4/1/2012

FROM: Robert and Cathleen Alex

435 Bassett Road

Watertown CT 06795

TO: CT Siting Council

Ten Franklin Square

New Britian CT 06051

**RE: Docket 422**

**Proposed Findings of Fact of Intervenors Cathleen and Robert Alex in opposition to Docket 422 North Atlantic Towers, LLC and New Cingular Wireless PCS, LLC (AT&T) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 655 Basset Road, Watertown, Connecticut.**

The Siting Council is responsible for:

1) balancing the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values;

4) promoting the sharing of telecommunications towers in order to avoid their unnecessary proliferation

(as noted on CSC website http://www.ct.gov/csc/cwp/view.asp?a=895&q=248310)

The applicants failed to discover many of the facts of this case in their initial application process to satisfy the National Environmental Policy Act of 1969(NEPA) requirements in early 2010 leading to false “no adverse effect” determinations from both the State Historic Preservation Office (SHPO) and the Department of Energy and Environmental Protection (DEEP). This led to the applicants’ ability to pursue a formal application to the Siting Council August 8, 2011 for a tower site that was in contradiction to protecting the environment and ecology of the area, as well as negatively impacting the scenic, historic, and recreational values in the area of potential effect (APE). This application process has subsequently become “re-active” to mitigate false and missing information by the applicants rather than “pro-active planning”. The facts were forced from the applicants through the interrogatory process over these last 8 months beginning August 2, 2011 when the applicants sent notice to us of their intent to propose a tower on Gustafson Orchard lands. It is also disturbing that the state agencies responsible for determining effect (SHPO and the DEEP) did not perform any on-site field reviews to confirm accuracy and completeness of the applicants’ original submissions. These agencies ultimately provided “no adverse effect” determinations in favor of the applicants based on inaccurate and incomplete original applications.

Specifically:

1. The initial January 8th, 2010 New Tower Submission Packet FCC Form 620 Section 106 Review completed by Catherine Labadia of Heritage Consultants, LLC on behalf of the applicants to satisfy NEPA was filed under an incorrect address and county of 936 Linkfield Road, Hartford County CT rather than the correct 655 Bassett Road, Litchfield County CT (page 3 of FCC Form 620 Exhibit).
2. Also, Attachment 2, Additional Site Information on FCC Form 620 describes the subject property incorrectly as a “176 acre parent parcel of land”. The project site of 655 Bassett Road lies on a parcel of 51.53 acres (August 8th 2011 ATT/NAT Application Tab 3 Site Evaluation Report).
3. This erroneous Form 620 document was used to notify local Indian tribes, local government (Watertown Planning and Zoning Commission), and the Watertown town historian John Pillis to gather information to assist in the identification of historic properties that may be effected by the project. The applicants solicited public involvement by a legal notice in the Town Times on December 3, 2009 that also utilized the wrong address.
4. The applicants consulting historian Catherine Labadia failed to note both listed and eligible historic properties in her January 4, 2010 report by stating “upon review of the GIS files provided by the CT SHPO, as well as historic maps, aerial photographs and topographic quadrangles maintained by Heritage Consultants, LLC no National Register listed or eligible resource is located within .5 miles of the proposed project” (page 9, Attachment 8 for FCC Form 620 Exhibit). The 936 Linkfield Road address used to gather her data from all parties involved was within a .5 mile of multiple eligible and listed properties noted on the 1859 and 1874 historic maps the applicants’ provided as attachments. This false report resulted in the CT SHPO issuing a letter of “No adverse effect” on March 25, 2010.
5. The Applicants Tower Submission Packet FCC Form 620 consulting historian Catherine Labadia checked “No Historic Properties in the APE for visual effects” (page 4 number 5 “Applicant’s Determination of Effect”, under “Visual Effects”). She presumed the APE without consulting SHPO and subsequently the Roderick Bryant Nationally Listed home located at 867 Linkfield Road adjoining Gustafson Orchard lands was omitted from the APE.
6. Page 5 for the certification, signature, date, and title are not completed for the applicants’ original New Tower Submission Packet FCC Form 620 done by Catherine Labadia and submitted January 8, 2010 by Deborah Osterhoudt and should make this document null and void. This incomplete page would certify “that all representations on this Form 620 and accompanying attachments are true, correct, and complete” with a footnote about false statements citing US codes: Title 18 Section 1001; Title 47, Section 312(a)(1); and Title 47 Section 503.
7. When the applicants’ omissions and errors were brought to the CT SHPO’s attention, an on-site visit by SHPO properly identified a “National Register of Historic Places eligible Historic District which includes the residence, outbuildings and surrounding property of 655 Bassett Road. The Linkfield-Bassett Historic District is eligible for listing on the National Register of Historic Places under Criterion C as an intact rural historic district consisting of Federal and Greek revival style residences and vernacular farmsteads. These farmsteads include residences, barns, and associated out buildings as well as stone walls meadows and pastures” (SHPO letter dated December 23, 2011).

