

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF NORTH ATLANTIC
TOWERS, LLC and 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 655 BASSET ROAD IN THE TOWN OF
WATERTOWN

DOCKET NO. 422

October 24, 2011

APPLICANTS

NORTH ATLANTIC TOWERS, LLC and NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
OBJECTION TO ADMISSION BY THE SITING COUNCIL OF
EXHIBITS OF INTERVENORS ROBERT AND CATHLEEN ALEX

North Atlantic Towers, LLC and New Cingular Wireless PCS, LLC ("AT&T") (the "Applicants") by its attorneys, Cuddy & Feder LLP, respectfully submit this objection to the admission by the Siting Council of certain exhibits and information of Intervenor Robert and Cathleen Alex and hereby moves the Siting Council under its authority pursuant to Section 4-178(1) of the Uniform Administrative Procedures Act (UAPA) to exclude certain exhibits and information offered by the Intervenor. The Intervenor filed eighteen (18) documents in this proceeding as exhibits. Many of these submissions are subject to exclusion from the record by the Siting Council for the reasons more fully set forth below.

All Documents Related to Health and/or Environmental Effects of RF Emissions

Should Be Excluded

As the Siting Council is aware, it is preempted by Telecommunications Act of 1996 (TCA) from considering the environmental effects of radio frequency emissions as long as the applicant(s) demonstrates compliance with the Federal Communication Commissions' (FCC) guidelines for radio frequency emissions. 47 USC §332(c)(7)(B). Moreover, the United States District Court held that

the Siting Council is preempted under the TCA from rendering a siting decision on the basis of any purported health effects from radio frequency emissions on wildlife. See: *Jaeger v. Cellco Partnership, et al.*, 2010 WL 965730 (D. Conn. 2010), affirmed *Jaeger v. Cellco Partnership, et al.*, 10-1347-cv (2nd Cir. 2010). (See also *Bornemann, et al v. Connecticut Siting Council, et al.*, 287 Conn. 177 (2008), where the Connecticut Supreme Court held that the Siting Council does not have jurisdiction to consider the “biological effects of high frequency radio wave emissions on wildlife”).

In fact, the Siting Council has taken administrative notice of the TCA and its preemption provisions with respect to environmental effects of radio frequency energy and the holdings in the *Jaeger v. Cellco Partnership* and *Bornemann v. Siting Council* cases in other communication facility proceedings. In addition, with respect to the siting of telecommunication towers and migratory birds, the Siting Council has taken administrative notice of the Service Interim Guidelines for Recommendations On Communications Tower Siting, Construction, Operation and Decommissioning by the U.S. Fish and Wildlife Service (USFW), Division of Migratory Bird Management.

Given that the Siting Council is preempted from consideration of environmental effects of radio frequency energy on both humans and wildlife and has taken administrative notice of the USFW guidelines on communication tower siting, any documents that concern RF emissions submitted by the Intervenors, including those documents listed below, should be precluded by the Siting Council.

- Attachment 5: *Biological effects from exposure to electromagnetic radiation emitted by cell tower base stations and other antenna arrays* by B. Blake Levitt and Henry Lai
- Attachment 11: *Briefing Paper on the Need for Research into the Cumulative Impacts of Communication Towers on Migratory Birds and Other Wildlife in the United States*
- Attachment 13: *Mobile phone-induced honeybee worker piping* by Daniel Favre

- Attachment 14: *Can Electromagnetic Exposure Cause a Change in Behavior? Studying Possible Non-Thermal Influences on Honey Bees – An Approach within the Framework of Educations Informatics* by Wolfgang Harst, Jochen Kuhn & Hermann Stever
- Attachment 15: *Changes in honeybee behavior and biology under the influence of cellphone radiations* by Ved Parkash Sharma and Neelima R. Kumar
- Attachment 18: *Bees, Birds and Mankind Destroying Nature by “Electrosmog”* by Ulrich Warnke

Irrelevant, Immaterial and Unduly Repetitious Evidence Should Be Excluded

Irrelevant and Immaterial Evidence

The Intervenors do not state the purpose or relevance for admission by the Siting Council of several of the documents included in its list of exhibits in this proceeding. Several of the submitted documents include excerpts with no indication of the specific relevance of the information contained therein to this proceeding. Several of these documents are seemingly submitted to support general statements in opposition without demonstrating any specific impacts from the proposed facility.

In addition, any documents or information regarding real estate and property value considerations are not relevant to Siting Council review of tower facilities. Section 16-50g of the Connecticut General Statutes sets forth the specific purpose of PUESA as a State statute intended to regulate public utility infrastructure and provide for a balance between the public need for such infrastructure with any environmental effects associated therewith.

