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April 16, 2012

**VIA FEDERAL EXPRESS
and ELECTRONIC MAIL**

Ms. Linda L. Roberts
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

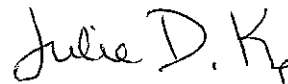
**Re: Docket No. 421 – Application by T-Mobile Northeast LLC
for a Certificate of Environmental Compatibility and
Public Need for a Telecommunications Facility at
158 Edison Road in the town of Guilford, Connecticut**

Dear Ms. Roberts:

With regard to the above-referenced docket, I have enclosed an original and twenty (20) copies of the Post-Hearing Brief of Applicant T-Mobile Northeast LLC.

Please contact me with any questions.

Very truly yours,



Julie D. Kohler

JDK:lcc
Enclosures

cc: Service List
Hans Fiedler, T-Mobile

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY T-MOBILE
NORTHEAST LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR A TELECOMMUNICATIONS FACILITY
AT 158 EDISON ROAD IN THE
TOWN OF TRUMBULL, CONNECTICUT

DOCKET NO. 421

Date: April 16, 2012

**POST-HEARING BRIEF OF
APPLICANT T-MOBILE NORTHEAST LLC**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, T-Mobile Northeast LLC ("T-Mobile") submits this post-hearing brief in support of the above-captioned application. This brief addresses (1) the public need for this telecommunications facility; (2) the lack of environmental impact of the proposed facility; and (3) the facility's consistency with the legislative mandate to avoid the unnecessary proliferation of towers in the State of Connecticut ("State").

I. INTRODUCTION

On August 1, 2011, T-Mobile filed with the Connecticut Siting Council ("Council") an application for Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a 150 foot monopole wireless telecommunications facility ("Facility") at 158 Edison Road, Trumbull, Connecticut ("Property"), pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies ("Application"). (*Hearing Exhibit 1, Application, p. 1.*)¹

¹ For the Council's convenience, all subsequent page references to Hearing Exhibit 1, which is T-Mobile's application, shall be made as "App. at p. ___." All subsequent references to exhibits attached to the Application shall be made as "App. Ex. ___."

The Facility would provide much needed coverage to Route 15, Main Street and Highgate Road, as well as the surrounding area. The proposed Facility would also provide future capacity relief and performance improvements to the existing facilities nearest the coverage objective. Finally, the Facility would provide a location from which the Town could alleviate its emergency service communication issues. The Town has required that T-Mobile position the regional dispatch platform atop the monopole at 150 feet AGL. Town's representatives confirmed that this height would meet the Town's emergency services needs and also allow for future growth. (*App. pp. 1-2; Prefiled Testimony of Scott Heffernan ["Heffernan"] pp. 3-4.*)

II. FACTUAL BACKGROUND

A. Pre-Application History

1. Site Search

T-Mobile identified a coverage gap in its wireless network in the area surrounding the proposed replacement telecommunications facility ("Facility") at 158 Edison Road, Trumbull, Connecticut ("Property"). There are no existing towers, transmission line structures or other suitable structures in this area of the Town. Moreover, any existing towers are too far from the target area to provide coverage specifically to the target area. The nearest towers and suitable structures are already in use by T-Mobile. T-Mobile conducted a site search within this area of the Town and identified the Property and replacement of the existing tower ("Existing Tower"), as the best possible location to resolve the existing coverage concerns. The proposed Facility would allow T-Mobile

to provide coverage while at the same time minimize any environmental impacts (Id.).

The site of the proposed Facility:

- Is located on a developed parcel and would replace an existing approximate 100 foot lattice tower;
- Is not located near any wetlands or watercourses;
- Would not require the removal or relocation of any trees; and
- Would accommodate a regional dispatch platform containing police, fire and emergency services antennas.

T-Mobile conducted an extensive site search in collaboration with both the Town and some of the Town's citizens. None of the other sites reviewed, or any other known and available sites, within the coverage objective, would provide adequate coverage and also allow for the same level of mitigation of environmental impacts as does the proposed site for the Facility. (*App. p. 9; 12.6.11 3:00 Tr. pp. 23-24*)

2. Municipal Consultation

The Town identified a need to replace the Existing Tower at the Town police station. The Town's public safety communication consultant, Northeastern Communications, Inc. ("Northeastern") opined that the Existing Tower had reached the end of its designed life service span. Northeastern recommended that the Town replace the Existing Tower with a 150 foot monopole structure and install its public safety equipment at the top. (*Prefiled Testimony of Eric Fine ["Fine"] p. 3*)

