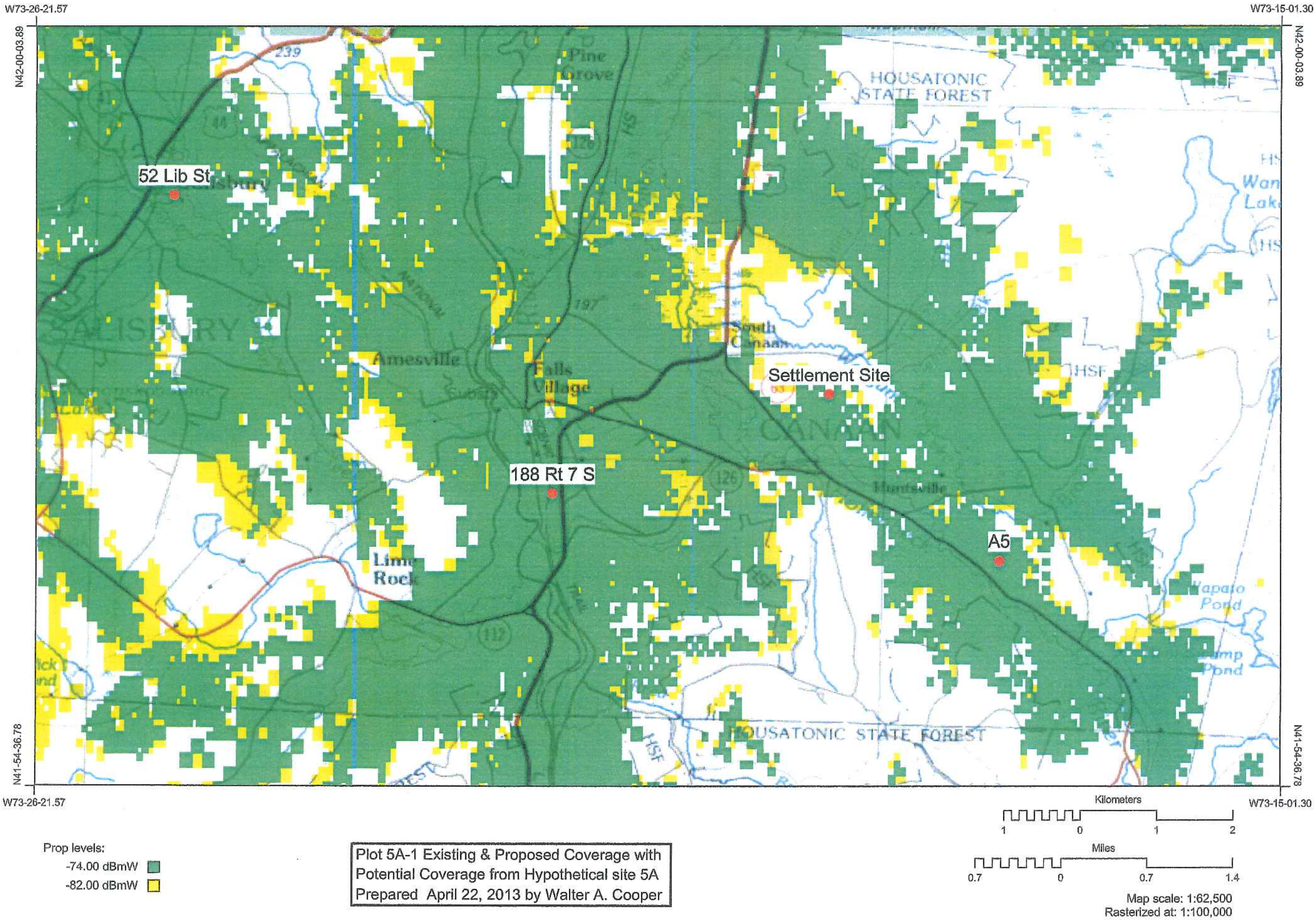
8. Finally, it does not appear that the applicant made an exhaustive search for alternate sites capable of providing adequate coverage with less environmental impact than either the proposed site or the settlement site. For example, one such potential site is on or near the Town-owned property on Route 63. The applicant apparently did not consider the Town-owned site or approach the owners of the adjacent lands, although the site appears to have the potential to provide good coverage while minimizing environmental damage. Recognizing the limitations of propagation modeling as noted above, the enclosed propagation maps (Exhibit 2) suggest that a 140 foot (or lower) tower on or near the Town parcel identified as Alternate 5 (A5 on the map) could provide coverage equal to, or better than, the coverage attainable from either the proposed site or the settlement site as depicted in Exhibit 4 of the motion to reverse. It seems likely that such a facility could be positioned so as to not break the ridgeline while requiring minimal road construction and tree clearing. Siting the facility in this way would make it less visible overall, while providing potentially superior coverage. With the extra coverage margin available at this site it might be feasible to incorporate additional design techniques such as flush mounted or concealed antennas (a so called "slick pole" structure) and/or reduced antenna spacing to further reduce the bulk and visual obtrusiveness of the facility without compromising coverage objectives. With options such as this left unexplored, the Council should not reverse its original decision.

Respectfully submitted,

Walter A. Cooper

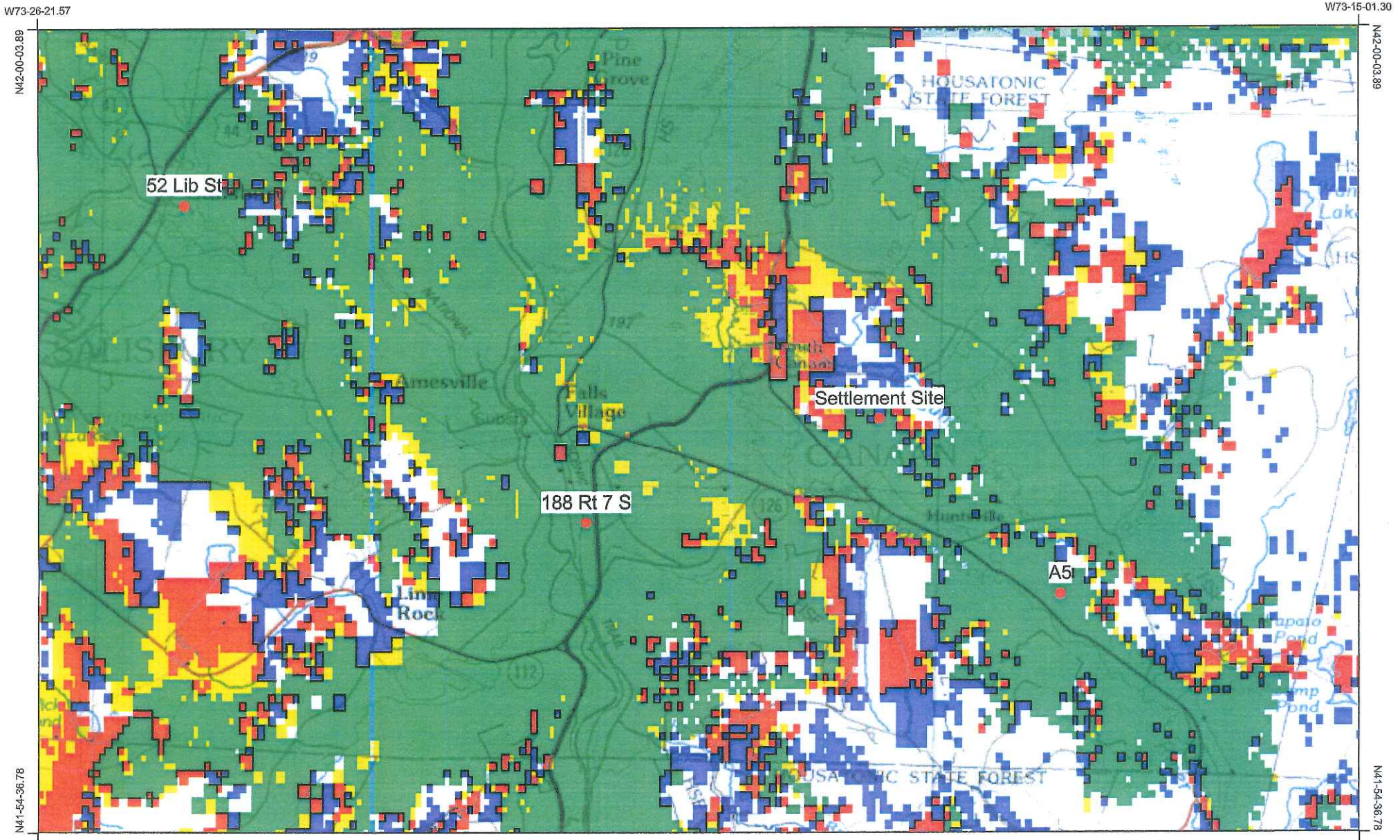
EXHIBIT 1 -- Test Call Results and Map

EXHIBIT 2 -- Hypothetical Propagation Maps



Prop levels:
-74.00 dBmW
-82.00 dBmW

Plot 5A-1 Existing & Proposed Coverage with
Potential Coverage from Hypothetical site 5A
Prepared April 22, 2013 by Walter A. Cooper



Plot A5-2 Existing & Proposed Coverage with Potential Coverage from Hypothetical Site 5A
Prepared April 22, 2013 by Walter A. Cooper

Walter A. Cooper
Radio Frequency Planning & Consultation
117 Walnut Hills Drive
Williamsburg, VA 23185
waltercooper94@msn.com
757-220-9442
917-843-9088 Cell

Project Experience:

Mr. Cooper has over 35 years of experience in radio frequency and telecommunication systems design, installation, and management. He has held key positions with the US government, as a principal of Flack + Kurtz Consulting Engineers and as founding principal of AKF Technologies, LLC. Some of his accomplishments in the radio frequency field include:

- Development and commercialization of one of the first practical software modeling tools for wireless communications in the Super High and Extremely High Frequency bands.
- Responsible for numerous wireless investigations, site selection and placement cases for towns, property owners and regional planning authorities.
- Appearance as an expert witness in wireless cases before planning authorities, boards and the courts.
- Responsible for the technical design, business case, and implementation oversight of Berkshire Connect, an innovative network of digital microwave, millimeter wave and optical fiber facilities. The project was cited by the Chairman of the FCC as a "national model" for regional telecommunications development.

