

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF NEW CINGULAR WIRELESS PCS,  
LLC (AT&T) FOR A CERTIFICATE 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: 409

July 16, 2011

**PROPOSED FINDINGS OF FACT OF THE INLAND WETLANDS AND  
CONSERVATION COMMISSION OF THE TOWN OF CANAAN  
(FALLS VILLAGE), CONNECTICUT**

The Inland Wetlands/Conservation Commission of the Town of Canaan (Falls Village) ("IW/CC") submits herewith its proposed findings of fact, based on the evidence presented during the hearing on the above matter, in opposition to New Cingular's application to construct and operate a telecommunications tower facility at 8 Barnes Road in the Town of Canaan (Falls Village), Connecticut.

1. The Council must consider only those areas where there is a proven public need.
2. The Applicant has failed to establish that any gap in coverage exists in the Town of Canaan.
3. Portions of the proposed coverage area are mapped inside the bounds of the 1,569-acre Robbins Swamp Natural Area Preserve. No human-made structures can sit on swampland.
4. The sole evidentiary showing of "public need" by the Applicant is testimony about putative "dropped" calls (Trans. 6/16/11 p. 112, lines 15 - 1), *de minimus* in quantity and unspecified as to location. These undocumented dropped calls are too vague to support a showing of public need.
5. The applicant conceded the vagueness of its reported "dropped call" evidence and the Applicant's failure to support its claim of public need. (Trans. 6/16/11, p. 112, lines 15-24 to p. 113, lines 1 - 18).

6. The Applicant has failed to demonstrate that there are no alternative sites available that would be less intrusive or less harmful to the environment as required under C.G.S. §16-50p, or why co-locating or roaming arrangements are not feasible with one of the four existing providers who presently serve the area. The Applicant's testimony describing its efforts to find alternative sites is vague.

7. In response to the Chairman's inquiry into the feasibility of another tower arrangement to the Applicant's consultant, the consultant responded: "I'm not entirely sure" constituting a lack of a good faith effort to find another tower arrangement. (Trans. 6/16/11, p. 48, p. 10)

8. The Applicant has failed to apply for an Inland Wetlands permit as required by town ordinance and state and federal law. Therefore the application is void *ab initio*.

9. The Clean Water Act of 1977, State Inland Wetlands and Watercourses Act and Ordinances of the Town of Canaan under which the IW/CC operates, require that the Applicant obtain a permit before it may construct the project in the Town of Canaan.

10. The Applicant has failed support its claim to title to build on the proposed site with evidence of that right to build. (See Trans. 6/16/11 page 89, line 1 to page 90, line 5) Therefore the application is void *ab initio*.

11. The Applicant does not dispute the existence of a population of endangered Burbot fresh water cod in the Hollenbeck River below the proposed tower site.

12. Applicant does not dispute the scientific studies of biological, non-thermal RF effects on wildlife and trees adduced by the Inland Wetlands/Conservation Commission ("IW/CC") at (IW70, IW71, IW72, IW73, IW74, IW75, IW76 and IW84).

13. Under their statutory mandates, both the Council and the IW/CC must consider the growing body of scientific studies showing adverse effects on organic life, including sparrows (IW74); storks (IW75); mice (IW76); frogs (IW70, IW73); and trees (IW84) (and IW71).

14. Since the FCC has failed to set safety standards on these "non-thermal biological" effects, and has failed to update its "thermal" only standards in 14 years, it falls to the local governing agencies to consider this serious harm in the context of protecting wetlands under their statutory care.

15. Scientific studies offered in evidence by the IW/CC show that the operation of cell transmission antennas can: prevent migratory bird nesting and reproduction within 200 meters of cell towers (IW75); and cause infertility in small animal food sources in migratory bird habitats (IW76).

16. The Council heard multiple witnesses and testimony on the hazards that exist in the development, maintenance and operation of at tower at this proposed site. (Trans. public portion, 2/17/11) These included the Chief of the Falls Village Volunteer Fire Department and the First Selectman.

17. The proposed project will require 3800 yards of fill, "a little over 200" tri-axle trucks. These trucks would have to back up the steep incline because, by the Applicant's admission, there is no way such large vehicles can turn around. (Trans. 6/16/11 at p. 186)

18. The steepness of the proposed 30% grade also severely restricts -- if it does not preclude - any traction for such vehicles (Trans. 6/16/11 at pages 182 (Calkins) lines 22 ff; p. 183; p. 189, line 1).