On October 5, 2009 the Town Council adopted the resolution (by a vote of 14 in favor, and 1 abstention) to authorize then First Selectman Raymond Baldwin to enter into a lease with T-Mobile for the replacement of the Existing Tower. Former First

Selectman Baldwin executed the lease with T-Mobile on October 30, 2009. (*Letter from Selectman Herbst, dated September 20, 2011.*)

On December 23, 2009, T-Mobile submitted a technical report to the First Selectman, the Honorable Timothy M. Herbst, regarding the Facility. T-Mobile also engaged in extensive consultation with other Town representatives. On January 29, 2010, representatives of T-Mobile met with the First Selectman; Police Chief, Thomas H. Kiely; and one of the Town's attorneys, Douglas E. LoMonte, to discuss the proposed Facility. They outlined the proposal and addressed questions the Town representatives raised regarding need, environmental impacts and specific project details. T-Mobile also met separately with Police Chief Kiely, Attorney LoMonte and representatives of the Police Union. T-Mobile answered questions posed by the union representatives about health and safety concerns. (*App. p. 20; App. Ex. Q; Letter from Selectman Herbst dated September 20, 2011.*)

To address the Police Union's concerns further, T-Mobile retained an independent RF engineer to assess the RF levels of the Existing Tower, which hosts municipal communication equipment, and compare those measurements to the anticipated RF emissions of the proposed Facility. On February 24, 2010, Ronald E. Graiff, P.E., met with representatives of T-Mobile, Police Union representatives and Police Chief Kiely at the Property. Mr. Graiff conducted a field study of the RF emissions emitted from the Existing Tower at various locations on the Property in the presence of the Police Union and T-Mobile representatives. Thereafter, Mr. Graiff completed a third party report, which concluded that the Facility would produce RF emissions well below any local, state, federal or international exposure standards. The

report also concluded that the Facility, as proposed, would reduce some of the current exposure levels as the municipal equipment would be elevated to a greater height on the proposed Facility. (*App. p. 21; App. Ex. Q; Letter from Selectman Herbst dated September 20, 2011.*)

3. Dialogue with Community

T-Mobile also met with representatives of the community on several occasions. On July 15, 2010, representatives of T-Mobile met with representatives of the Town, the Police Union and the community to discuss the proposed Facility. T-Mobile answered questions about the Facility and agreed to work with the community to ensure that there were no other feasible alternatives to the Facility as proposed. (*App. p. 21.*)

On September 3, 2010, and December 3, 2010, representatives of T-Mobile met with representatives of the community to discuss alternative sites for the proposed Facility. The community representatives asked whether T-Mobile could locate a telecommunications facility at (1) the Stop & Shop Plaza located at 100 Quality Street; (2) an undeveloped parcel located at 5065 Main Street, adjacent to the Trumbull Mall; or (3) any of the municipal properties rejected by the Town previously. T-Mobile investigated each of these suggestions and determined that none were feasible alternatives, for the reasons outlined in the Application. (*App. pp. 21-22; App. Ex. J.*)

On November 15, 2010, representatives of T-Mobile met with the First Selectman to ensure that no other feasible alternatives exist. They discussed municipal properties in the area, including the Department of Public Works property and Island Brook Park. The Town did not express an interest in leasing these properties to T-Mobile for a telecommunications facility. The Town wanted T-Mobile to locate the Facility at the

police station. (12.6.11 Tr. p 24.) T-Mobile also investigated whether 965 Church Street, a privately owned parcel, would address the coverage objective. That parcel would not address the coverage objective because of the topography. Based upon this extensive and protracted consultation with the Town and its citizens, T-Mobile concluded that the Property is the best site for the Facility. (App. pp. 22-23; App. Ex. J.)

On April 14, 2011, May 26, 2011 and June 30, 2011, representatives of T-Mobile met with representatives of the Town, representatives of Northeast Communications (the Town's telecommunications consultant) and representatives of the community. These discussions focused on the Town's requirements for the regional platform, which would support police, fire and EMS communications. (App. p. 23)

4. Revised Proposal to Accommodate Town and Community Requests

As a result of these discussions, T-Mobile and the Town modified the Facility design to accommodate the requests of the Town and community representatives. T-Mobile implemented the following stealth measures: (1) flush mounts, as opposed to T-arms and (2) T-Mobile would include privacy slats to shield the Facility compound. With respect to the regional dispatch platform, the Town agreed to implement the following stealth devices: (1) the use of fiberglass, slim line whip antennas (eliminate dipoles); (2) antennas painted sky blue to blend with the sky background; (3) the reduction of the overall height of the Facility from 173'4" to 171'6" AGL by reducing the height of the regional platform antennas to include 3 whip antennas at 3'2", 2 whip antennas at 9'6", 4 whip antennas at 16" and 1 whip antenna at 21'6"; and (4) the use of 4 foot standoff T-boom antenna mounts as opposed to a walk-around platform. (App. p. 2.; Letter from First Selectman dated September 2, 2011; Chasse p.4.)