Telecommunications and Radio Frequency Master Planning Projects

- County of Arlington, VA
- James Madison Univ. College of Integrated Science & Technology, Harrisonburg, VA
- Connect One Georgia, Macon, GA
- Western North Carolina Public Bandwidth Initiative
- Mercer University Enterprise Center – Macon and Atlanta, GA
- City of Signal Hill, CA
- Town of Egremont, MA
- Town of Southold, NY
- Digital Microwave Corporation, CA
- Housatonic Valley Association, CT
- Dutchess County Planning Federation, NY
- Town of Stockbridge, MA
- Town of Brookline, MA
- American Red Cross Disaster Services, Washington, DC
- Patterson, NJ Cyber District, NJ
- Berkshire Connect, Berkshire Regional Planning Commission, MA
- Franklin Connect, Franklin Regional Council of Governments, MA
- Tech Commons, Southfield, MI
- Northwestern Connecticut Council of Governments
- Cape Cod Commission, MA
- Berkshire Natural Resources Council, MA
- Berkshire-Litchfield Environmental Council, CT
- Town of Cape Elizabeth, ME
- Scenic Hudson, NY
- Global Crossings/Equal Access Network, Springfield MA
- Connecticut Federation of Planning and Zoning Agencies
- Center for the New West, Denver, CO

- Lonestar Gas, Dallas, TX
- Ebasco Services, New York, NY
- Con Edison, New York, NY
- U.S. West Advanced Technology Center, Denver, CO
- Hutcheson Telecommunications Ltd., Hong Kong
- Union Switch & Signal Research Center, Pittsburgh, PA
- Newark Digital Century Building, Newark, NJ

Cellular and PCS Facility Siting Cases

- Town of Williamstown, MA*
- Town of Brookline, MA*
- Town of West Stockbridge, MA
- Town of Barnstable, MA
- Town of Lenox, MA
- Town of Great Barrington, MA*
- Town of Monterey, MA
- Town of Egremont, MA
- Town of North East, NY
- Town of Philipstown, NY
- Town of Mohawk, NY
- Town of Lebanon, NY
- Town of Pound Ridge, NY*
- Town of Woodstock, NY
- Town of Wappinger, NY*
- Town of LaGrange, NY
- Town of New Castle, NY
- Town of Clarkstown, NY
- Village of Munsey Park, NY*
- Town of Mohawk, NY
- Village of Mamaranek, NY
- Village of Tarrytown, NY*
- Village of Briarcliff Manor, NY
- Village of Upper Nyack, NY
- Town of Canaan, NY
- Town of Clinton, NY
- Town of Islip, NY*
- Town of Southold, NY*
- Town of Hempstead, NY
- Town of North Salem, NY
- Town of North East, NY
- Town or Rochester, NY
- 7th Avenue Associates, New York, NY*
- Manhattan Place, New York, NY
- Sovereign Apartments, New York, NY
- Franklin Square United Neighborhood Association, Franklin Square, NY
- Palisades Interstate Park Commission
- Town of Litchfield, CT
- Town or Redding, CT
- Town of Sharon, CT
- Town of Southbury, CT
- Town of Hamden, CT
- Town of New Milford, CT
- Concerned Shermanites, Sherman, CT
- City of Torrington, CT
- Town of Farmington, CT
- Town of Washington, CT
- Citizens of Gaylordsville, CT
- Citizens of Warren, CT

*Multiple cases.

Wireless Technology Design Projects

- Public Safety/Life Safety Distributed Antenna System, World Trade Center Reconstruction, New York, NY
- Town of Woodbridge, NJ Police
- Telefonica R&D Headquarters Facility, Madrid Spain
- Polytechnic Univ., Center for Advanced Telecommunications Technology, NY
- Bell Labs Renovation, Murray Hill, NJ
- General Electric Executive Education Center, Ossining, NY
- JFK International Airport General Aviation Terminal, NY

- Yale University Sterling Law School, New Haven, CT
- University of Maryland School of Law, Baltimore, MD
- Case Western Reserve University, Cleveland, OH
- Lehigh University Campus Network, Bethlehem, PA
- Sloan-Kettering Memorial Cancer Center, New York, NY
- New York University, New York, NY
- Greenwich Public Schools, Greenwich, CT

Education:

B.S., United States Military Academy
M.B.A. (Management Information Systems), University of Georgia
Diploma, Command, Control & Communications, Armed Forces Staff College
Diploma, US Army Command and General Staff College

Lectures/Publications

A noted expert in his field, Mr. Cooper has presented lectures in telecommunications at the Princeton University Graduate School of Architecture, New York University, the James Madison University College of Integrated Science and Technology and the College of William & Mary Christopher Wren Association. He has presented seminars on telecommunications planning and design for various groups, including:

- American Institute of Architects
- Boston Society of Architects
- Society of College and University Planners
- American Association of Hospital Engineers
- Institute for International Research
- International Development Research Council
- Construction Specification Institute
- Men/Women in Telecommunications

Mr. Cooper is Associate Editor of McGraw-Hill's *Timesaver Standards: Architectural Fundamentals and Design Data, 7th Edition* and author of the telecommunications chapters of McGraw Hill's *Timesaver Standards for Urban Design.* He developed the *Digital Microwave Path Analysis Propagation Program* for Digital Microwave Corporation and has also written articles for: Business Communications Review, Communications News, Consulting-Specifying Engineer, Construction Specifier, Architectural Record, Building Design & Construction, New York Construction News and Crain's New York Business.

NORTHEAST CONSULTING, LLC

DEVELOPMENT CONSULTANTS • CIVIL & CONSULTING ENGINEERS • ENVIRONMENTAL & SITE PLANNERS • PERMIT MANAGEMENT

118 EAST MAIN STREET, SUITE 201, TORRINGTON, CT 06790 – PHONE: 860-626-0270 – FAX: 860-626-1630

April 21, 2013

Town of Canaan
Town Hall
PO Box 47
Falls Village, CT 06031

Attn: Ellery Sinclair
Chairman
Inland Wetland Commission

Re: AT&T Proposed Cellular Tower
8 Barnes Road

Dear Mr. Sinclair;

Pursuant to your request, we have reviewed the following documents related to the above referenced application to the Connecticut Siting Council as related to the access drive:

The following documents were included in the documents related to this application and review:

- AT&T responses to Siting Council Interrogatories dated April 15, 2013 and received by the Town of Canaan April 17, 2013

Our comments are as follows:

Access Design and Construction

The document above contains a letter from CHA, dated 04/05/13 (Tab 2) indicating the revised road design which keeps all grading and improvements within the 30' wide perpetual easement. The access road to the proposed easterly location is almost a mile long (5,170') rising from Barnes Road. Specifications for improvements to the 12' travel portion of the access road were not included in the above document. The drawings under Tab 2 indicate that portions of this access road will exceed 33% in pitch. This is extremely steep, especially for a gravel or crushed stone surface.

The publication "Forest Road Design", published by the Oregon Department of Forestry, July 2006 states, "grades over 20% require assist vehicles. Rock surface grades over 16% require special surfacing design to alleviate traction problems". We have serious concerns as to the ability of a loaded tri-axle or loaded concrete mixer to negotiate a grade exceeding 33% safely during construction. The applicant has indicated that the facility is unmanned and the access is for limited maintenance of the unmanned facility but that is after construction.

We understand that this road will be used by construction equipment during construction of the facility. There is no indication of the size or type of equipment and no indication as to the length of the tower sections that will need to be delivered to the compound location. The road does not appear to be designed to allow tractor trailer traffic over the surface without assistance. There appears to be no indication of how this crushed rock surface is to be maintained for future access.

. From a practical standpoint, this is an extremely steep road with a crushed rock surface that, from a safety stand point would preclude the ability of emergency vehicles from accessing the site during construction. Should

a construction vehicle create an emergency during construction with an accident while traversing this road, it may be impossible for emergency agencies to access that accident in a timely manner.

To further accentuate the safety concerns, the above document indicates that provisions are to be made for a permanent diesel generator on-site. The document does not indicate how the diesel fuel is to be delivered to the site. A tank truck of diesel fuel would have an extremely difficult time climbing this road without assistance but the real safety concern would be on the way back down. A tank truck loaded with diesel fuel traversing a grade exceeding 33% down gradient on a crushed stone surface with limited traction invites an incident that may include driver injury, a fuel spill and possibly a fire in an area that likely will not be accessible by emergency personnel. This would also be an issue during construction unless all of the equipment is to be driven to the bottom for fuelling.

The information reviewed for this report requires considerable clarification. The Fire Chief and the ambulance service should be consulted for their opinion on the steepness of the driveway and the gravel surface. Further environmental reviews and studies need to be done to ascertain the environmental effect of not only the tower operation but the construction of the tower and the access drive construction.

If you have any questions or require further information, please feel free to contact me.

Sincerely,
NORTHEAST CONSULTING, LLC

Richard M. Calkins, PE
Principal

RMC: rrc

April 22, 2013

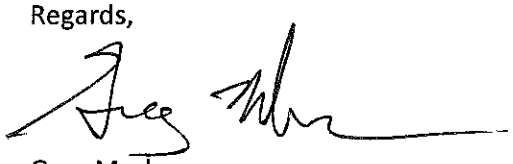
Attn: Ellery Sinclair, Chairman Town of Canaan Inlands Wetlands Commission

RE: Proposed Cell Tower 8 Barnes Road

Dear Mr. Sinclair,

As you are aware, I testified against this site in the initial hearing in front of the Connecticut Siting Council on behalf of the Town of Canaan Planning and Zoning Commission. It is my understanding with this subsequent application (or modification of said application) that the road to gain access to the tower in essence will remain as first put forth, with additional length added along the ridge once the proper elevation is achieved. It is my belief that the engineering study that was performed on the behalf of the Town of Canaan showed the initial flaws of the access to this proposed site, and those same flaws and concern will still exist. I testify to this as well with my vast experience of approximately twenty years in the ready-mix concrete business of gaining access to off road sites such as that proposed here. With this being stated about my professional life, it is my belief and concern that the proposed road will not allow safe access to the tower pad for the supply and safety vehicles that would need to gain access without the assistance of a large metal tracked machine to assist (such as a large bulldozer) to pull the trucks up and to connect from the rear and let the trucks down. This is a very serious concern that has not been adequately addressed.

Regards,



Greg Marlowe

68 Belden Street, Falls Village Ct

The Nature Conservancy
Protecting nature. Preserving life.

The Nature Conservancy in Connecticut
55 Church Street, Third Floor
New Haven, CT 06510-3028

tel [203] 562-6270
fax [203] 562-6271

nature.org/connecticut

April 23, 2013

Mr. Robert Stein, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Dear Mr. Stein,

The Nature Conservancy is an international, non-profit conservation organization dedicated to conserving the lands and waters on which all life depends. Given our mission, The Conservancy is writing to express concern related to a proposal from New Cingular Wireless PCS, LLC ("AT&T") to construct a telecommunications tower facility on Cobble Hill, in Canaan (Falls Village), CT. This proposal is currently before the Connecticut Siting Council ("CSC") as Docket # 409a.

A previous application (Docket 409) for a telecommunications tower at this same site was reviewed by the CSC in 2011. At that time, The Nature Conservancy submitted a letter for the public hearing recommending an on-site biological inventory be conducted, based on the proximity of the site to known rare species, including on adjoining land of The Conservancy and throughout the area.

It is my understanding that an on-site biological inventory has not occurred, and that the applicant is relying on information provided to it by the Connecticut Department of Energy & Environmental Protection, which stated in a letter dated September 2, 2010, *"This information is not necessarily the result of comprehensive or site-specific field investigations. Consultations with the Data Base should not be substituted for on-site surveys required for environmental assessments."*

The CSC itself recognizes that, *"There are records of 72 State-listed endangered, threatened or special concern species occurring within a two-mile radius of the proposed tower site."* (CSC February 15, 2013 motion to reopen the docket 409.)

The Nature Conservancy has a long-standing interest in the environment of the northwest corner of Connecticut. Through land ownership and management, the Conservancy will be active in the area into the future. It is our understanding that the AT&T application for the proposed telecommunications tower facility does not include a biological inventory for state rare species by a qualified scientist, so The Nature Conservancy respectfully suggests an inventory be conducted at the proposed tower site.

Sincerely,

David Gumbart
Assistant Director of Land Management

Starling W. Childs, MFS
EECOS Environmental Consultants, Inc
109 Litchfield Road
Norfolk, CT 06058
Email: eecostar@gmail.com

To:

Robert Stein, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Date: April 22, 2013 (Earth Day)

Re: AT&T request to reconsider a Telecommunications tower site on Cobble Mountain in Falls Village, Connecticut previously denied a certificate of environmental compatibility.