19. Applicant's canopy removal is extensive -- far more extensive than appears upon first reading of the application. On cross examination, the Applicant admitted that the total number of trees to be cut would be higher than the 110 trees indicated in the Supplemental Information (May 20, 2011, at p. 5, I.) provided by the Applicant, because smaller trees would also be cut (see Application at page 17).

20. This cutting would have a severe effect upon soil disturbance, which, in turn, would alter the ecology of the wetlands in the "project action area" below the site (as defined by USFWS (IW56)).

21. The construction of the proposed access road and tower compound will permanently alter the forest floor, forest canopy and quantity, quality and nutrient composition of runoff water from Cobble Hill. (Trans. 6/16/11 at pp.183, line 24 to p. 185, line 19; p. 187, lines 11 - 16)

22. The proposed project occurs within two watersheds: the Wangum Brook and Hollenbeck River watersheds.

23. Since the proposed project occurs within two watersheds (the Wangum Brook and Hollenbeck River watersheds), and since both are directly associated with the contiguous Robbins Swamp, the massive alteration proposed to the site is projected to have a deleterious effect on wetlands and watercourses and the life in them.

24. The massive alteration proposed to the site is projected to have a deleterious effect on wetlands and watercourses and the life in them is prohibited under the State's Wetlands and Watercourses Act and the State's Endangered Species Act as well as others. (IW1, IW2)

25. The proposed access road modifications entail significant soil removal and deposition on steep slopes directly above an area recognized by numerous state officials as unique and worthy of protection (Trans. 6/16/11 at p. 180, line 6 to p. 181, line 16; IW66, IW67 and IW68).

26. The fragile soils associated with the steep slopes of Cobble Hill are shallow to bedrock and are erodable.

27. The project poses an increased risk for erosion and the migration of sedimentation of these soils into Robbins Swamp.

28. According to the Nature Conservancy, adjacent to Canaan Mountain is the Hollenbeck River and its watershed, which includes Robbins Swamp, Connecticut's largest inland wetland. Robbins Swamp represents one of the region's most significant natural areas: the regions second largest calcereous wetland.  
(<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/connecticut/placesweprotect/northwest-highlands.xml>)

29. According to the Nature Conservancy, "[t]he unique geology of Canaan Mountain and Robbins Swamp gives rise to a rich collection of plants, animals and natural communities, some of which are found nowhere else on Earth. The endangered timber rattlesnake and northern metalmark butterfly are found here as well as three rare bird species and 23 rare species of plants, including a variety of trees, flowering plants, grasses and sedges."  
(<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/connecticut/placesweprotect/northwest-highlands.xml>)

30. The proposed extensive series of drainage swales and outflow areas are too vaguely described to meet the requirements of an application for certification by the Siting Council because the distances between swale outflows in several areas are up to several hundred feet, and the level outflow areas cannot be shown to accommodate total water flow at each of these sites (IW9A, IW9B; Trans. 6/16/11 page 187, lines 9-16).

31. The proposed extensive series of drainage swales and outflow areas are too vaguely described to meet the requirements of an application for permitting by the IW/CC since the distances between swale outflows in several areas are up to several hundred feet, and since the level outflow areas cannot be shown to accommodate total water flow at each of these sites (IW9A, IW9B; Trans. 6/16/11 page 187, lines 9-16).

32. The Applicant has failed to demonstrate 1) the total amount of water flow at each exit area; 2) whether any man-made structure can handle such accumulations and 3) whether the proposed project might do so. (Trans. 6/16/11 page 187, lines 11 - 16; Engineer Calkins' Reports at IW9A and IW9B)

33. The proposed extensive series of drainage swales and outflow areas add to the velocity and quantity of water flow from road and site runoff. (Trans. 6/16/11 page 187, lines 11 - 16; Engineer Calkins' Reports at IW9A and IW9B)

34. Mr. Mercier asked Mr. Perkins "Is there any benefit for vehicle passage purposes of paving some of the steeper sections?" (6-16-2011 transcript Pg. 32, lines 2-4). According to the IW/CC, many sections have been paved and that the paving has washed out, leaving exposed bedrock.