Moreover, the Facility would accommodate several other requests by the community. The Facility would be surrounded by an 8 foot fence (with privacy slats). The equipment within the fencing would comply with all applicable codes. Additionally, the Facility would only require lighting when a technician is on site to perform maintenance. Finally, T-Mobile's cables would be installed internally to minimize any adverse visual impact. (*Letter from First Selectman dated September 2, 2011.*)

5. Pre-Application Synopsis

T-Mobile has engaged in an extensive municipal consultation with the Town, the Town's telecommunications consultant, the Police Union and the community. This consultation has spanned approximately 18 months – since the submission of the Technical Report on December 23, 2009 – included many meetings with the community and the retention of an independent RF consultant. Throughout this consultation, T-Mobile has vetted the area for possible alternative locations, worked with the Town and the community to address possible changes to the regional platform and reconfigured the proposed Facility to accommodate the requests of the Town and its citizens. (*App. p. 24; App. Ex. Q.*)

B. FACILITY DESCRIPTION

The Facility would replace the Existing Tower, which is approximately 100 feet above grade level ("AGL"). The Existing Tower is approximately 30 years old and is at the end of its life cycle. The Town of Trumbull ("Town") would like to replace the Existing Tower with a new, taller structure to accommodate the Town's police, fire and emergency services current and future communication needs. The Existing Tower, at

its current height and structural limitations, does not address the Town's communication needs sufficiently. (*App. pp. 1-2, 6; Chasse, pp. 2-3; Fine Testimony, p. 3; December 6, 2011 Transcript ["12.6.11 Tr.,"] pp. 25-26.*)

The Facility would sit within a 490 square foot area leased by T-Mobile, located in the center of the Property, which is an approximately 2.30 acre parcel. The Property is currently used as the Town's police station. An 8 foot high chain link fence, with privacy slats, would secure the equipment at the Facility. Vehicle access would be along an existing bituminous access and parking area used by the police station. (*App. pp. 2, 10; App. Ex. C.*)

The Facility would consist of a 150 foot monopole structure, with T-Mobile's antennas flush mounted at a centerline of 140 AGL. The Facility would also host a regional dispatch platform for emergency services situated atop the monopole. The height and configuration of the regional dispatch platform would be dictated by the needs and specifications of the Town. As designed currently, the regional platform would incorporate stealth characteristics, such as slim profile antennas, painted blue to match the background of the sky, and a slim profile mounting. The municipal equipment would be located in a separate shelter adjacent to the area leased by T-Mobile. T-Mobile's equipment would be located nearby on a concrete equipment pad. Finally, the Facility would accommodate the various wireless carriers active in the Connecticut marketplace. (*App. pp. 2, 10-11, 18; App. Ex. C.*)

III. A SIGNIFICANT PUBLIC NEED EXISTS FOR THE FACILITY

General Statutes § 16-50p (a) (3) (A) mandates that the Council “shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine . . . [that] a public need for the facility and the basis of the need” The record amply demonstrates that there is a significant public need for the Facility.

A. T-MOBILE NEED

The Facility is an integral component of T-Mobile’s wireless network in the Town. There is a gap in coverage in this area of the Town, specifically along Route 15, Main Street and Highgate Road, as well as the surrounding area. The Facility would also provide future capacity relief and performance improvements to the existing facilities nearest the coverage objective. The Facility, in conjunction with other existing and future facilities in the Town and surrounding municipalities, is necessary for T-Mobile to provide wireless services to people living in and traveling through this area of the State. (*App.*, p. 6; *App. Ex. H, J; Heffernan*, pp. 3-4; *T-Mobile’s Responses to the Council’s First Set of Interrogatories* [*“T-Mobile First Interrog. Resp.”*]; *T-Mobile’s Supplemental Response to CATT’s First Set of Interrogatories* [*“T-Mobile Suppl. Resp. CATT Interrog.”*]; *12.6.11 Tr. p. 20; 3.2.10 Tr. pp. 137-40.*)