Dear Chairman Stein and Members of the CT Siting Council:

The comments and testimony which I filed on behalf of the Berkshire Litchfield Environmental Council(BLEC) during your public hearing on Docket 409 in February of 2011 still stand with regard to the inappropriateness of AT&T's Cobble Mountain telecommunications tower. Having said this, I am writing once again to reiterate my concerns, both as a property owner in Falls Village and as a concerned citizen with special interests in the ecology and natural history of northwest Connecticut.

It is my understanding that AT&T has now requested relief from the denial your siting council issued after those lengthy deliberations back in 2011. You rightly decided then that this high elevation site and attendant access road did not meet the test for environmental compatibility and need. Other potential sites clearly could and should have been considered prior to AT&T designating this Cobble Mountain location to be the most favorable in order to meet their needs for adequate and reasonable wireless signal coverage. What struck our BLEC organization as undesirable then, for any number of reasons, still holds true today.

Furthermore, now AT&T has come back to your council requesting consideration of an alternate site on the top of Cobble Mountain or possibly a change in the height of the offending antennae tower in the previously denied location. This sort of bifurcation of the process in order to appear to give an alternate site or facilities design still begs the very same questions that involve both their right to access the tower sites by way of an old, 30 foot wide right of way or Jeep trail to the top of the mountain. While this "road" may have served for reasonable seasonal access for the property and cabin owner on Cobble Mountain, it in no way is either wide enough nor of reasonable grade to undergo the necessary construction and improvements to be considered a safe or environmentally acceptable road for a modern telecommunications facility.

Judging from my own experience in the business of road engineering, construction, and maintenance in the hilly region of northwest CT, there is neither adequate width in the supposed right of way nor sufficient runs of acceptable slope gradient to allow for adequate cut and fill materials to be displaced along with the necessary and essential accompanying drainage structures and ditches. Our towns throughout the northwest corner have strict zoning controls that speak to the maximum gradients of any access road not to exceed at any point in their run a slope of 12 percent and even then for no more than 100 feet in length. There is good reason for this requirement given the obvious eventuality of having to one day get emergency services vehicles to any particular developed site in all seasons of the year. The cell tower access road, as it is proposed, would, by virtue of its very confined right of way, have to exceed the maximum gradient of 12 percent in several segments of its climb up the mountain. The inability to adequately account for drainage ditches, discharge basins, and sufficient numbers of culverts would ensure the inevitable erosion and sedimentation impacts onto neighboring forestland and eventually onto and across Barnes Road at the entryway to the access. Winter access, were it to be even possible, would require an inordinate amount of salt or other ice melting compound to be spread, the toxic runoff off which would all end up in the sensitive and State-recognized, uniquely valuable calcareous wetlands directly at the base of Cobble Mountain. Given the narrow and presumed right of way, there is no conceivable way to engineer a road such that this requirement for ice melting compounds and snow removal would not create problems, quite literally, 'down the road' in the future.

Now comes AT&T before you to suggest that were they to gain access the top of Cobble Mountain by some freaky means of road engineering and rock blasting, they might consider an alternate site some 1,800 feet to the east from the previously denied tower site. This is an engineering sleight of hand at its best. The high elevation slopes and rocky summits of our northwest hills, of which Cobble Mountain is one of the rockiest, serve as the last refuge for the endangered populations of Eastern Timber rattlesnakes(*Crotatlus horridus).* The NW CT subspecies of this endangered snake population along with its related groups in eastern NY State have been in decline and are hanging on only in the remote and rocky uplands of our tri-state region. Subject to poaching by collectors, roadkill as they cross roads to get to water, and habitat disturbance and behavioral disruptions due to inappropriate high elevation development activity, it is incumbent on any and all state and local agencies to take their presence into account whenever making land use decisions that might in any way diminish their critical habitat areas.

One such inappropriate development is just the sort of application you have again before your siting council. The blasting and construction of any road up to the rocky summit of a mountain in their limited remaining range will inevitably have negative consequences on rattle snakes. Roads invite and facilitate trespass from poachers, allow for vehicular travel where cold blooded snakes have prior to been able to bask in the sunlight without risk of vehicular passage, and construction can inadvertently destroy the ancestral, maternal denning sites so necessary to the population's chances of survival. We know the previous application for this telecommunications tower made little more than a perfunctory DEEP letter reference to the presence or absence of any state threatened or endangered species such as the Timber rattler, but I know from my own experience, having seen them here on neighboring Canaan Mountain, that rattle snakes are indeed present and that Cobble Mountain is an integral part of their critical habitat area. Notwithstanding the proposed additional construction of yet another 1,800 feet of rocky, high elevation access road, any consideration of this new site over the already denied construction on the previous site would be disruptive to the biota of this species rich and biologically diverse region of the state. While you do not take into consideration the environmental consequences of increased levels of electromagnetic fields on living organisms, my previous testimony made significant references to the plethora of studies that have been conducted in other countries that demonstrate and document the deleterious effects of elctrosmog on living organisms and their ability to coexist and breed in close proximity to high power electromagnetic fields such as would inevitably occur at the top of Cobble Mountain.

In conclusion, I would ask, as I have before, that you deny any further reconsideration of the AT&T permit to locate and construct a telecommunications tower on Cobble Mountain and ask the applicants exhaust any and all other potential means and adequate site searches in order to accomplish whatever reasonable signal coverage they so believe that they need. There is more than adequate cell signal in and around the Wangum Brook Valley and Falls Village at the present time. It is unclear to me, and to many others, why the applicant so believes this nearly inaccessible, severely challenging, and incomparably scenic monolith of a mountain in the heart of an historic area need be permanently marred and scarred by the presence of yet another massive, cellular antennae array. Thank you for your time and consideration of these concerns.

Sincerely,

Starling W. Childs, MFS
President of BLEC, Inc.

Starling W. Childs, MFS

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eecostar@aol.com

SUMMARY

I am deeply committed to the management of land and natural resources for a sustainable economic future and a healthy environment. In order to accomplish these sometimes divergent goals, I have learned to adhere to rigorous scientific inquiry such that the facts, to the extent that they are known, will guide the decisions made and implemented. My background in the environmental sciences and my practical and professional skills developed from more than 30 years in the field enable me to outline wise choices with regard to land use and natural resource development issues. I have developed excellent communication skills to convey complex scientific issues both to the uninitiated and to my peers alike. My continuing commitment to the long term care and conservation of forested ecosystems in New England and elsewhere in the world keeps me active in the pursuit of new knowledge. At the same time, I am continuing to teach younger people at Yale School of Forestry and Environmental Studies whose role it will soon be to tackle the environmental challenges of this new century.

WORK HISTORY

1988- present

Partner, EECOS Environmental and Ecological Consulting Services, Inc.

As a founding partner with EECOS, Inc., I am responsible for all aspects of environmental site assessment work. EECOS has specialized in the area of conservation documentation for the preparation of conservation easements on forest and farm land. The particular strengths and set of skills which I lend to the EECOS team include a broad knowledge of natural resources management issues, with particular emphasis on forest resources and the appraisal of standing timber resources, renewable energy with an emphasis on forest biomass, mineral extraction, wildlife, and water resources. My responsibilities include the assessment and analysis of field information and data, preparation of reports and geographic information, and the development of innovative solutions to the challenges facing resource managers and landowners in their efforts to comply with regulations. EECOS has served the forestry needs of our clients, primarily in the Northeast for more than 20 years, but the partners have a wide range of experience in issues both nationally and internationally as well. My own particular experiences have included work-study travels in the South Pacific, South and Central America, and Europe and the British Isles. In addition, a specific area of interest includes the time spent studying arctic and subalpine ecosystems in Alaska and the intermontane West. Areas of special concern include the valuation of natural resources and land as well as creative estate tax planning to minimize exposure for clients through the use of conservation easements.

1980-1987 *Consultant, Fox Hill Forestry Services*

Established as a consulting enterprise to aid landowners in the management of their woodlands, Fox Hill Forestry provided advice and management plans primarily on small woodland properties around Connecticut. Timber sales, forest road design and construction, and forest inventories were the main services provided. In addition to FHFS, I worked for the Great Mountain Forest Corporation which is the 7,000 acre family Tree Farm here in Northwest Connecticut. Now entering the third generation of management, this restored working forest provides a full range of forest uses from research and education to annual harvests of saw timber, biomass and pulp wood. Public recreation and wildlife management continue to be a large part of the mission for the Great Mountain Forest as well. My role has evolved from assistant forester to that of Chief Forester with a crew of forestry staff to oversee the day to day activities. We maintain over 16 miles of gravel roads on GMFC.

1979-1980 *Consultant, State of Connecticut DEP Forestry Unit*

Conducted field surveys and data collection for the analysis and preparation of a report on erosion and sedimentation resulting from timber harvesting roads and extraction activities in Connecticut. The results of the study led to the development of Connecticut's Timber Harvesting Guidelines for the Protection of Streams and Water Quality Handbook.

1977-1978 *Guide for Wilderness Alaska, Inc. outfitters and packers.*

Assisted in the creation and construction of a base camp for field excursions and trips in Alaska's western Brooks Range in a remote area known as the Schwatka Mountains. The work included everything from procurement of supplies, air drop resupplies, land surveying, log building construction, and leading participants safely over unmarked backcountry wilderness terrain .

1976-1977 *Field Technician for New Zealand Forest Service, Protection Forestry Division*

Responsible for all aspects of field data collection in an intensive hydrological survey of timber harvesting, erosion, sedimentation, and slope stability related to forest road construction and clearcut harvests in the Mai Mai National Forest of southwestern New Zealand. Duties included around the clock stream sampling, laboratory sample preparations, weir dam maintenance, sediment collection and analysis, and meteorological record keeping.

EDUCATION

1972-1976 *Yale College, Bachelor of Science Degree in Geology and Natural Resources*
1978-1980 *Yale University School of Forestry and Environmental Studies, Master of Forest Science*
1992-present *Adjunct Professor for Yale School of Forestry& ES Summer Field Modules*

PUBLIC SERVICE and PROFESSIONAL ASSOCIATIONS

President, Berkshire Litchfield Environmental Council
President, Great Mountain Forest Corporation
Past-President, Yale School of Forestry and Environmental Studies Alumni/ae Assoc.
Chairman, External Advisory Board of Global Institute of Sustainable Forestry, Yale
Director, Connecticut Forest and Park Association
Director, Connwood Foresters, Inc.
Past-Director, E. F. Schumacher Society
Past-Director, Forest History Society
Member, Society of American Foresters
Member, Forest Guild
Member, Sigma Xi Scientific Research Society
Tree Warden, Town of Norfolk, CT
Member of Planning and Zoning Commission, Norfolk

Connecticut Siting Council
Docket No. 409/409A

HEARING EXHIBITS OF THE INLAND WETLANDS/CONSERVATION COMMISSION OF THE TOWN OF CANAAN (FALLS VILLAGE), CT

The following is a list of the exhibits the Inland Wetlands/Conservation Commission ("IW/CC") of the Town of Canaan (Falls Village) presently intends to present at the public hearing on Docket No. 409A. [++ signifies last page omitted, contained no text.]