35. The disturbance to the site and the area surrounding the site will be significant: The compound is an area of disturbance of 10,000 square feet. Since one acre comprises 43,560 square feet, the proposed total disclosed area of direct disturbance would be 92,764 square feet (1.9 acres x 43,560 square feet = 82,764 square feet, plus the 10,000 square foot compound area). (Trans. 6/16/11, p. 92, line 21 to p. 93, line 7)

36. The site is not clear at present. The existing so called "logging road" is currently "treed" and will require significant tree removal and blasting. (Trans. 6/16/11, p. 93, lines 22 - p. 94, line 2)

37. Tree removal from the site will be substantially more than the Applicant asserted in the Application. In addition to the disclosed 110 trees to be removed (Applicant's Supplemental Information, May 20, 2011 at p. 5, I.), the Applicant acknowledged that there would be more cut, not yet accounted for. (Trans. 6/16/11, page 110, line 10 to page 111, line 13)

38. "Somewhere in the neighborhood of thirty-eight hundred yards" of fill is proposed for transport up the slope for building the road and compound (Trans. 6/16/11 p. 186, line 20-23), some 200 tri-axle trucks-worth by the estimation of Engineer Richard Calkins (*Ibid.*). This contradicts the Applicant's assertions in its NEPA Environmental Affects Checklist form. (Application, Tab 7, page 4)

39. Robbins Swamp is environmentally significant to the State of Connecticut (IW/CC testimony; IW65, IW66, IW67, IW68, IW69, IW78A, IW78B, IW79, IW80, IW81, IW82).

40. The wetlands at issue on this docket are known and designated by the State as A Critical Habitat. (IW37, Application, Map at Tab 7, page 5; IW44)

41. CT DEP NDDB documented the presence of 82 protected species within a 2 mile radius of the proposed project. The project is therefore prohibited under the statutes that guide both the IW/CC and the Siting Council. (NDDB Data letter, IW77, IW78A, IW78B)

42. According to the Connecticut Chapter of the Nature Conservancy and the Connecticut Department of Environmental Protection, among the state-listed species in the Robbins Swamp-Hollenbeck River area are:

Aegolius acadicus, Northern saw-whet owl SC  
Agrotis stigmata, Spotted dart moth SC  
Ambystoma jeffersonianum, Jefferson salamander "complex" SC  
Ambystoma laterale, Blue-spotted salamander E/SC  
Apodrepanulatrix liberaria, New Jersey tea inchworm T  
Atylotus ohioensis, Tabanid fly SC  
Botaurus lentiginosus, American bittern E  
Calephelis borealis, Northern metalmark E  
Catocala herodias gerhardi, Herodias underwing E  
Crotalus horridus, Timber rattlesnake E  
Empidonax alnorum, Alder flycatcher SC  
Erynnis lucilius, Columbine duskywing E  
Euphyes bimaculata, Two-spotted skipper T  
Euphyes dion, Sedge skipper SC  
Glyptemys insculpta, Wood turtle SC  
Gomphus ventricosus, Skillet clubtail SC

*Hemaris gracilis*, Slender clearwing T  
*Hybomitra luridus*, Horse fly SC  
*Lota lota*, Burbot E  
*Lycaena hyllus*, Bronze copper SC  
*Notropis bifrenatus*, Bridle shiner SC  
*Papaipema leucostigma*, Columbine borer T  
*Passerculus sandwichensis*, Savannah sparrow SC  
*Rana pipiens*, Northern leopard frog SC  
*Sargus fasciatus*, Soldier fly SC  
*Satyrodes eurydice*, Eyed brown SC  
*Speranza exornata*, Barrens itame T  
*Sturnella magna*, Eastern meadowlark SC  
*Agastache nepetoides*, Yellow giant hyssop E  
*Alopecurus aequalis*, Orange foxtail T  
*Anemone canadensis*, Canada anemone T  
*Asplenium ruta-muraria*, Wallrue spleenwort T  
*Calamagrostis stricta* ssp. *inexpansa*, Reed bentgrass SC  
*Cardamine douglassii*, Purple cress SC  
*Carex alopecoidea*, Foxtail sedge T  
*Carex aquatilis* var. *aquatilis* Sedge SC  
*Carex castanea*, Chestnut-colored sedge E  
*Carex cumulata*, Clustered sedge T  
*Carex formosa*, Handsome sedge SC  
*Carex hitchcockiana*, Hitchcock's sedge SC  
*Carex oligocarpa*, Eastern few-fruit sedge SC  
*Carex prairea*, Prairie sedge SC  
*Carex sterilis*, Dioecious sedge SC  
*Carex trichocarpa*, Sedge SC  
*Carex tuckermanii*, Tuckerman's sedge SC  
*Cryptogramma stelleri*, Slender cliff-brake E  
*Cypripedium parviflorum*, Yellow lady's-slipper SC  
*Cypripedium reginae*, Showy lady's-slipper E  
*Draba reptan*, Whitlow-grass SC  
*Dryopteris goldiana*, Goldie's fern SC  
*Equisetum scirpoides*, Dwarf scouring rush E  
*Gentianella quinquefolia*, Stiff gentian E  
*Hepatica nobilis* var. *acuta*, Sharp-lobed hepatica SC  
*Linnaea borealis* ssp. *americana*, Twinflower E  
*Lythrum alatum*, Winged loosestrife E  
*Malaxis brachypoda*, White adder's-mouth E  
*Mitella nuda*, Naked miterwort SC  
*Petasites frigidus* var. *palmatius*, Sweet coltsfoot T  
*Pinus resinosa*, Red pine E  
*Plantago virginica*, Hoary plantain SC  
*Platanthera orbiculata*, Large round-leaf orchid SC\*  
*Potamogeton hillii*, Hill's pondweed E