To achieve most of its coverage objectives in this area, T-Mobile must mount its antenna array at a minimum centerline of 130 feet above grade level (“AGL”). (*12.6.11 Tr. pp. 21-22.*) If the Facility is approved at a height of 150 feet, T-Mobile would locate its antennas at the 140 foot centerline to improve its coverage to the area. This position would allow T-Mobile to minimize the number and height of future telecommunications facilities in this area. Additionally, the antenna height would enable T-Mobile to overcome the existing topography and mature vegetation and provide coverage in these

areas of the Town. (*App. at p. 9; App. Exs. B, H; Heffernan at pp. 4-6; T-Mobile First Interrog. Resp.; 12.6.11 Tr. pp. 60, 63.*)

B. TOWN NEED

The Town has also demonstrated a critical need for a new communications facility at this location. "The Town of Trumbull desperately needs to enhance its emergency services communication . . . (i)rrespective of the outcome of this application, the Police will require an upgraded communication tower at their current location." (*Letter from Selectman Herbst dated September 20, 2011.*) The Existing Tower has reached the end of its designed life span and is insufficient to address the Town's fire, police and emergency services communication needs. (*Fine p. 3.*)

The Town has stated that it would need a new regional and municipal dispatch platform situated atop a 150 foot structure. According to the Town, a platform for emergency services at this height would allow the Town to overcome the challenging topography of the area, as well as provide much needed coverage and allow for future growth. (*Id.*)

The record establishes that the Facility would provide much needed coverage in this area for T-Mobile's network, and address the Town's critical emergency service communication needs. The intervenor CATT has provided no expert testimony to refute the demonstrated need of either T-Mobile or the Town. The significant public need for improved wireless telecommunications in this area of the Town is therefore uncontested.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT.

In addition to demonstrating a public need for the Facility, T-Mobile must identify “the nature of the probable environmental impact . . . including a specification of every significant adverse effect . . . whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife” General Statutes § 16-50p (a) (3) (B). The record is replete with evidence demonstrating that the Facility would have a minimal environmental impact on the surrounding areas, and would not conflict with any environmental policies of the State.

T-Mobile conducted a comprehensive environmental analysis of the Facility, which is attached to the Application as Exhibit K (Wetlands Report), Exhibit M (Visual Resource Evaluation Report), and Exhibit P (NEPA Compliance Documentation). State and Federal authorities provided substantive responses. (*Exhibit N.*) T-Mobile also submitted materials regarding the impact of telecommunications facilities on migratory birds. (*Exhibit N.*)

A. Visual Resource Evaluation

The topography and vegetation contained at the Property and within the Study Area serve to minimize the potential visual impact of the Facility. The average height of the tree canopy within a 2 mile radius of the Facility is approximately 60 feet. This vegetation sits on rolling hills that range in ground elevation from approximately 85 feet above mean sea level (“AMSL”) to approximately 490 feet AMSL. The tree canopy covers nearly 4,096 acres of the 8,042 acre Study Area. (*App. p. 13; App. Ex. M.*)

Based on the viewshed testimony and analysis, areas from which the Facility would be at least partially visible year round comprise approximately one-half of 1 percent of the total Study Area. The majority of these views would be within the immediate area of the proposed Facility. The Facility would be partially visible year round to 71 residential properties within the Study Area. Approximately 48 additional residential properties would have seasonal views of the proposed Facility. (*App. p. 13; App. Ex. M, Prefiled Testimony of Mike Libertine ["Libertine"] pp. 5-6*)

Finally, the Facility would have little to no visual impact to sensitive receptors such as scenic, historic or recreational sites. Specifically, the Facility would not have an adverse visual impact on Route 15, which is a designated National Scenic Byway. (*App. Exs. M, N, P; Libertine p. 7*).