Exhibits Relating to IW/CC Authority

IW1	Certified copy, Wetlands and Watercourses Regulations of the Town of Canaan, Connecticut, as amended October 1, 1975.
IW2	Certified copy, Soil Erosion and Sediment Control Regulations, Town of Canaan, Connecticut, effective July 1, 1985.
IW3	Certified copy, Town Meeting Minutes, Special Town Meeting, Town of Canaan Connecticut, August 23, 1972, Establishing a Conservation Commission under Conn. Gen. Stat. §7-131 a (a)&(b)
IW4	Certified copy, Town Meeting Notice and Meeting Minutes February 21, 1973 designating the Town of Canaan Conservation Commission the Inland Wetlands Commission "to promulgate such regulations as are necessary to protect the inland wetlands and watercourses within the territorial limits of the town of Canaan pursuant to the power granted by Connecticut Gen. Statutes section 7-131 (a)."
IW5	Certified copy, Current Town of Canaan Route Sheet (to Obtain a Building Permit).
IW6	Letter of January 15, 2011 to the Connecticut Siting Council from the Inland Wetlands-Conservation Commission of the Town of Canaan, Connecticut: Notice of Intent to be a party, Docket 409.
IW7	Town of Canaan Falls Village 2002 Plan of Conservation & Development, Planning and Zoning Commission, January 9, 2002 (excerpts).
IW8	Certified copy, Town of Canaan, Falls Village Zoning Regulations (excerpt) 4.3. Steep Slope Overlay Zone; 5.1. Landscaping and Buffers.

IW9-A Letter and Report of February 24, 2010 from Northeast Consulting, LLC Civil & Consulting Engineers to Town of Canaan Planning & Zoning Commission.

IW9-B Letter and Report of December 2, 2010 from Northeast Consulting, LLC Civil & Consulting Engineers to Town of Canaan Planning & Zoning Commission.

IW10 Bormann, F. Herbert and Gene E. Likens, "Pattern and Process in a Forested Ecosystem; Disturbance, Development and the Steady State Based on the Hubbard Brook Ecosystem Study," Springer-Verlag, New York 1979 (excerpts).

IW11 Town of Canaan Town Road Inventory and Policy Recommendations.

Exhibits Relating to Alternative Sites

IW12 The Ottery Group Letter of August 24, 2009 to First Selectman Mechare, Falls Village, CT.

IW13 IW/CC Letter of September 21, 2009 to Stacy P. Montgomery, The Ottery Group, Inc.

IW14 Cuddy & Feder Letter of October 29, 2009 to First Selectman Mechare, Falls Village, CT.

IW15 IW/CC Letter of February 8, 2010 to General Manager of Century Aggregates, Falls Village, CT.

IW16 Cuddy & Feder Letter of March 24, 2010 to IW/CC.

IW17 New Cingular Wireless PCS, LLC letter of April 28, 2010 to General Manager of Century Aggregates, Falls Village, CT.

IW18 Cuddy & Feder Letter of October 19, 2010 to Chairman Daniel F. Caruso, Connecticut Siting Council.

Exhibits Relating to Visibility and Scenic and Historic Values

IW19 Connecticut Department of Transportation web page on Connecticut Scenic Roads criteria for designation of scenic highways; Connecticut Scenic Roads as of November 1, 2008 reflecting 10.26 miles designated from route 128 north to the North Canaan town line; June 6, 1989

Connecticut Law Journal: Department of Transportation: designation of scenic roads.

IW20 "Upper Housatonic Valley National Heritage Area, Feasibility Study" 2003, National Park Service, U.S. Department of the Interior (excerpts).

IW21 Upper Housatonic Valley National Heritage Area Feasibility Study Overview (http://www.upperhousatonicheritage.org/pdfs /pubs/UHVNHABrochure.pdf) (last visited 2/8/11).

IW22 Upper Housatonic Valley National Heritage Area Flyer (http://www.upperhousatonicheritage.org/uploaded_files /Heritage%20Brochure%20-%20sheet.pdf) (last visited 2/8/11).

IW23 Upper Housatonic Valley National Heritage Area "Why National Heritage Areas?" (http://www.upperhousatonicheritage.org/index.php?catId =1&subCatId=47) (last visited 2/8/11).

IW24 April 20, 1983 State Historic Preservation Office Notification Letter Re: South Canaan Congregational Church Enrollment on National Register of Historic Places.

IW25 "South Canaan the Congregational Church," an excerpt from "Early Connecticut Meeting Houses," by J. Frederick Kelly, Columbia University press, 1948, reprinted by the Falls Village Canaan Historical Society, Inc.

IW26 Affidavit of Alison Orr-Andrawes, dated January 6, 2011 with four photos attached.

IW27 November 17, 2010 Letter from Susan Pinsky and Marc Rosen to Connecticut Siting Council.

IW28 Historic and Architectural Resource Survey of Canaan, Connecticut, Connecticut Historical Commission, Funding provided by the Connecticut General Assembly 2000. IF#s 1; 2; 16; [Note: Errata in original material: the 8 Barnes Road house should be 5 Barnes Road.]

Exhibits Relating to State Endangered Species and Species of Special Concern

IW29 January 28, 2011 Letter from Hon. Andrew W. Roraback and Hon. Roberta B. Willis to Connecticut Siting Council.

IW30 August 6, 2010 Letter from VHB, Inc. to First Selectman Mechare; and September 1, 2010 response from IW/CC Chairman Ellery W. Sinclair.

IW31 Petersen, Richard C., "Connecticut's Venomous Snakes: Timber Rattlesnake and Northern Copperhead," State Geological and Natural History Survey of Connecticut, a Division of the Department of Agriculture and Natural Resources, Bulletin 103, 1970 (excerpts).

IW32 "Wildlife in Connecticut, Endangered and Threatened Species Series (Fact Sheet), Bog Turtle (Clemmys muhlenbergii)," Connecticut Department of Environmental Protection, wildlife division (no date).

IW33 "Bog Turtle (*Clemmys muhlenbergii*) Northern Population RECOVERY PLAN," U.S. Fish and Wildlife Service, Hadley, Massachusetts, prepared by Michael Klemens, Ph.D., Wildlife Conservation Society, Bronx, New York in cooperation with Pennsylvania field office, U.S. Fish and Wildlife Service, State College, Pennsylvania for Region 5, U.S. Fish and Wildlife Service, Hadley Massachusetts, May 15, 2001 (excerpts).

IW34 Connecticut Department of Environmental Protection, A County Report of Connecticut's Endangered, Threatened and Special Concern Species, 12/1/2010: Litchfield County.

IW35 Connecticut Department of Environmental Protection, Endangered Species Webpage.

IW36 Connecticut DEP Fact Sheets: American Bittern: Endangered; Bog Turtle: Endangered++; Bald Eagle: Threatened; Timber Rattlesnake: Endangered;

IW37 Connecticut Environmental Conditions Online; Connecticut Critical Habitats.

IW38 Affidavit of Mary Lu Sinclair dated February 7, 2011.

IW39 "Rattlesnake Spotted Slithering in Sharon: Snake Measuring 4 Feet Spotted By Viewer," WFSB.com, September 1, 2010.

IW40 Housatonic Valley Association letter dated January 19, 2011 from Tim Abbott.

IW41 The Litchfield Hills Greenprint: The Case for Regional Conservation in the Litchfield Hills.

IW42 The Nature Conservancy in Connecticut-Hollenbeck preserve webpage 1/26/11.

IW43 The Nature Conservancy in Connecticut-Northwest Highlands webpage 1/26/11.

IW44 U.S. Fish and Wildlife Service Endangered Species: Critical Habitat – What is it?

IW45 Klemens, Michael W., "Amphibians & Reptiles in Connecticut, A Checklist With Notes on Conservation Status, Identification, and Distribution," Connecticut Department of Environmental Protection, Bulletin 32, 2000 (excerpts).

IW46 Dowhan, Joseph J. and Robert J Craig, "Rare and Endangered Species of Connecticut and the Their Habitats," State Geological and Natural History Survey of Connecticut, The Natural Resources Center, Department of Environmental Protection, Report of Investigations No. 6, 1976 (excerpts).

IW47 Connecticut Audubon Society, "Connecticut State of the Birds: Conserving Birds & Their Habitats" 2006; Sibley, David Allen, "Birds Make Good Indicators of Environmental Health"; Introduction by Robert Martinez, President, Connecticut Audubon Society, Fairfield, Connecticut; "Recommendations from Connecticut Audubon Society" (excerpts); with letter of transmittal.

IW48 Connecticut's Comprehensive Wildlife Conservation Strategy: Creating a vision for the future of wildlife conservation, State Department of Environmental Protection, Bureau of Natural Resources, October 1, 2005: Introduction; Chapter 1: Connecticut's Wildlife Distribution and Abundance: Determination of Species of Greatest Conservation Need (GCN); Chapter 2: Habitats, Sub-habitats, and Vegetative Communities in Connecticut (excerpts); Chapter 3: Threats Affecting Species of Greatest Conservation Need (GCN) or their Habitats (excerpts); Chapter 4: Conservation Actions for Connecticut's Twelve Key Habitats and GCN Species.

IW49 Connecticut DEP Endangered, Threatened & Special Concern Species in Connecticut Explanation Page.

IW50 Connecticut DEP Endangered Species/Wildlife Income Tax Check-Off Funded Projects.

IW51 February 7, 2011 Letter from Hank Gruner to Connecticut Siting Council.

Exhibits Relating to U.S. Fish and Wildlife Regulation

IW52 U.S. Fish and Wildlife Fact Sheet: Small Whorled Pogonia.

IW53 U.S. Fish and Wildlife Fact Sheet: Bog Turtle.

IW54 U.S. Fish and Wildlife "Endangered Species Program Overview" webpage (http://www.fws.gov/newengland/EndangeredSpec-Overview.htm) (last visited 2/8/11).

IW55 U.S. Fish and Wildlife Protocol Relating to Applicant's Tab 7 Materials (http://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm) (last visited 2/8/11).

IW56 U.S. Fish and Wildlife Definition of "Action Area" (http://www.fws.gov/northeast/nyfo/es/actionarea.htm) (last visited 2/8/11).

IW57 Webpage Linking U.S. Fish and Wildlife Website to Connecticut DEP Webpage Listing State Endangered Species (http://www.fws.gov/scripts/exit.cfm?link=http://www.ct.gov /Dep/cwp/browse.asp?A=2702) (last visited 2/8/11).

IW58 Connecticut DEP "Insects Plants Endangered and Invasive Species" Webpage Linked From USFWS webpage (http://www.ct.gov/Dep/cwp/browse.asp?A=2702) (last visited 2/8/11).

IW59 Letter of January 14, 2011 Division of Migratory Bird Management, U.S. Fish and Wildlife Service, to FCC re: Comments of the U.S. Fish and Wildlife Service's Division of Migratory Bird Management filed electronically, on WT Docket No. 08-61 and WT Docket No. 03-187, Regarding the Environmental Effects of the Federal Communication Commission's Antenna Structure Registration Program.

IW60 Notice of Inquiry Comment Review: Avian/Communication Tower Collisions Final, Prepared for Federal Communications Commission, September 30, 2004 (Excerpt).

IW61 Briefing Paper on the Need for Research into the Cumulative Impacts of Communication Towers on Migratory Birds and Other Wildlife in the United States *Division of Migratory Bird Management (DMBM), U.S. Fish & Wildlife Service* – for Public Release, LAST UPDATED: January 23, 2009, Albert M. Manville, II, Ph.D., Senior Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr. – MBSP-4107, Arlington, VA 22203. 703/358-1963; Albert_Manville@fws.gov.