Indeed, Section 16-50p of PUESA specifically lists the Council’s obligation to consider potential significant adverse effects from a tower facility on “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.” Property values or other off-site economic factors are not even mentioned in the Statute. In fact, PUESA’s reference to the term “values” in Section 16-50p

omits any mention of property or real estate. Had the General Assembly intended for the Siting Council to consider such values, it would have inserted the word “property” as a term modifying “values” as language directly within the ambit of Section 16-50p, something it did not do in enacting PUESA. As such, the Siting Council has no legal authority to consider real estate values as part of any specific application for a certificate.

Moreover, this exact issue was addressed by the State Supreme Court in *Town of Westport v. Conn. Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002). In *Westport*, the town argued that the Siting Council was required to consider surrounding property values as part of a tower application on a residential lot. The Supreme Court held that “[u]nder section 16-50p . . . the council is not obliged to take into account the status of property values directly.” *Westport* at 407. As such, the Court reiterated that the Council’s obligation as part of a tower proceeding was to consider “environmental, scenic, historical and recreational values” and not property values. Given all the foregoing, there simply is no authority for the Siting Council to take into consideration property values in this proceeding.

As such, the Applicants object to the admission by the Siting Council in this proceeding of the documents listed below under its authority to exclude irrelevant and immaterial evidence under Section 4-178(1) of the UAPA.

- Attachment 1: “Where are you visiting from?”
- Attachment 6: Berry Nutrition
- Attachment 7: Multi-Agency Recommendations for Lightning Safety
- Attachment 8: Connecticut Climate
- Attachment 9: Lightning Protection for Telecommunications Facilities
- Attachment 10: Falcons for Bird Abatement
- Attachment 12: Property Devaluation

- Attachment 16: Excerpt from Audubon Connecticut Protecting Connecticut's Grassland Heritage

Unduly Repetitious Evidence

Several of the documents included by the Intervenors as exhibits have already been submitted in this proceeding. Accordingly, these documents, which are listed below, are unduly repetitious and should not be admitted as exhibits by the Siting Council in this proceeding under its authority to exclude unduly repetitious evidence under Section 4-178(1) of the UAPA.

- Attachment 4: Excerpt from the Watertown Plan of Conservation and Development
- Attachment 17: Natural Diversity Database Areas, Watertown, CT

Statements Regarding Compliance with the Town of Watertown's

Zoning Regulations Should Be Excluded

Pursuant to Section 16-50x(a) of Connecticut General Statutes ("CGS"), the Siting Council has exclusive jurisdiction over wireless telecommunications facilities. Review and approval by the Siting Council of the Applicants' proposed Facility in this proceeding are "in lieu of all certifications, approvals, and other requirements of state and municipal agencies...." CGS Section 16-50x(a). As such, no local land use, zoning, wetland or other permits are required for the Applicants' proposed Facility and such regulations are merely guidance.

The Siting Council's exclusive jurisdiction over wireless telecommunications facilities is well established. See *Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002), holding that the exclusive jurisdiction of the Siting Council precluded the town from applying its zoning regulations and other local laws; and *Corcoran v. Connecticut Siting Council*, 50 Conn.Supp. 443, 934 A.2d 870 (Super. Ct. 2006), holding that the Siting Council's exclusive jurisdiction over wireless facilities under CGS 16-50x(a) allows it to override municipal provisions.

Given the Siting Council's exclusive jurisdiction over the Applicants' proposed Facility in this proceeding, compliance with local regulations is not required and any statements or information suggesting that compliance with local regulations is required should be excluded. To the extent the Intervenor seeks to introduce local regulations for guidance purposes only, the Applicants have no objection to those materials.

Petitions with General Statements in Opposition Should Not Be Admitted as

Intervenors' Exhibits

The Applicants object to the admission of public comments in form of a signed petition with a general statement in opposition to the proposed facility as Intervenors' exhibits on the grounds that the signatories to the petition are not parties and/or intervenors in this proceeding and as such, are not available for cross examination. Therefore, the generalized statement contained in the petition cannot be fully evaluated by the Council, the applicants or any other party in this proceeding for a full disclosure of the facts as provided in Section 16-50o of Connecticut General Statutes (CGS), Section 4-178(5) of UAPA and Section 16-50j-28 of RCSA. Indeed, it appears that many of the signatories of the petition are not local. Without the opportunity to cross exam these signatories, it is not possible to determine what specific objection they have to the proposed facility or to determine how the proposed facility will impact them.

Documents such as the petition are properly considered part of the public comment file in this proceeding and should not be admitted as an exhibit for the Intervenors. Accordingly, the petition submitted in Attachment 2 should not be admitted as an exhibit for the Intervenors.

Conclusion

For the foregoing reasons, the Applicants object to admission by the Siting Council of certain exhibits and information of the Intervenors Robert and Cathleen Alex and hereby move the Siting Council under its authority pursuant to Section 4-178(1) of the Uniform Administrative Procedures Act (UAPA) to exclude certain exhibits and information of the Intervenors as detailed herein.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was sent by electronic mail and overnight mail to the Connecticut Siting Council and:

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Dated: October 24, 2011


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