B. Other Environmental Factors

T-Mobile conducted a comprehensive environmental analysis to determine potential impact of the proposed Facility. The environmental analysis concluded that:

- The Property is not designated as a wilderness area and it is not located in a wildlife preserve or in a U.S. Fish and Wildlife Service National Wildlife Refuge. (*App. p.14; App. Ex. N; Prefiled Testimony of Ashley Bonavenia ["Bonavenia"] p. 2.*)
- The Facility would not affect threatened or endangered species or designated critical habitats. (*App. p. 14, 18-19; App. Ex. N; Bonavenia p. 3.*)
- The proposed Facility would not affect any National Parks, National Forests, National Parkways or Scenic Rivers, State Forest, State Designated Scenic Rivers or State Game lands. (*App. p. 16; App. Ex. P; Bonavenia p. 3.*)
- The proposed Facility would not impact any recognized districts, sites, buildings, structures or objects of significance in American history, architecture, archeology, engineering or culture as listed on the National Register of Historic Places. In a letter dated May 26,

2010, the State Historic Preservation Officer concluded that the Facility would have no such impact. (*App. p. 14, 24; App. Ex. N, P; Bonavenia pp. 3-4.*)

- The proposed Facility would not affect any Native American religious sites. (*App. p. 16; App. Ex. P; Bonavenia p. 4.*)
- There are no wetlands on or within the immediate vicinity of the Property. (*App. p. 16; App. Ex. K; Libertine p. 8.*)
- The Facility would not impact any coastal resources. There are no coastal resources located on or near the Property. (*App. Ex. K; Libertine Testimony, p. 9.*)
- The Facility would not be located within a 100 or 500 year flood plain. (*App. p. 16; App. Ex. K; Bonavenia p. 4.*)
- According to an aeronautical study conducted in accordance with the regulations promulgated by the Federal Aviation Administration, the proposed Facility would not require marking or lighting. (*App. pp. 18-19; App. Ex. R.*)

Ultimately, the design and location of the Facility successfully minimizes any potential environmental impact while addressing the coverage needs in the area. Any environmental impacts associated with the Facility would be limited. The Facility would also eliminate the need for additional facilities in this area of the Town, thereby reducing the cumulative environmental impact on the Town.

The existing case law supports the approval of T-Mobile's application for a certificate as several Court decisions have affirmed the issuance of certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present application. See generally *Westport v. Connecticut Siting Council*, 47 Conn. Sup. 382, 797 A.2d 655 (2001), *Aff'd*, *Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002); *Nobs v. Connecticut Siting Council*, No. CV 980492714S, 2000 WL 675643 (Conn. Super. Ct. April 28, 2000).

Finally, the intervenor provided no expert evidence to demonstrate that the proposed Facility would result in a significant environmental impact.

IV. THE INTERVENOR, CATT HAS OFFERED NO EVIDENCE TO SUPPORT PURPORTED CLAIMS UNDER GENERAL STATUTES § 22A-19, AND PROVIDED NO EVIDENCE TO REFUTE T-MOBILE'S EXPERT TESTIMONY REGARDING PUBLIC NEED AND ENVIRONMENTAL COMPATIBILITY.

The Council granted intervenor status to the Citizens Against Trumbull Tower ("CATT") under General Statutes § 16-50n and 22a-19. CATT's status as an intervenor is not supported by its Petition to Intervene ("Petition") or the record. Further, the record is devoid of any evidence to refute the testimony and analyses of T-Mobile's panel of experts.

A. Legal Standard For Intervention Under § 22a-19.

Section 22a-19 (a) provides in relevant part: "In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law . . . any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." The standing conferred by § 22a-19 is limited strictly "to challenging only environmental issues covered by the statute and only those environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceeding into which the party seeks to intervene." (Internal quotation marks omitted.) *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143, 157, 953 A.2d 1 (2008).

A would-be intervenor must submit a “verified pleading” containing “specific facts.” *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164, 788 A.2d 1158 (2002). The specific factual allegations must set forth the environmental issues that the intervenor intends to raise. *Id.*, 164-65. “A [verified pleading] does not sufficiently allege standing [however] by merely reciting the provisions of § [22a-19], but must set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken.” (Internal quotation marks omitted.) *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35, 959 A.2d 569 (2008).

The requirement to allege a sufficient factual predicate comports with the pleading standards of the Practice Book, which requires a pleading to contain the material facts upon which the pleader relies. *Nizzardo v. State Traffic Commission*, *supra*, 259 Conn. 163; Practice Book § 10-1. Ultimately, the would-be intervenor must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment. *Finley v. Inland Wetlands Commission*, *supra*, 289 Conn. 35.

B. CATT’s Petition Failed to Articulate A Valid Basis for Intervention.

T-Mobile objected to CATT’s Petition insofar as CATT sought intervention under § 22a-19 (“Objection”). T-Mobile objected on the grounds that the Petition did not (1) articulate any valid environmental claims and (2) set forth specific facts in support of CATT’s purported environmental claims

As discussed in the Objection, CATT did not articulate any valid environmental claims which would trigger § 22a-19. The Petition set out six claims for the §22a-19

intervention, none of these claims were supported by evidence, in the Petition or in the record.