IW62 U.S. Fish and Wildlife Service Press Release: 40th Anniversary of Convention on Wetlands of International Importance Celebrated at Gibraltar Carlson High School on World Wetlands Day -- February 2, 2011.

IW63 Highlands Conservation Act, PL 108-42.

IW64 Connecticut Highlands Q&A, USDA Forest Service, Northeastern Area, State and Private Forestry.

Exhibits Relating to Robbins Swamp and Environs

IW65 "Management Plan for the Robbins Swamp Natural Area Preserve at the Robbins Swamp Wildlife Management Area," December 2002, State of Connecticut Department of Environmental Protection (excerpts); with letter of transmittal dated October 4, 2002.

IW66 Letter of December 11, 1985 to Susan Fitch (Kelsey) Vice Chairperson, IWCC from Nancy M. Murray, Biologist/Data Manager Natural Resources Center, Connecticut Natural Diversity Data Base (NDDB), Connecticut Department of Environmental Protection, "[Robbins swamp] is...one of the most significant [inland wetlands] because of the high concentration of state-listed 'species of special concern'. Thirteen 'species of special concern' are known to be extant in Robbins Swamp. The names of species and locations are not provided due to their extremely sensitive nature."

IW67 A Recommendation to the Commissioner of Environmental Protection from the Natural Area Preserves Advisory Committee, Robbins Swamp Natural Area Preserve, with preserve description, and listing a state listed species and significant natural communities within the preserve, with map attachment of natural area preserve: Robbins Swamp, dated April 22, 1998.

IW68 Letter of September 11, 1995 from Governor John G Rowland to Inland Wetlands Secretary Susan Kelsey; and letter of September 19, 1995 from Connecticut Department of Environmental Protection Commissioner Sidney J. Holbrook: "The proposed acquisition [Robbins Swamp] presents the state with a rare opportunity to unite these two unique areas with an open space greenway. Such a link is highly significant from a biological standpoint and an important attribute of sound stewardship of these two prized natural resources."

IW69 Letter of January 13, 2011 to Connecticut Siting Council Chairman Daniel Caruso from the Housatonic River Commission.

IW70 Balmori, Alfonso, "Mobile Phone Mast Effects on Common Frog (*Rana temporaria*) Tadpoles: The City Turned into a Laboratory," Electromagnetic Biology and Medicine, 29:31-35, 2010

IW71	Balmori, Alfonso, "Electromagnetic pollution from phone masts. Effects on wildlife." Pathophysiology, 2009.
IW72	Frey, Allan H. and Edwin S. Eichert, "Modification of Heart Function With Low Intensity Electromagnetic Energy," Journal of Bioelectricity 5(2), 201-210 (1986)
IW73	Balmori, Alfonso, "The incidence of electromagnetic pollution on the amphibian decline: Is this and important piece of the puzzle?" Toxicological & Environmental Chemistry, Apr.-June 2006; 88(2): 287-299.
IW74	Everaert, Joris and Dirk Bauwens, "A Possible Effect of Electromagnetic Radiation from Mobile Phone Base Stations on the Number of Breeding House Sparrows (Passer domesticus), Electromagnetic Biology and Medicine, 26: 63-72, 2007
IW75	Balmori, Alfonso, "Possible Effects of Electromagnetic Fields From Phone Masts on a Population of White Stork," Electromagnetic Biology and Medicine, 24: 109-119, 2005.
IW76	Magras, Ioannis N. and Thomas D. Xenos, "RF Radiation – Induced Changes in the Prenatal Development of Mice," Bioelectromagnetics, 18:455-461, 1997.
IW77	February 8, 2011 Connecticut Department of Environmental Protection NDDB Data Letter with attachments re: State Listed Species Records Within an Aapproximately Two Mile Radius Circle centering on Proposed Cobble Hill Telecommunications Tower located at 8 Barnes Road in Canaan, Connecticut.
IW78-A	DEP NDDB Map OVERLAY coordinates with Application, Tab 1, Map 3 (black and white)
IW78-B	DEP NDDB Map OVERLAY coordinates with Application, Tab 1, Map 3 (transparency)
IW79	Copy of photograph of Blue Spotted Salamander submitted by Ameen Storm Abo-Hamzy, during Public Session of July 1, 2008 Siting Council Hearing on Docket 360 [Intervenor's Exhibit IJ73]
IW80	Moorhead, William H. III, "Eightmile River Watershed Biodiversity Report," Consulting Field Botanist, 12 November 2006 (excerpts).
IW81	Friends of Wangam Valley Mission Statement, 2003.

IW82 "Conservation Group Returns Land to Nature," Waterbury Republican American, December 12, 1995.

IW83 Affidavit of Bonnie H. Burdick, dated February 9, 2011.

IW84 Kato Yasuko, "RF Effects on Plants, Summary," Shukan Kinyabi, July 2, 2004, pp. 27-29. Translated for Japan Focus by Jean Inglis.

IW85/86 Pre-Hearing Submission of Town of Canaan Inland Wetlands/Conservation Commission, Docket 409, February 10, 2011 Including List of Witnesses; Pre-Filed Testimony of Tim Abbott, Greenprint Director, Housatonic Valley Association; Salvatore Dziekan;

TOWN OF CANAAN (FALLS VILLAGE) INLAND WETLANDS AND CONSERVATION COMMISSION ("IWCC") SUPPLEMENTAL HEARING EXHIBITS DOCKET 409A

IW87 Meeting Minutes, Connecticut Siting Council Meeting of March 7, 2013

IW88 Memorandum of Decision on Cross Motions for Summary Judgment, *New Cingular Wireless PCS LLC a.k.a. AT&T v. The Connecticut Siting Council*, 3:11-cv-1502 (WWE) (Doc 55)

IW89 Stipulation Withdrawing Appeal From Active Consideration Without Prejudice, With Leave to Reactivate, *New Cingular Wireless PCS LLC a.k.a. AT&T v. The Connecticut Siting Council*, (2d. Cir) Docket 12-4709

IW 90 Annual Precipitation Connecticut (Annual 1910 – 2010 Data Values), NOAA Satellite and Information Service, National Climatic Data Center

IW 87

Meeting Minutes

Meeting of March 7, 2013

A meeting of the Connecticut Siting Council (energy/telecommunications) was held on Thursday, March 7, 2013, in Hearing Room Two, Ten Franklin Square, New Britain, Connecticut. The meeting was called to order with a quorum present by Chairman Robert Stein at 1:00 p.m.

Council Members Present:

Robert Stein
Chairman
Colin Tait
Vice Chairman
Robert Hannon
(designee for Commissioner Esty)
Philip T. Ashton
Michael Caron
(designee for Chairman House)
Barbara Currier Bell
James J. Murphy
Daniel P. Lynch, Jr.
Edward S. Wilensky

Staff Members Present:

Linda Roberts
Executive Director
Melanie Bachman
Staff Attorney
Fred Cunliffe
Siting Analyst Supervisor
Christina Walsh
Siting Analyst Supervisor
Michael Perrone
Siting Analyst
David Martin
Siting Analyst

Recording Secretary:

Lisa Fontaine

Minutes of February 21, 2013.

Mr. Murphy moved to approve the minutes of February 21, 2013, seconded Mr. Lynch. The motion passed with Mr. Ashton abstaining.

DOCKET NO. 360 - Cellco Partnership d/b/a Verizon Wireless Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 188 Route 7 South, Falls Village (Canaan), Connecticut. Development and Management Plan.

Mr. Wilensky entered the meeting at 1:05 p.m.

Mr. Murphy moved to approve the Development and Management Plan; seconded by Mr. Ashton. The motion passed with Chairman Stein abstaining and Mr. Tait not present.

DOCKET NO. 404 - New Cingular Wireless PCS, LLC Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 28 Great Oak Lane, Redding, Connecticut. Request for an Extension of Time.

Mr. Tait moved to approve an extension of time until January 1, 2014 to complete construction of this site; seconded by Dr. Bell. The motion passed unanimously.

DOCKET NO. 409 - New Cingular Wireless PCS, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 8 Barnes Road, Canaan (Falls Village), Connecticut. Motion to Reopen.

Mr. Ashton moved to reopen this docket to hear evidence on changed conditions and a new site location to determine if the Council's original decision should be reversed or modified, pursuant to Connecticut General Statutes 4-181a(b); seconded by Mr. Hannon. The motion passed with Mr. Tait voting no and Mr. Caron abstaining.

DOCKET NO. 427 - North Atlantic Towers, LLC Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 171 Short Beach Road, Branford, Connecticut. Development and Management Plan.

Mr. Ashton moved to approve the Development and Management Plan with the condition that North Atlantic Towers, LLC submit a site plan depicting the final route of underground utilities to the site; seconded by Mr. Wilensky. The motion passed with Mr. Hannon abstaining.

DOCKET NO. 428 - New Cingular Wireless PCS, LLC (AT&T) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: Roxbury Tax Assessor Parcel ID #32-008 off of Route 67, Roxbury, Connecticut, or 126 Transylvania Road, Roxbury, Connecticut. Draft Findings of Fact, Opinion, and Decision and Order.

Mr. Ashton moved to approve the Draft Findings of Fact, Opinion, and Decision and Order granting a Certificate for the Roxbury Tax Assessor Parcel ID #32-008 off of Route 67 site; seconded by Mr. Wilensky. The motion passed with Mr. Hannon abstaining.

DOCKET NO. 431 – South Norwalk Electric and Water application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of an electrical substation and its connection to an existing 115 kV transmission line, located at 180 Dr. Martin Luther King, Jr. Drive, Norwalk, Connecticut. Draft Findings of Fact.

After reviewing the Draft Findings of Fact, Chairman Stein conducted a non-binding straw poll of the Council members with Mr. Tait, Mr. Murphy, Dr. Bell, Mr. Lynch, Mr. Wilensky, Mr. Hannon, Mr. Caron, Mr. Ashton, and Chairman Stein unanimously in favor of issuing a Certificate for the proposed electrical substation and its connection to an existing 115 kV electric transmission line.

Chairman Stein directed staff to draft a favorable Opinion and Decision and Order to be reviewed at the next meeting.

DOCKET NO. 433 - The United Illuminating Company application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 115/13.8 kilovolt substation located at 14 Old Stratford Road, Shelton, Connecticut. Draft Findings of Fact, Opinion, and Decision and Order.

Mr. Lynch stated that, although he did not attend the public hearing, he had read the transcript and would be voting.

Mr. Ashton moved to approve the Draft Findings of Fact, Opinion, and Decision and Order; seconded by Mr. Murphy. The motion passed unanimously.

DOCKET NO. 434 - Cellco Partnership d/b/a Verizon Wireless Application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a relocated telecommunications facility at 139 North Main Street, West Hartford, Connecticut. Request for Party/Intervenor Status.

Mr. Murphy moved to grant intervenor status to New Cingular Wireless PCS, LLC (AT&T); seconded by Dr. Bell. The motion passed unanimously.

DOCKET NO. 436 – Message Center Management, Inc. and New Cingular Wireless PCS, LLC Application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at one of two sites: 465 Hills Street or 56 Hills Street, East Hartford, Connecticut. Completeness Review, Schedule, Custodian of the Docket, Deposition of the Transcript, Request for Party/Intervenor Status.

