

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

March 2, 2012

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 related to health and/or environmental effects of RF emissions of the 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 such exhibits and information offered by the Intervenor.

**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 Intervenor, including those documents listed below, should be precluded by the Siting Council.

- Letter dated 12/21/11 from Susan Tompkins, MA, Ed.D
- 1/3/12 submission: BOA Bicoca Open Archive: Negative Effects on a bioindicator by electromagnetic field exposure alone and in combination with UVC rays

### **Conclusion**

For the foregoing reasons, the Applicants object to admission by the Siting Council of certain exhibits and information related to health and/or environmental effects of RF emissions of the Intervenor 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 these 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: March 2, 2012



Lucia Chiochio

cc: John Stevens, North Atlantic Towers, LLC  
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