The allegations in the Petition are vague, conclusory and are an insufficient basis upon which to intervene under § 22a-19, and are unsupported by evidence in this proceeding. Moreover, § 22a-19 pertains to claims of unreasonable pollution, impairment or destruction of “natural resources,” and does not pertain to claims by a private property owner that it would have views of a new or replacement structure. CATT does not present a colorable claim under § 22a-19.

C. The Record Does Not Support Any Of The Alleged Bases For CATT’s Intervention Under § 22a-19.

The Petition set out six purported claims for the §22a-19 intervention, some of which do not relate to any environmental issue within the purview of § 22a-19. Each allegation is addressed in turn.

1. CATT is a duly constituted voluntary association whose purpose includes the protection and conservation of natural resources in the Town of Trumbull.

This unsupported allegation avers only that CATT is concerned with protecting the natural resources of the Town of Trumbull. There are no facts indicating what natural resources CATT seeks to protect, nor any specific allegations articulating what natural resources that would be impacted by the proposed Facility. In fact CATT witnesses specifically testified that they sought to protect the residential neighborhood(s), with notably no reference to “natural resources.” Specifically, Mr. Lefcort was asked whether a nearby Town park, Island Brook Park, was an inappropriate place to locate a tower. Mr. Lefcort responded that it was an inappropriate

location for a tower, but did not base his position on the natural resources that might be impacted if a tower was constructed on a Town park. Instead he cited the impact to the residences nearby. "The reason we believe that is that the perimeter of that area, that park is surrounded by residential --- by a residential area." He went on to elaborate "CATT has --- had long ago developed an agreement within the group that the issues concerning T-Mobile's cell tower at the police station was one of its impact on residents From this testimony it is clear that CATT does not seek to "protect natural resources" but instead to preclude the development of a wireless facility in any residential area. Most, if not all, of the search area is residential in nature. (12.20.11 Tr. pp. 56-57.)

2. The proposed tower will have a negative impact on the scenic vistas in Trumbull and it fails to meet the requirements of zoning in the Town in a way which fundamentally harms the general welfare of the community.

This allegation does not support intervention under § 22a-19 because (1) the reference to "scenic vistas" does not provide CATT with a valid basis upon which to intervene in this specific docket and (2) the vague reference to zoning does not provide CATT with a valid basis upon which to intervene; and (3) CATT offers no specific facts to support its assertions about "scenic vistas" or "zoning."

There is no reference to any "natural resource," protected by the Connecticut Environmental Protection Act ("CEPA"), other than "scenic vistas." There is also no reference to any specific vista purportedly impacted by the proposed Facility. Moreover, the phrase "vistas" is found only within the context of the Coastal Area Management Act, General Statutes § 22a-91 (15) (F). The proposed location for the Facility is not located in a coastal area. (App. Exs. C, D, K, N and Q.)

Assuming *arguendo* that the local parks in the Town of Trumbull – within the vicinity of the location for the proposed Facility – constitute “scenic vistas” for purposes of CEPA intervention, the Facility would not impact any of those areas or parks in an unreasonable manner. Specifically, the Facility would not be visible from all but one of the parks. Island Brook Park would only have a minimal view of the very top of the Facility, just over the tree line, even during leaf-off conditions. (*App. Ex. M; Libertine Testimony, p. 7.*)

This allegation also refers vaguely to zoning requirements without any specificity. Putting aside the fact that the Council is not obligated to follow local zoning requirements, see General Statutes § 16a-50x, the proposed Facility would meet the setback requirements and most of the other requirements provided in the Trumbull Zoning Regulations. The only portion of the monopole that would exceed the zoning regulations regarding height is the portion relating to the municipal and regional dispatch platform, which has been requested by the Town. There is absolutely no factual basis for an unreasonable impact to the environment, premised upon a failure to meet zoning requirements, as required by § 22a-19. Notably, there is no factual basis for unreasonable impact in CATT’s Petition regarding zoning requirements. (*App. pp. 18-19.*)

Finally, this allegation does not include “specific facts” as required for a sufficient “verified pleading” under § 22a-19. *Nizzardo v. State Traffic Commission, supra*, 259 Conn. 164-65. There can be no inference of unreasonable impairment to the environment based upon this allegation.