Quercus macrocarpa, Bur oak SC  
Ribes triste, Swamp red currant E  
Salix serissima, Autumn willow SC  
Schizachne purpurascens, Purple oat SC  
Schoenoplectus acutus, Hard-stemmed bulrush T  
Sibbaldiopsis tridentata, Three-toothed cinquefoil T  
Thuja occidentalis, Northern white cedar T  
Trisetum spicatum, Narrow false oats SC  
Trolius laxus, Spreading globe flower T  
Uvularia grandiflora, Large-flowered bellwort E  
Viola nephrophylla, Northern bog violet SC

(NDDDB Data letter, IW77, IW78A, IW78B)

43. Numerous "NDDDB Areas" are situated both on Cobble Hill in the area of the proposed tower and in the surrounding wetlands downslope from the areas of disturbance created by the project.

44. Communication from the NDDDB stated that the NDDDB had made "no assessment on impacts or effects that this facility may or may not have on these species." (IW77)

45. Mr. Gustafson's representation that consultation with CT DEP on the NDDDB species is "strongly recommended" by USFWS (Trans. 2/17/11 (7:10pm) page 104, line 20) is plain error of law. (IW55, Step One of a mandatory Two Step Process)

46. Rather than apply "project action area" as defined by USFWS (IW56), the Applicant's consultant defined the area which he disclosed to USFWS and DEP "as the proposed area of development and disturbance associated with the proposed facility." (Trans. 2/17/11, page 93, lines 20-22)

47. The definition of "project action area" used by USFWS or by DEP includes not only the directly affected areas, but all indirectly affected areas well beyond "200 feet of the proposed development." (Applicant's letter to CT DEP; IW56)

48. USFWS "Project action area" under ESA review is a legal term with specific meaning (IW55, IW56) disregarded by the Applicant's consultant. The effects of this error were multiplied when the result was applied to mandatory State review as well.

49. The Applicant's review failed to apply the correct definition of "action area," and entirely failed to fulfill Step 2, and therefore was not entitled to the letter it included in its application and upon which it based its other EA assertions. (IW55)  
([http://www.fws.gov/newengland/EndangeredSpec-Consultation\\_Project\\_Review.htm](http://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm))

50. The Applicant failed to disclose the presence of potential habitat for Federally Endangered Species as required by law and by FCC rules. (IW55)  
([http://www.fws.gov/newengland/EndangeredSpec-Consultation\\_Project\\_Review.htm](http://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm))

51. The taking of a federally Endangered Species, whether intentionally or unintentionally, is a violation of federal law (ESA).

52. Thorough inventory and assessment of the potential impact of the project on state listed species has not yet been conducted.

53. The IW/CC established, during the course of these proceedings, the known presence of the Burbot, an Endangered species of fresh water cod, in the Hollenbeck River directly below the proposed project. (IW/CC Testimony, par. 57) This is not disputed.

54. The tower compound is within the Hollenbeck River watershed. This is undisputed. Changes in drainage patterns resulting from the proposed project have the potential to increase sedimentation into the known Burbot habitat, which could obliterate this species from this location. (Testimony of Sam Dziegan; See also IW85, attached to IW/CC Testimony, and Testimony, pars. 53 to 57).