Historic Homes (as noted on 1859 and 1874 historic maps)

Eligible:

Hiram French House @ now Barbara Scott at 405 Bassett Road  
Daniel Upson House @ now Frank Gustafson at 655 Bassett Road   
S Bryant House @ now Steve and Katherine Barnosky at 936 Linkfield Road

E Bryant House @ now Sue and Ed Budris at 858 Linkfield Road

Listed:

R Bryant House @ now Mrs. Ruth Getsinger at 867 Linkfield Road (both CT and National Park Service Registed Historic Places, NPS Reference # 00001563)

1. The on-site review by SHPO resulted in a revised “adverse effect” letter of determination (SHPO letter dated December 23, 2011) that forced the applicants to mitigate impact by offering to lower the tower height to 130’ and altering the tower design to a “monopine” (Applicants’ Supplemental February 27, 2011-misdated and actually submitted in 2012). The proposed tower alterations to a 130’ “monopine” resulted in SHPO reversing their determination of “adverse effect” back to “no adverse effect” (SHPO letter dated February 6, 2012).
2. While the applicants’ mitigation to please SHPO resulted in a lower “monopine” design, it has created another concern in that the tower design and location is now a potential hazard to the threatened species American Kestrel whose habitat includes high perches (applicants’ consultant Mark Kiburz testimony March 6, 2012 Hearing page 114 line 24 and 115 lines 1-3 ) along woodland edges (CT DEEP letter October 24, 2011) 50’ from the open field fence line (February 27, 2012 Applicants’ Responses to Intervenors Robert and Cathleen Alex Interrogatories A29). Mark Kiburz falsely reports the new tower location as being 110’ deep in the woods in contrast to the actual stake being reported by the applicants as 50’ as noted previously (March 6, 2012 Hearing Transcript Page 115 Lines 21-22).
3. Also, the current tower location was moved to this woodland edge 200’ south of original proposal as the result of the applicants’ need to mitigate visibility from Evergreen Berry Farm as the applicants failed to identify Evergreen Berry Farm as a place of significant public use with scenic and recreational value in their August 8, 2011 Application (March 6, 2012 Hearing Transcript Page 72 Lines 12-23).
4. Evergreen Berry Farm hosts conservatively 14,000 visitors each harvest season and adjoins the Gustafson Orchard lands. The farm’s blueberry field currently has a 360 degree view of only the natural landscape (Alex pre-filed material October 20, 2011) This is contrary to applicants’ false statement by Infinigy Visual Resource Analysis (noted in Applicants’ Narrative August 8, 2011) that“The majority of the areas where the proposed project will be visible are agricultural areas with limited to no public access and limited to secondary roadways to the south and east of the project site.”
5. The applicants’ initial application of August 8, 2011 failed to note that Gustafson Farms also has significant public access for their retail tree fruit operation. This is in contrast to the applicants’ own statement at the March 6, 2012 hearing of “Yes, we’re aware of that” in response to Intervenor question “Are you aware that Gustafson Apple Orchard is visited quite routinely by the public to purchase apples, pears and peaches?” (Hearing transcript page 73 lines 1-4).
6. The initial application failed to identify Federal Army Corps of Engineers Black Rock Dam as a place of scenic and recreational value with significant public access that had an estimated 3,161 visitors for 2011 (Late filed Alex/Army Corps Engineers exhibit March 23, 2012). In addition, the applicants’ second Visual Resource Analysis dated December 16, 2011 of the balloon flight of November 3, 2011 failed to note the tower visibility from this recreational dam site in their narrative. Visibility was confirmed by Robert Alex under oath at the March 6, 2012 hearing and is also depicted on the applicants’ own Viewshed Analysis Map Appendix B in yellow, denoting “Approximate Year-Round Visibility Area”, of the Visual Resource Analysis Report of December 16, 2011.
7. The initial application as well as the subsequent Visual Resource Analysis of December 16, 2011 failed to identify visibility of the tower along the Mattatuck Trail. John Favreau from Inifinigy Engineering reportedly walked the trail November 9, 2011 and determined “no visibility” in contrast to Robert Alex walking the same trail November 3, 2011 and marking tower visibility during partial leaf on conditions at approximately 1750’ north of the tower site, which he presented under oath (March 6, 2012 Hearing Transcript Page 96 Lines 21 – 24, Page 97 Lines 1 - 7).
8. A petition signed by hundreds of visitors in the final weeks of the 2011 berry harvest season attests to the serious desire of visitors to preserve the scenic and recreational value of both Evergreen Berry Farm and that of Gustafson Apple Orchard as noted by the petition heading “Proposed location is highly visible from Evergreen Berry Farm berry fields and all of Gustafson’s Apple Orchard” followed by “I the undersigned object to the location of the proposed cell tower at 655 Bassett Road and wish to preserve the scenic beauty and recreational value of Evergreen Berry Farm’s pick-your-own farm and neighboring lands/farms” (Attachment 1, Alex pre-filed material received by Council October 20, 2011).
9. The applicants falsely stated that “fewer than one dozen residential structures will have partial seasonal views of the proposed facility, and that fewer than three residential structures beyond the proposed site, will have year-round views of the proposed facility” (August 8, 2011 Part VI A). Applicants subsequently modified the property visibility on the second Visual Resource Analysis requested by the Siting Council dated December 16, 2011 to “year-round visibility of the upper portion of the proposed tower is expected from a total of 10 residences.” However, this data continues to be inaccurate and is in stark contrast to Robert Alex’s personally witnessed visibility list of at least 30 leaf-off and 16 leaf-on year-round visibilities for properties (Alex Visibility List submission January 12, 2012).
10. In an effort to mitigate visibility to Evergreen Berry Farm the applicants proposed to move the tower approximately 200’ south of original coordinates. Although this reduces visibility to Evergreen Berry Farm at the farm entrance in the vicinity of the black raspberries and the northwestern corner of the blueberry field (applicants second Visual Resource Analysis, Appendix B, Viewshed Analysis topo map dated December 16, 2011), it does not reduce visibility to the eligible Linkfield-Bassett road Historic District that visitors have petitioned to preserve (district entails primarily Gustafson farmland); and now places the tower on a woodland edge threatening the habitat of the American Kestrel (Threatened Species) as well as the Bobolink and Eastern Meadowlark (both Species of Special Concern) known to inhabit grassland areas, woodland edges, and open fields (CT DEEP letter October 24, 2011).
11. As a result of the new tower coordinates the applicants re-applied to the DEEP for a new letter of determination via a new Request for Natural Diversity Data Base (NDDB) State Listed Species Review. The applicants’ consultant Mark Kiburz provided the DEEP with the following false information:
12. Date on application was noted as January 3, 2011 rather than the actual January 3, 2012.
13. “Requester Company Name” reported as “Infinigy Engineering” is not “stated exactly as it is registered with the Secretary of State” as the NDDB application directs requester to do. “Infinigy Engineering & Surveying LLC” is the correct company name.
14. Applicants reported compound area as 2,500 sq. ft. when in fact it is 5,625 sq. ft. of fenced utility compound and 10,000 sq. ft. of lease area (Drawing Z4 of the February 27, “2011” (actually submitted in 2012) Supplemental).
15. The applicants incorrectly stated the tower coordinates as latitude 41°39’26.09” longitude 73°8’9.81” for the DEEP that reflect a greater distance from the woodland edge than is actually noted in the field by the applicants’ tower center stake. The true coordinates are Latitude 41°39’25.48” Longitude 73°8’10.54” as stated by the applicants in their February 27, “2011” (actually submitted in 2012) Supplemental.
16. The applicants failed to note that the only trees remaining between the tower compound lease area and fence line would be a single row of trees along the fence line constituting "woodland edges" known to be habitat for the threatened species the American Kestrel (Alex photographic evidence Exhibit F admitted to Hearing on March 6, 2012).
17. The false information noted in section 18 above resulted in another letter of “no adverse effect” from the DEEP on January 6, 2012.