3. There exists at least one configuration which can provide adequate coverage for the applicant with less impact by utilizing a shorter

tower because the height is driven by a speculative and baseless need of the Town communications; internally or flush mounted antennas; removing the Town whip antennas from the top of the pole; and utilizing other locations.

This allegation does not appear to address any “natural resource.” If this allegation refers to the visual impairment of a “scenic vista,” then it is defective for the same reasons discussed above. If this allegation refers to the potential visual impact of the Facility on residences, such allegations do not confer standing under § 22a-19. A neighbor’s potential visibility of a proposed telecommunications facility, located at a police station, does not constitute a “natural resource” and does not amount to the unreasonable pollution, impairment or destruction of a “natural resource.”

The case law supports this conclusion. The Connecticut Supreme Court has held that prime agricultural land is not a natural resource. *Red Hill Coalition v. Town Plan & Zoning Commission*, 212 Conn. 727, 739-40, 563 A.2d 1347 (1989). As such, it is very unlikely that a court would conclude that a residence - or views from that residence of a telecommunications facility located at nearby police department - would be a “natural resource.”

Such an allegation, without more, cannot constitute unreasonable pollution, impairment or destruction of the State’s “natural resources.” It does not allow for a reasonable inference of such an impact. If this were the case, then most, if not all, towers or taller structures, regardless of location, would unreasonably impact the State’s “natural resources.” The Petition does not cite to any statute or case law supporting the proposition that a view of a telecommunication facility from one’s home constitutes a “natural resource” protected by CEPA.

Finally, CATT offered no expert testimony to prove that there were any other possible locations or configurations that would provide T-Mobile with the necessary coverage. CATT's two lay witnesses talked conceptually about different tower designs and locations, but no evidence or analyses were provided to demonstrate that any of the ideas were feasible.

4. CATT intends to submit evidence to the record in the form of expert testimony which will substantiate the feasibility of alternatives to the proposed facility which will assist the Council in complying with its mandate to minimize impact as required by C.G.S. § 16-50g and 16-50p(3)(G)(b)(1).

The only CATT witness that might be characterized as an expert witness is Mr. Plumb. When considering whether Mr. Plumb is qualified to provide evidence regarding the feasibility of T-Mobile's alternatives, it is necessary to consider his testimony on the subject. When asked about T-Mobile's coverage/need in this area, Mr. Plumb conceded that he had not done an analysis of T-Mobile's coverage in this area. (12.20.11 Tr. pp. 61-62.) He further noted that he did not have experience with cellular communications systems (such as T-Mobile's) or municipal public safety equipment. (12.20.11 Tr. pp. 102-103.) For these reasons, Mr. Plumb cannot be considered an "expert" to "substantiate the feasibility of alternatives" to the proposed Facility.

5. The height requested is excessive and unnecessary to meet the public need and will be visible from sensitive residential receptors.

The operative word in this allegation is "residential." This statement cannot confer standing for the same reasons the third allegation cannot confer standing. The term "natural resource" does not include views of the proposed Facility, located at a police station, from any of the homes of CATT representatives.

Moreover, there was absolutely no evidence in the record that refuted the height necessary for T-Mobile to provide coverage from this Facility. CATT did not offer any analysis to contradict T-Mobile's position. In fact, Mr. Plumb concluded "I did not see an issue with the T-Mobile application specific to the mobile phone communication coverage." (12.6.11 Tr. p. 38.)

6. The design does not incorporate the best available technology for reducing the visual impacts of the facility in that it fails to consider alternative designs.

This allegation does not address any "natural resource" conceivably protected by CEPA. This statement cannot confer standing under § 22a-19. From a factual standpoint this statement is simply untrue. The record is replete with information demonstrating that T-Mobile revised its design several times based upon requests from CATT and the Town.

CATT witnesses suggested a flagpole as an "alternative design". They provided no expert testimony that a flagpole design was a feasible alternative. In contrast, T-Mobile offered specific expert testimony that a flagpole design would impact its ability to provide coverage and capacity to the area. (2.7.12 Tr. pp. 50-52.) It would also increase the height and width of the Facility. (12.20.11 Tr. p. 132-135.) Finally, it would be impossible to locate all of the Town equipment on a flagpole facility. (2.7.12 Tr. pp. 43-44.)

Accordingly, these six cursory allegations – taken individually or cumulatively - do not set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken. *Finley v. Inland Wetlands Commission, supra*,

289 Conn. 35. These allegations do not, therefore provide a colorable basis for standing under § 22a-19, nor does the record support the allegations.