55. There is designated "critical habitat" in close proximity to the tower site. This critical habitat is designated in a map attachment to the Application. (Application at Tab 7, map at page 5 (orange shaded area)).

56. Any alteration of the quality, quantity and timing of the water flowing into Robbins Swamp will be detrimental to its unique calcareous ecosystem (Exhibit IW 65).

57. There is great risk of harm presented in the likely introduction of invasive species through the Applicant's land-moving equipment and proposed activities. (IW/CC Testimony, 2/10/11 at par. 13)

58. Invasive species have the potential to alter and degrade the unique habitats in Robbins Swamp.

59. The protection of the wetlands by the IW/CC requires elimination of cell towers "in or near" wetlands in order to protect the habitat and other natural benefits present in this major natural resource and critical habitat.  
([http://www.fws.gov/habitatconservation/com\\_tow\\_guidelines.pdf](http://www.fws.gov/habitatconservation/com_tow_guidelines.pdf))

60. IW/CC witness Tim Abbot described the deleterious effects of habitat fragmentation, how and why such considerations are pertinent to a wetland of state-wide importance. (Trans. 6/16/11)

61. The USFWS has made plain its recommendations that: \* \* \* Towers should not be sited in or near wetlands, other known bird concentration areas (e.g., State or Federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species. \* \* \* ([http://www.fws.gov/habitatconservation/com\\_tow\\_guidelines.pdf](http://www.fws.gov/habitatconservation/com_tow_guidelines.pdf))

62. Under FCC Rules, all tower applicants must consider the impact of facilities under the ESA: Section 1.1307(a)(3) of the Commission's rules, 47 C.F.R. §1.1307(a)(3), requires



applicants, licensees, and tower owners (Applicants) to consider the impact of proposed facilities under the Endangered Species Act (ESA).

([http://wireless.fcc.gov/siting/environment\\_compliance.html](http://wireless.fcc.gov/siting/environment_compliance.html))

63. The FCC's environmental rules "require that all licensees and applicants prepare and file with the FCC an Environmental Assessment (EA) if, among other things, their proposed facilities "may affect" or "are likely to jeopardize" listed or proposed threatened or endangered species or designated critical habitats. (47 C.F.R. 1.1307(a)(3))

(<http://wireless.fcc.gov/siting/endangeredspeciesletter.pdf>)

64. The Applicant never addressed the indirectly affected areas, required under FCC rules, ESA and NEPA. This admission came out on cross examination on 6/16/11 (at Trans. 6/16/11 p. 92, line 21 to p. 93, line 7)

65. The Applicant never defined or disclosed the indirectly affected areas, required under FCC rules, ESA and NEPA. This admission came out on cross examination on 6/16/11 (at Trans. 6/16/11 p. 92, line 21 to p. 93, line 7)

66. The USFWS has stated that loss of migratory birds at communication towers is estimated at 4-5 million annually. Potentially impacted resources include 90 bird species which are threatened or endangered and 124 non-game species of management concern.

(<http://www.fws.gov/habitatconservation/communicationtowers.html>)

67. Increasing numbers of studies coming out of Europe and other parts of the globe show that the presence and operation of cell towers in flyways will result in millions more bird deaths.

(<http://www.fws.gov/habitatconservation/communicationtowers.html>) (IW59, IW60, IW61)

68. USFWS mandatory environmental impact review (IW55), required identification of the presence of potential habitat of known listed species. The Applicant was not entitled to any letter of "No Effect" (Tab 7), because it A) misapplied the criteria (see IW56); and B) failed to consider the presence of habitat within the "Project Action Area," -- including the area of indirect effects of the project.

69. The devastation to aquatic life presented by the presence of the proposed tower in a wetland with protected species is evident, where the Balmori study of tadpoles (IW70) exposed to RF at 140 meters (approximately 460 feet) had a 90% mortality rate, contrasted with a 4% mortality rate for tadpoles similarly exposed, but protected in an RF-blocking Faraday cage.

70. The Balmori study (IW70) has serious implications for any wetland.

71. The USFW Service's directive not to place any tower "in or near wetlands" ([http://www.fws.gov/habitatconservation/com\\_tow\\_guidelines.pdf](http://www.fws.gov/habitatconservation/com_tow_guidelines.pdf)) must be enforced by agencies with the authority to do so.