Mr. Ashton moved to approve the application as complete, approve the schedule for processing the docket as per staff recommendations, the appointment of Carriann Mulcahy as custodian of the docket, the deposition of the transcript in the Town of East Hartford, a public field review and hearing in East Hartford on Thursday, June 6, 2013; seconded by Dr. Bell. The motion passed unanimously.

PETITION NO. 1042 – Somers Solar Center, LLC Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction and operation of a 5.0 MW AC Solar Photovoltaic Project located at 458 & 488 South Road, Somers, Connecticut. Draft Findings of Fact.

Chairman Stein and Mr. Lynch stated that, although they did not attend the public hearing, they had read the transcript and would be voting.

After reviewing the Draft Findings of Fact, Chairman Stein conducted a non-binding straw poll of the Council members with Mr. Tait, Mr. Murphy, Dr. Bell, Mr. Lynch, Mr. Wilensky, Mr. Hannon, Mr. Caron, Mr. Ashton, and Chairman Stein unanimously in favor of approving this petition.

Chairman Stein directed staff to draft a favorable Opinion and Decision and Order to be reviewed at the next meeting.

PETITION NO. 1057 - The Connecticut Light and Power Company petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed modifications to the existing Northeast Simsbury Substation and replacement of structures in Simsbury and Bloomfield; and re-conductoring of a 115-kV transmission line from Northeast Simsbury Substation (Simsbury, Connecticut) to the North Bloomfield Substation, Bloomfield, Connecticut. Landscape and Grading Plan.

Mr. Tait moved to approve the proposed Landscaping and Grading Plan, submitted on February 20, 2013; seconded by Mr. Ashton. The motion passed unanimously.

Administrative Matters.

DOCKET NO. F-2012/2013 – Connecticut Siting Council Review of the Ten-Year Forecast of Connecticut Electric Loads and Resources. United Illuminating Request for Extension of Time.

Mr. Lynch moved to add this item to the agenda; seconded by Mr. Caron. The motion passed unanimously.

Mr. Ashton moved to approve the request from The United Illuminating Company dated March 1, 2013, for an extension of time to file the Annual Report of its Ten-Year Forecast of Loads and Resources pursuant to §16-50r of the Connecticut General Statutes to March 22, 2013; seconded by Mr. Murphy. The motion passed unanimously.

DOCKET NO. 435 - The Connecticut Light & Power Company Application for a Certificate of Environmental Compatibility and Public Need for the Stamford Reliability Cable Project, which consists of construction, maintenance, and operation of a new 115-kV underground transmission circuit extending approximately 1.5 miles between Glenbrook and South End Substations, Stamford, Connecticut and related substation improvements.

Mr. Murphy moved to add this item to the agenda; seconded by Dr. Bell. The motion passed unanimously.

Mr. Ashton moved to grant party status to the Office of Consumer Counsel; seconded by Mr. Murphy. The motion passed with Chairman Stein abstaining.

The following calendar events were discussed.

- Thursday, March 14, 2013, beginning at **2:00 p.m.**, field review and public hearing for Petition No. 1056 (GRE 314 East Lyme, LLC) at the East Lyme Town Hall, Auditorium, 108 Pennsylvania Avenue, Niantic, Connecticut
- Thursday, March 21, 2013, beginning at **1:00 p.m.** energy/telecommunications meeting, in Hearing Room Two, Ten Franklin Square, New Britain
- Thursday, March 28, 2013, beginning at **1:00 p.m.** field review and public hearing for Docket No. 435 (CL&P-Stamford) at the NEON Stamford Gymnasium, 34 Woodland Avenue, Stamford, Connecticut.

Adjournment.

Mr. Ashton moved to adjourn the meeting, seconded by Mr. Caron. The motion passed unanimously.

Chairman Stein adjourned the meeting at 2:00 p.m.

Respectfully submitted,

Robin Stein
Chairman

RS/laf

IW88

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NEW CINGULAR WIRELESS PCS, LLC a.k.a. AT&T, Plaintiff,	:	No. 3:11cv1502 (WWE)
v.	:	
THE CONNECTICUT SITING COUNCIL, CHAIRMAN ROBERT STEIN, VICE CHAIRMAN COLIN C. TAIT, BRIAN GOLEMBIEWSKI, BARBARA CURRIER BELL, LARRY P. LEVESQUE, DANIEL P. LYNCH, JR., JAMES J. MURPHY, JR., EDWARD S. WILENSKY and PHILIP T. ASHTON, in their official capacities, Defendants.	:	

MEMORANDUM OF DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In this action, plaintiff New Cingular Wireless PCS, LLC a.k.a. AT&T ("AT&T") claims that defendants The Connecticut Siting Council (the "CSC"), Chairman Robert Stein, Vice Chairman Colin C. Tait, Brian Golembiewski, Barbara Currier Bell, Larry P. Levesque, Daniel P. Lynch, Jr., James J. Murphy, Jr., Edward S. Wilensky and Philip T. Ashton (the "CSC Defendants") have violated the Telecommunications Act of 1996 by denying an application to construct a wireless tower facility. Plaintiff asserts that this denial effectively prohibits AT&T from providing wireless services to the public in an area with a significant gap in service.

The parties have filed cross motions for summary judgment. For the following reasons, the Court will deny AT&T's motion for summary judgment and will grant the CSC Defendants' motion for summary judgment.

I. BACKGROUND

The parties have submitted statements of undisputed facts, exhibits and supporting materials that reveal the following undisputed facts.

AT&T provides wireless communication services to the public pursuant to licenses issued by the Federal Communications Commission (the "FCC") that allow for the construction and operation of a network of wireless facilities in the state of Connecticut.

At present, AT&T lacks reliable, continuous in-building or in-vehicle coverage in an area including the hamlet of Falls Village in Canaan, Connecticut (the "Coverage Gap Area"). AT&T's Coverage Gap Area includes Route 7, which is a designated scenic roadway in Litchfield County, Route 63, and Route 25.

On October 19, 2010, AT&T applied to the CSC for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a wireless telecommunications facility located at 8 Barnes Road on Cobble Hill in Canaan, Connecticut (the "Site"). AT&T proposes to install a 150-foot monopole at the Site

The Site's location near the summit of a prominent hill allows AT&T to provide adequate coverage to the proposed service area with 28 square miles of cellular coverage and 19 square miles of PCS coverage. The Site is approximately 1,800 feet from Robbins Swamp and approximately 1,000 feet from the Hollenbeck River, which both contain state-listed endangered species.

The proposed facility would require clearing three acres of the twenty-five acre property that comprises the Site. The CSC found that construction would not have a

significant impact on forest fragmentation and that the Site is "not within a Town-designated unique or special habitat area." Further, the CSC remarked that "[d]evelopment of the tower and access road can be engineered to prevent an increase in run-off above present day levels." Run-off from the Site would also be discharged overland above steep slopes located to the west, a different direction from the north side of Cobble Hill where the wetlands associated with the Hollenbeck River are located. The CSC remarked that proposed drainage designs were in accordance with the Department of Transportation's Drainage Manual. Run-off would be controlled through the use of swales, cross-drains and level spreaders, as well as the use of twelve inches of crushed gravel to improve filtration on the driveway surface. Further, the CSC recognized that "[a] comprehensive erosion and sediment control plan and a storm water management plan would be developed and included within the Development and Management Plan to ensure run-off does not affect off-site wetland and watercourse resources."

The CSC decision reflects that state-listed endangered, threatened or special concern species occur within a two-mile radius of the Site but no evidence indicates that such species are on the Site and "no known populations of Federally threatened or endangered species" are known to be on the Site. Further, the Site is not located near any areas identified by the Connecticut Audubon Society as an Important Bird Area or Important Bird Site. The CSC found that the proposed facility complied with the recommendations for siting telecommunications facilities of the U.S. Department of Interior, Fish and Wildlife Service Division of Migratory Bird Management.

Nevertheless, the CSC found that "the proposed tower would substantially and adversely affect the scenic quality of its location on Cobble Hill, and no public safety concerns require that the proposed facility be constructed in such a location."

The CSC stated:

> Located as proposed at the top of Cobble Hill, a tower would be visible year-round from approximately 513 acres within two miles of the site. It would be visible from portions of two nationally-recognized historic properties, portions of Robbins Swamp, significant portions of Route 7, and sections of Under Mountain Road, Music Mountain Road, Route 126, and Route 63. Considered from a near distance, the tower would be obtrusive because the lowlands surrounding Cobble Hill are generally open, consisting of swampy areas interspersed with open fields, with little intervening mature vegetation to screen views of the tower. A tower located on the side of a hill or among numerous ridges can blend into such backdrops; a tower backgrounded against the open sky becomes prominent, especially when it is significantly taller than the tree canopy. Considered on a wider landscape scale, the tower would be even more obtrusive. . . . As the tallest and most noticeable feature on top of Cobble Hill, the tower would become the focal point of any landscape view.

The CSC also expressed concern that design features to protect against soil erosion, sedimentation and storm water runoff would represent "additional engineered features ... [that] would be increasingly anomalous with the character of the area."

The CSC noted that it had requested that AT&T explore alternative options, including multiple towers to serve its coverage objectives and, in denying the application, the CSC "encourage[d] the applicant to explore other alternative sites and technologies."

This action for declaratory judgment ensued.

II. DISCUSSION

A motion for summary judgment must be granted if the pleadings, discovery materials before the court and any affidavits show that there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

A dispute regarding a material fact is genuine if there is sufficient evidence that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The burden is on the moving party to demonstrate the absence of any material factual issue genuinely in dispute. Am. Int'l Group, Inc. v. London Am. Int'l Corp., 664 F.2d 348, 351 (2d Cir. 1981).

If a nonmoving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, then summary judgment is appropriate. Celotex Corp., 477 U.S. at 323. If the nonmoving party submits evidence which is "merely colorable," legally sufficient opposition to the motion for summary judgment is not met. Liberty Lobby, 477 U.S. at 24. The mere existence of a scintilla of evidence in support of the nonmoving party's position is insufficient; there must be evidence on which the jury could reasonably find for it. See Dawson v. County of Westchester, 373 F.3d 265, 272 (2d Cir. 2004).

On summary judgment, the court resolves all ambiguities and draws all permissible factual inferences in favor of the nonmoving party. See Patterson v. County of Oneida, 375 F.3d 206, 218 (2d Cir. 2004). If there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party on the issue on which summary judgment is sought, summary judgment is improper.

See Security Ins. Co. of Hartford v. Old Dominion Freight Line Inc., 391 F.3d 77, 83 (2d Cir. 2004). The same standard is applicable to cross motions for summary judgment.

TCA Framework

Congress enacted the TCA "to provide a pro-competitive, de-regulatory national policy framework designed to accelerate private sector deployment of advanced telecommunications and information technologies and services ... by opening all telecommunications markets to competition...." Cellular Telephone Co. v. Town of Oyster Bay, 166 F.3d 490, 493 (2d Cir. 1999) (quoting H.R. Conf. Rep. No. 104–458, at 206 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 124).

The TCA sets forth a regulatory scheme for state and local authorities responsible for determining whether a cellular phone tower may be built. See 47 U.S.C. § 332(c). Section 332(c)(7)(A) affords local and state zoning authorities general authority "over decisions regarding the placement, construction, and modification of personal wireless service facilities," but this delegated authority to regulate cellular towers is limited. Cellular Phone Taskforce v. FCC, 205 F.3d 82, 96 (2d Cir. 2000). The local or state zoning authority with regard to siting of new wireless telecommunications tower facilities is subject to the limitations imposed by federal policies and a denial subject to the TCA is reviewed more closely than other types of zoning decisions. Sprint Spectrum, L.P. v. Willoth, 176 F.3d 630, 637 (2d Cir. 1999).