D. CATT Has Offered No Expert Evidence in this Docket to Support Its Claims or Refute the Expert Testimony Provided By T-Mobile.

CATT offered the testimony of three witnesses in this Docket. The first witness, Kevin Plumb identified himself as a Professional RF Engineer with a background in radio frequency and tower engineering, although he admitted he was not a certified professional engineer. (12.20.11 Tr. p. 34.) He further acknowledged that he had no experience with either cellular or municipal public safety systems, which would exclude him from providing expert testimony about a Facility that would serve the needs of cellular and municipal public safety providers. (12.20.11 Tr. pp. 68-69.)

Mr. Plumb's proffered testimony was focused on the compliance with RF emission standards and perceived "safety related concerns". Mr. Plumb conceded that "(t)he T-Mobile application clearly meets the 1996 FCC standards with respects to Human Exposure to Radiofrequency Electromagnetic Fields." (sic) (*Statement of Kevin Plumb ["Plumb"]*, p. 2.) Mr. Plumb's "safety related concerns" included the application of Revision F or G of the EIA/TIA standard and concerns about falling ice from the Facility. Mr. Chasse, a professional engineer, advised Mr. Plumb that Connecticut had yet to adopt Revision G of the EIA/TIA standard, but suggested that the Facility could be designed using both standards.² (12.6.11 Tr. pp. 95-97.) Finally, under cross examination, Mr. Plumb conceded that the article on which he based his remaining safety concerns specifically concluded that the catastrophic failure of communications

towers is relatively rare, and the examples given in the article were almost exclusively guyed towers, which is dissimilar to the Facility being proposed. (12.20.11 Tr. pp. 73-75.)

CATT's provided no expert testimony regarding the impact of the Facility on the environment. CATT's remaining witnesses were not experts, but members of the CATT organization that offered their opinions about various aspects of the Facility. (12.6.11 Tr. pp. 87-88, 96-97.) These witnesses suggested several alternative locations for the Facility, but acknowledged that T-Mobile had investigated these sites. They also suggested a flagpole configuration, which configuration would only serve to increase the height (as T-Mobile would require 2 levels) and girth (to accommodate internal arrays and cabling) of the Facility. (12.20.11 Tr. p. 132-135.)

CATT offered no expert testimony to refute the qualified and credible testimony of T-Mobile's panel of experts. These unsupported claims are in stark contrast to the numerous professional environmental analyses and substantial expert testimony provided by T-Mobile in this Docket.

V. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS.

The Connecticut legislature has determined that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. General Statutes § 16-50aa. General Statutes §16-50p (b) (1) (A) requires the Council to consider the feasibility of tower sharing to avoid the unnecessary proliferation of telecommunications

² Upon direction from the Council, T-Mobile could then implement whichever standard was the most rigorous.

facilities. "The sharing of facilities is encouraged, if not required by General Statutes §16-50p (b) (1) (A)." *Nobs*, 2000 WL 675643, at *2 n.1.

Certification of the proposed Facility would be in the public interest. There are no other existing facilities or structures in this area from which wireless carriers could co-locate. The Facility would provide co-location opportunities for T-Mobile, public safety communications systems and three telecommunications carriers, which would limit the proliferation of telecommunications facilities. The Facility would be designed to maximize co-location opportunities and coverage area because three additional carriers would be able to co-locate on the Facility. Finally, the Town has demonstrated that it has a pressing need to improve its emergency services communication in this area, and this Facility will allow them to provide much needed emergency communication to its residents. Therefore approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers. (*App. p. 10; App. Ex. C.*)

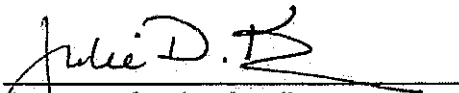
V. CONCLUSION

The record amply supports the approval of a certificate for the Facility. The Facility is necessary to provide adequate wireless coverage in this area of the Town. T-Mobile has demonstrated that the Property is the best location for a facility that would address the coverage issues in this area with the least amount of environmental impact. CATT did not submit any expert evidence refuting T-Mobile's articulated need for the Facility, substantial expert testimony, or numerous professional environmental analyses. T-Mobile therefore requests that the Council issue a certificate for the Facility, reflecting in its Decision and Order, consistent with General Statutes § 16-50x,

that such approval satisfies and is in lieu of all local and state approvals and certifications.

**THE APPLICANT,
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CERTIFICATE OF SERVICE

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

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