72. The proposed site is surrounded by wetlands.

73. The proposed site is upland slope to two watersheds under the protection of the Inland Wetlands Commission of the Town of Canaan and under the Inland Wetlands and Watercourses Act and associated laws and town ordinances.

74. The proposed project presents both site-disruption physical and electronic threats to the survival of the many listed species present in and near the proposed project site.

75. The reason for making wetlands 'off limits' to tower placement includes protection of the habitat function of wetlands -- including particularly food sources.

76. The supplemental information called for by the Council revealed that the Applicant had increased the maximum steepness of the grade of its access road to 30%, not decreased it. (Trans. 6/16/11 at page 30, line 21).

77. The proposed tower project would not be an acceptable land use under the Town of Canaan Zoning Regulations under the Steep Slopes Overlay Zone (Section 4.3 of the Regulations), specifically designed to allow additional restriction of activities on steep slopes. (IW8)

78. Projects involving major disturbance of surface soils, alteration of water runoff, safety concerns about access for emergency vehicles, and adverse visual impacts are of particular concern to the Town under these zoning regulations. While minor projects might be allowed under Special Permit, any one of these factors alone would be sufficient to deny a Special Permit for this project.

79. AT&T estimates its proposed project would disturb 1.9 Ac of surface and involve moving 3,830 cu. yds. of dirt (AT&T's Responses, Tab 4 sheet CO2D).

80. The direct observation on November 12, 2010 of the field review balloon at the proposed Cobble Hill site showed that the tower would be visible from the National Register South Canaan Meetinghouse (IW26).

81. The Applicant conceded this visibility during the evidentiary hearing by revising the statement in the application that the tower was not visible from the Meetinghouse. (Trans. 6/16/11 p. 18, line 17, ff.)

82. A determination by the SHPO is not binding, but is advisory. (Advisory Council on Historic Preservation, Protecting Historic Properties: A Citizen's Guide to Section 106 Review) (<http://www.achp.gov/docs/CitizenGuide.pdf>)

83. The conditional language in the SHPO's letter of June 21, 2011 has no basis in fact in this record, that the putative evidence "...indicate[s] that the subject telecommunications tower will be visible seasonally on the distant ridge..." (David Bahlman Letter of June 21, 2011)

84. The SHPO's statement that the visibility is "seasonal" has no basis in fact in this record in light of the Orr-Andrawes affidavit with photographs taken during conditions in November, 2010 showing the balloon above the tree canopy (leaf-on conditions) (IW26)

85. The SHPO's statement that the tower would appear on a "distant ridge" has no basis in fact in this record in light of the fact that the tower base is within 1/2 mile from the historic property and 547 feet above it.

86. According to the Advisory Council on Historic Preservation, Section 106 Review of "Adverse Effects" can include, but are not limited to any of the following: physical destruction or damage; alteration inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties; relocation of the property; change in the character of the property's use or setting; introduction of incompatible visual, atmospheric, or audible elements; neglect and deterioration; transfer, lease, or sale of a historic property out of federal control without adequate preservation restrictions. (Advisory Council on Historic Preservation, Protecting Historic Properties: A Citizen's Guide to Section 106 Review) (<http://www.achp.gov/docs/CitizenGuide.pdf>)

87. The presence of the proposed tower would effect a "change in the character of the property's use or setting"; and would "introduce incompatible visual, atmospheric, or audible elements" and therefore would create an adverse effect under Section 106 of the NHPA. (Advisory Council on Historic Preservation, Protecting Historic Properties: A Citizen's Guide to Section 106 Review) (<http://www.achp.gov/docs/CitizenGuide.pdf>)

88. ATT admitted during the Hearing (Trans. 6/16/11, p. 101, line 10) that it filed no Form 620 relating to the proposed site under this Application. ATT has failed to comply with FCC Rules and Section 106 of the NHPA and the Nationwide Programmatic Agreement. This is a fatal defect.

89. The SHPO determination on this docket was made without a Form 620 filing and therefore there was no entitlement to a SHPO letter.

90. The SHPO determination on this docket was made without an in-person site visit.

91. The Applicant's failure to file a site-specific Form 620 to SHPO on this docket has prevented fair hearing by SHPO of public comment to such submission -- a violation of due process under a federal regulatory scheme.