Section 332(c)(7)(B) provides that the regulation of the placement, construction, and modification of cellular towers by any State or local government shall: (1) not unreasonably discriminate among providers; (2) not prohibit or have the effect of prohibiting the provision of personal wireless services; (3) act on a request within a

reasonable period of time; and (4) render a denial in writing and supported by substantial evidence contained in a written record.[1]

A claim that a local government's ruling violates the TCA's effective-prohibition provision based on the denial of an application for a proposed facility must demonstrate that the proposed facility "is the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to land-lines." Sprint Spectrum, L.P. v. Willoth, 176 F.3d at 643. Effective prohibition is determined without deference to the local regulatory authority and may be found even where substantial evidence exists to support the denial of an individual permit under the terms of local ordinance. Green Mountain Realty Corp. v. Leonard, -- F.3d --; 2012 WL 3234407 (1st Cir. 2012).

Thus, under the Willoth standard, a plaintiff prevails on a Section 332(c)(7)(B)(i)(II) claim for effective prohibition if it shows both that a "significant gap" exists in wireless coverage and that its proposed facility is "the least intrusive means" to close that gap. The carrier bears the burden to show that an effective prohibition of services has occurred. Omnipoint Holdings, Inc. v. City of Cranston, 586 F.3d 38, 48 (1st Cir. 2009).

1. Significant Gap

Courts have differed as to whether a "significant gap" must be measured from the perspective of the individual provider or the perspective of users. See T-Mobile

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[1]In Connecticut, local zoning authority over the siting of new wireless telecommunications tower facilities is vested within the administrative purview of the CSC. Conn. Gen. Stat. § 16-50i(a)(6).

Northeast LLC v. Town of Ramapo, 701 F. Supp. 2d 446, 458 (S.D.N.Y. 2009). However, the FCC has issued a Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B), stating that a "State or local government that denies an application for personal wireless service facilities siting solely because one or more carriers serve a given geographic market has engaged in unlawful regulation that prohibits or has the effect of prohibiting the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II)." 24 F.C.C.R. 13994, 14015-16 (2009).

The determination of a significant gap is highly fact intensive. Green Mountain Realty Corp. v. Leonard, 688 F.3d at 51. A significant gap can be established by evidence including radiofrequency propagation data reflecting insufficient service within a populated area or along travel corridors; see Nextel Partners, Inc. v. Town of Amherst, 251 F. Supp. 2d 1187 (W.D.N.Y. 2003); the characteristics of the gap area, including the size, the number of users, and whether the carrier's users are similarly affected by the gap; see Omnipoint Holdings, Inc., 586 F.3d at 49; and the percentages relevant to dropped or unsuccessful calls. See Green Mountain Realty Corp., 688 F.3d at 51. For purposes of this ruling, the Court assumes that AT&T has satisfied the first prong that a significant gap in coverage exists.

2. Least Intrusive Means

Defendants maintain that AT&T has not proved that the tower on the Site is the least intrusive means to close the existing significant gap.

An application proposing the least intrusive means for closing a significant gap should be granted. See New Cingular Wire PCS, LLC v. Town of Fenton, 843 F. Supp. 2d 236, 258 (N.D.N.Y. 2012). If an applicant's proposal is not the least intrusive means

to close a significant gap in coverage, an application may be denied without effectively prohibiting personal wireless services. Willoth 176 F.3d at 643. Examples of such less instrusive means include selection of a less sensitive site, reduction of the tower height, the use of a preexisting structure, or a camouflage of a tower or antennae. Id.

Additionally, "where holes in coverage are very limited in number or size (such as the interiors of buildings in a sparsely populated rural area, or confined to a limited number of houses or spots as the area covered by buildings increases), the lack of coverage likely will be de minimus so that denying applications ... to fill these holes will not amount to a prohibition of service." Id. at 644.

As its main concern in rejecting the proposed facility, the CSC focused upon the location of the tower on top of Cobble Hill and the extent of its year-round visibility. As noted by the CSC, the proposed tower will represent "the tallest and most noticeable feature on top of Cobble Hill," and "would become the focal point of any landscape view." However, the CSC recognized AT&T's diligence in examining alternatives to the proposed tower facility and the problems posed by the severe terrain. In its Findings of Fact dated August 25, 2011, the CSC outlined AT&T's efforts to identify suitable sites and reasons that such sites proved unsuitable. After it established a search ring, AT&T investigated several sites and the feasibility of using multiple towers, microcells, repeaters, and distributed antenna systems. AT&T did not investigate several proposed alternatives that were determined to provide inadequate wireless service as indicated by propagation maps and drive tests.

Defendants propose that use of multiple towers rather than one large tower at the Site represents a less intrusive means to close the coverage gap. This option was

explored by AT&T but rejected due to the inability to find a lease site servicing the northern portion of the Coverage Gap Area. Defendants maintain that a significant gap in coverage would not result if the northern portion of the Coverage Gap Area was serviced to a lesser degree than that sought by AT&T.

Thus, in considering whether defendants' proposal represents a viable less intrusive means, the Court must determine whether a significant gap in coverage would remain if AT&T serviced the southern portion of the Coverage Gap Area but did not fully service the northern portion. Toward that end, the Court requested the parties to provide supplemental briefing relevant to the coverage gap in the northern portion of the Coverage Gap Area.

The parties submitted supplemental affidavits in support of their diverging positions on whether a significant gap in coverage would remain in the northern portion of the Coverage Gap Area.

According to plaintiff's expert Anthony Wells, the northern area that would not be "served reliably" comprises a 4.19 square mile land mass where 196 people reside, and it contains 0.85 lineal miles of Route 7 where 2800 vehicles travel daily and 2.45 lineal miles of other significant state and local roads.

CSC's Siting Analyst Robert Mercier determined the coverage gap in the northern portion to be 2.5 square miles assuming coverage from an approved tower in Falls Church and also the proposed AT&T tower in the southern portion of AT&T search area. His affidavit stated that less than 200 people live in the area and that less than a mile of Route 7 runs through the area.

Mercier reviewed AT&T's Coverage Map that included coverage provided by the approved Falls Village tower and that delineated areas with coverage better than -74 dBm, coverage between -74 and -82 dBm and coverage weaker than -82 dBm. (82 dBm is a weaker signal than 74 dBm.)[2] He also considered AT&T's Drive Test Map that included only then-existing coverage and that shows where coverage fell below AT&T's desired in-vehicle level of -82 dBm.[3] Mercier calculated that the AT&T Drive Test map indicated only .04 miles of Route 7 with coverage levels below AT&T's desired level of service.

The CSC Defendants maintain that AT&T's desired coverage level of -82 dBm is not necessarily the industry standard for reliable in-car service, and therefore some users in areas with weaker than -82 dBm may still be able to receive and make cell phone calls. See Sprint Spectrum v. Zoning Board of Adjustment of the Borough of Paramus, 2010 WL 4869218, *10 (D.N.J. 2011) (noting that federal law does not set any specific signal level and that signals weaker than -85 dBm may be adequate for maintain calls); see also New Cingular Wireless PCS, LLC v. Zoning Hearing Bd. of Weisenberg Tp., 2009 WL 3127756, *7 (E.D. Pa. 2009).

Courts considering whether a significant gap exists have also taken into account the quality of existing service including information such as "percentages of unsuccessful calls or inadequate service during calls in the gap area." Omnipoint

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[2] dBm is a unit of received signal strength.

[3] As the CSC found in its Findings of Facts, AT&T "designs its system with an in-vehicle signal level of -82 dBm, and an in-building level of -74 dBm."

Holdings, Inc, 586 F.3d at 50. AT&T has provided no evidence relevant to whether individuals traveling on the roads can actually make, receive or maintain calls at some levels lower than AT&T's desired -82 dBm.

The evidence adduced demonstrates that the northern portion, which is described as largely wetland and dedicated open space, does not retain a high population density and has a minimal amount of roadway without coverage. A Route 7 traveler will traverse less than one mile in the northern area in a short amount of time. Similarly, the 2.45 miles of other roads noted in AT&T's Wells's affidavit do not represent a significant period of travel time without in-vehicle coverage.

Thus, the evidence does not substantiate that a significant gap in coverage would remain if AT&T used towers in the southern portion that did not service the northern portion at the level AT&T considers adequate. It appears that the lack of coverage in the northern portion will be de minimus rather than a significant gap. AT&T has failed to sustain its burden of proof that the proposed 150 foot single tower at the Site is the least intrusive means to close the coverage gap. See Willoth, 176 F.3d at 643. Accordingly, the Court will deny AT&T's motion for summary judgment and will grant CSC's motion for summary judgment.

III. CONCLUSION

For the foregoing reasons, AT&T's motion for summary judgment [doc. #22] is DENIED; the CSC Defendants' motion for summary judgment [doc. #31] is GRANTED. The Court finds that the evidence adduced does not substantiate that the denial of

plaintiff's application to construct a wireless tower facility violates the effective prohibition clause of the TCA.

The clerk is instructed to enter judgment in favor of the defendants and to close this case.

Dated this __25__ day of October, 2012 at Bridgeport, Connecticut.

_____
Warren W. Eginton
Senior United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

1W89

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of February, two thousand and twelve,

New Cingular Wireless PCS, LLC, AKA AT&T,

Plaintiffs - Appellants,

v.

Connecticut Siting Council, Robert Stein, Chairman, in his official capacity, Colin C. Tait, Vice Chairman, in his official capacity, Brian Golembiewski, in his official capacity, Barbara Currier Bell, in her official capacity, Larry P. Levesque, in his official capacity, Daniel P. Lynch, Jr., in his official capacity, James J. Murphy, Jr., in his official capacity, Edward S. Wilensky, in his official capacity, Philip T. Ashton, in his official capacity,

Defendants - Appellees.

ORDER
Docket No. 12-4709

The parties in the above-referenced case have filed a stipulation withdrawing this appeal pursuant to Local Rule 42.1.

The stipulation is hereby "So Ordered".

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

New Cingular Wireless PCS, LLC

v.

Connecticut Siting Council, et. al.

Docket No. 12-4709

STIPULATION WITHDRAWING APPEAL FROM ACTIVE CONSIDERATION, WITHOUT PREJUDICE, WITH LEAVE TO REACTIVATE

The undersigned counsel for the parties hereby stipulate that the above-captioned appeal is hereby withdrawn without costs and without attorneys' fees and without prejudice, subject to reactivation of the appeal by appellant's counsel by written notice to the Clerk of this Court by June 14, 2013 whichever comes first.

If not thus timely reactivated, the appeal shall be subject to dismissal.

Withdrawal of the appeal from active consideration shall not operate as a dismissal of the appeal under F.R.A.P 42(b).

Dated: February 13, 2013

Co-Attorney for Appellant, New Cingular Wireless PCS, LLC
Christopher B. Fisher
Cuddy & Feder LLP

Dated: February 13, 2013

Attorney for Appellees Connecticut Siting Council, Et Al.
Robert L. Marconi
Assistant Attorney General
10 Franklin Square
New Britain, Connecticut 06051

Counsel: Please print name and firm under signature

CERTIFICATE OF SERVICE

I, Nissa J. Imbrock, an attorney, hereby certify that on February 15, 2013, I electronically filed the foregoing using the CM/ECF system, which will send notification of the filing to all counsel of record who are registered on the CM/ECF system.