92. There are no applicable exemptions for new tower builders to the filing of a Form 620.

93. The Applicant's NEPA Environmental Affects Checklist (appearing at Application, Tab 7, page 4), required by federal law, contains this material falsehood:

4. Will the facility be located in, on, or within the viewshed of a building, site, district, structure or object, significant in American history, architecture, archeology, engineering or culture, that is listed, or eligible for listing on the State or National Register for Historic Places?

Answer: NO.

Information Source, Consultation with State Historic Preservation Officer (SHPO) and Public Notice Fulfillment (See attached SHPO "no effect" letter and public notice documents.)

(Application, Tab 7, page 4)

94. The Applicant's NEPA Environmental Affects Checklist (appearing at Application, Tab 7, page 4), required by federal law, contains this material falsehood:

7. Will construction involve significant change in surface features (impacts to wetlands, deforestation, water diversion, etc.)? NO

Information source, Refer to VHB's Wetland inspection report dated August 25, 2010. No direct impact to wetlands or watercourses will occur. (Application, Tab 7, page 4)

95. Under NEPA, not only must direct impacts be considered and reported, but indirect, and cumulative impacts (or effects) are also required. (47 CFR Chapter 1, FCC Rules implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321-435))

96. U.S. Route 7 from the Kent-New Milford town line to the Canaan-North Canaan town line, 28.61 miles is a state-designated "Scenic Road." (Trans. 6/16/11, p. 97, line 19 to p. 98, line 2)

97. The Falls Village town center is a National Register Historic District, indicative of the rural character of the community as a whole, and so designated by the National Park Service, U.S. Department of the Interior. (Trans. 6/16/11, p. 98, line 10)

98. The Town and many of its landmarks, including the National Register South Canaan Meetinghouse, are part of the federally designated Upper Housatonic National Heritage Area. (IW20, IW21, IW22)

99. The Upper Housatonic National Heritage Area was designated by Congress in recognition of the area's scenic and natural beauty, and history. (IW20, IW21, IW22).

100. The scar that would be left by the 3,080 foot access road will present a particularly stark contrast with the wooded landscape in winter, running up a steep and very visible ridge presenting an unsightly gash against this hillside. (Dominick Caiati, Trans. 2/17/11 (7:10 p.m.), page 18, lines 13-16; page 21, lines 4-9)

101. The Applicant defined the area of "potential effect" ("APE") as views within a half mile of the proposed facility (Trans. 6/16/11 page 98, line 14 to page 100 line 20). The half mile zone applies only to towers of 200 feet and under in "overall" height. Since the proposed tower will be at 697' "overall" height, the Applicant applied the wrong standard when it provided "APE" analysis. (NPA, found at <http://wireless.fcc.gov/siting/npa/definitions.html>)

102. This erroneous data was provided to SHPO, to the Council and all parties on this docket, and an appropriate visibility study has yet to be filed.

103. The Applicant has not provided proof of its legal right to build on the proposed site. (Trans. 6/16/11 page 89, line 1 to page 90, line 5)

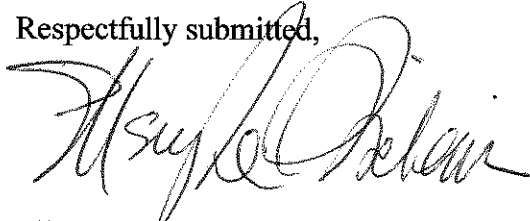
104. The Council has requested this proof and the Applicant agreed to provide it.

105. During the evidentiary hearing, the Applicant asserted its right to build at the proposed site.

106. Parties objecting to the Application have expended resources and time in making their cases and their records before the Siting Council.

107. The Applicant admitted during the evidentiary hearing that the obliteration of the route of the existing logging road on the property that is the subject of the application places that landmark into legal controversy (Trans. 6/16/11 p. 94, line 23 to p. 4).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ellery W. Sinclair".

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

July 16, 2011

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:

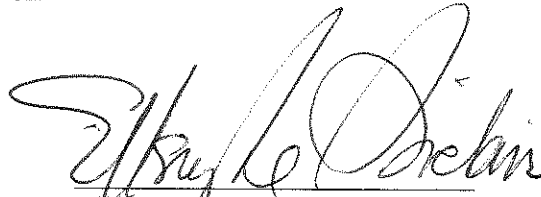
Christopher B Fisher, Esq.  
Lucia Chiocchio, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601

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: July 18, 2011