/s/ Nissa J. Imbrock

Annual Precipitation Connecticut

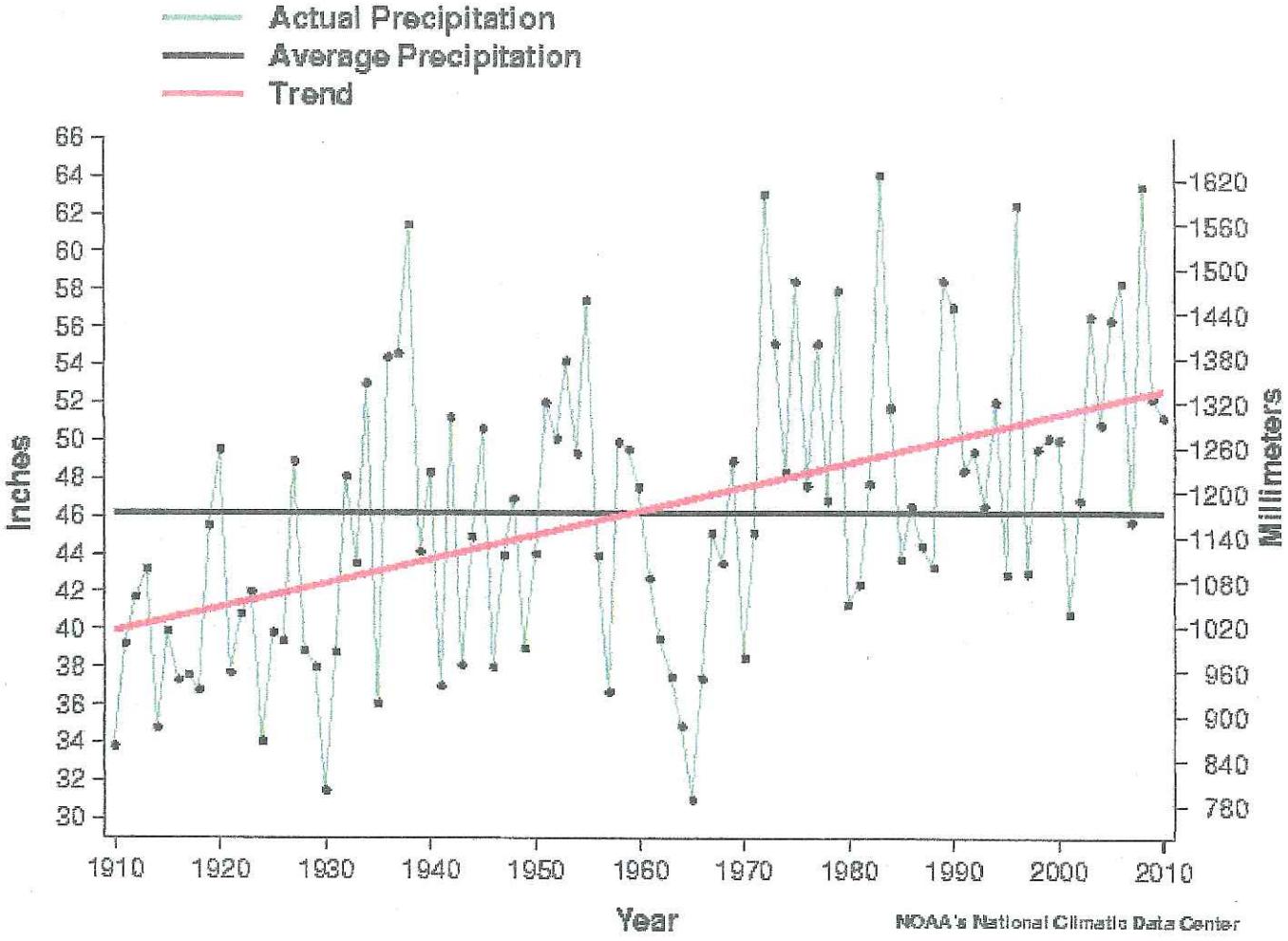
Some of the following data are preliminary and have not been quality controlled.

For official data, please contact the NCDC Climate Services and Monitoring Division at ncdc.orders@noaa.gov.

Annual 1910 - 2010 Data Values:

Annual 1910 - 2010 Average = 46.23 Inches

Annual 1910 - 2010 Trend = 1.27 Inches / Decade Increase



NCDC / Climate At A Glance / Climate Monitoring / Search / Help

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via http://www.ncdc.noaa.gov/oa/climate/research/cag3/ct.html
Please send questions to Karin.L.Gleason@noaa.gov
Please see the NCDC Contact Page if you have questions or comments.

Weather-Related Morbidity and Mortality

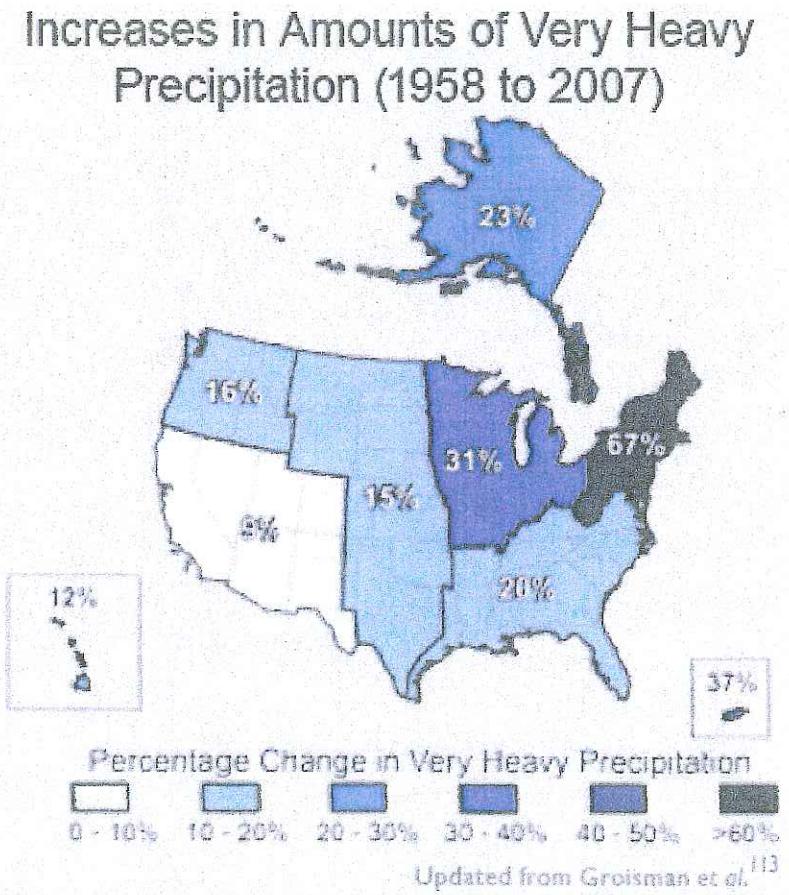
Impacts on Risk

A changing climate coupled with changing demographics is expected to magnify the already significant adverse effects of extreme weather on public health. For example, the intensity and frequency of precipitation events in the United States have increased over the past 100 years in many locations. In the Midwest and Northeastern United States, heavy rainfall events (defined as those in excess of 1 inch of rainfall) have increased by as much as 100%, and recent flooding events, such as the June 2008 flooding in the Midwest, have caused billions of dollars of damage and significant loss of life. In line with this observed trend, there is a projected increase in intensity of precipitation events in some areas of the country, particularly in the Northeast, which has experienced a 67% increase in the amount of heavy precipitation events in the past 50 years. Precipitation extremes also are expected to increase more than the mean. Regional variability appears to be increasing so that even though extreme precipitation events will become more common, some areas will concurrently experience drought, especially in the northeast and southwest. http://www.cdc.gov/nceh/ehs/Publications/Drought.htm The intensity of extreme precipitation events is projected to increase with future warming. This could limit the ability to capture and store water in reservoirs, leading to flash flooding events. Climate variability resulting from naturally occurring climate phenomena such as El Niño, La Niña, and global monsoons, are associated with extreme weather events around the globe. El Niño and La Niña conditions lead to changes in the patterns of tropical rainfall and in the weather patterns in mid-latitudes, including changes in the frequency and intensity of weather extremes. El Niño is also projected to increase in both frequency and intensity as the climate warms, though there is uncertainty about the relative frequency of El Niño and La Niña in the future. Increased precipitation associated with stronger El Niño events would affect the Western United States, particularly California, the Pacific Northwest, and the Gulf Coast more than other regions of the country. Heavy precipitation events will be highly variable in magnitude, duration, and geographic location. Increased variability in weather and climate extremes is difficult to predict, and will impact the ability of human systems to manage for and adapt to heavy precipitation and flooding events. An observed divergence of precipitation patterns has led to increased variability in the amount of precipitation per event, resulting in both extreme amounts of precipitation, as well as abnormally small precipitation events. These effects have already been observed globally. A study in Germany found that winter storms from 1901 to 2000 showed an increasing trend of precipitation events both exceeding the 95th percentile and falling below the 5th percentile; while from 1956 to 2004 the Dongxiang River in China became increasingly likely to be at either extreme flood flow or abnormally low-flow. The current evidence is insufficient to determine if the frequency of tropical cyclones in the Atlantic Basin will change. The observed frequency of tropical cyclones in the Atlantic Basin has increased since the mid-1990s, though the numbers are not unprecedented and must be reconciled with active multi-decadal periods of the past, such as the 1950s and 1960s. Increases in sea surface temperature and decreases in wind shear may lead to more intense Atlantic hurricanes, though some models also show a decrease in the number of intense hurricanes in the Atlantic Basin. The spatial distribution of hurricanes also is likely to change, with storm surges becoming more damaging in areas unaccustomed to facing large hurricanes. The combination of sea-level rise with increasing storm intensity could lead to significant destruction of coastal infrastructure and more costly hurricanes. In addition, flooding and coastal changes could lead to ecosystem changes such as loss of wetlands that could indirectly impact human health. Hurricane track forecasting and modeling methods

have improved, and mortality rates for major storms have declined over time, but the combination of increased coastal population density, increased intensity of tropical storms, and sea-level rise will result in significantly increased risk going forward.

Some models show that what were 20-year floods in 1860 in the United Kingdom are now 5-year floods; even greater impacts are expected in tropical regions. In the United States, large floods are more frequent now than at the beginning of the 20th century. Monsoon-related flooding results in damaged infrastructure, increased disease, and loss of life. During El Niño, areas including Indonesia, southern Africa, northeastern Australia, and northeastern Brazil usually experience extensive periods of dry weather and warmer-than-average temperatures. These conditions have historically resulted in a variety of adverse effects, such as mudslides, forest fires and resulting increased air pollution, mass migrations, and famines.

Centers for Disease Control and Prevention November 2010
http://www.cdc.gov/climatechange/effects/weather_related.htm



The map shows percent increases in the amount falling in very heavy precipitation events (defined as the heaviest 1 percent of all daily events) from 1958 to 2007 for each region. There are clear trends toward more very heavy precipitation for the nation as a whole, and particularly in the Northeast and Midwest.

http://www.globalchange.gov/images/cir/pdf/National.pdf