1. The DEEP did not perform an on-site visit to verify the accuracy and completeness of the application (DEEP letter of January 6, 2012).
2. The DEEP noted in their January 6, 2012 letter to the applicants that “this information is not the result of comprehensive or site-specific field investigations. Consultations with the Data Base should not be substituted for on-site surveys required for environmental assessments.” Mark Kiburz reported at the March 6, 2012 Hearing that he visited only the *original* site and only *once* on March 1, 2010 (February 27, 2012 Responses to Alex Interrogatory Q/A 89). He did not return to assess the new tower location, did not assess the site changes for impact on the listed threatened and endangered species, did not provide the DEEP with a comprehensive report including environmental assessments of all new findings pertaining to the habitat characteristics of the new tower site, did not know and did not contact Jenny Dickson (Session Woods Raptor Expert for the DEEP) to inquire about Bald Eagle nests in the City of Waterbury Watershed that adjoins the tower site (March 6, 2012 Hearing Transcript page 108 lines 1-2, and 9), and did not report that the 130’ “monopine” location might be considered a “high perch” along a woodland edge with a potential impact on nesting or perching American Kestrels in close proximity to operating antennas (January 4, 2012 Alex Exhibit: Art Gingert Kestrel Letter confirming nesting Kestrel populations on Gustafson farmland).
3. The applicants failed to fully and accurately report the site changes to the DEEP and perform a comprehensive site review on the new tower location despite knowledge of:
4. Art Gingert’s American Kestrel banding project on Gustafson’s farm (Intervenors Exhibit submission January 4, 2012);
5. the CT Audubon “Protecting CT’s Grassland Heritage” information on Kestrel range (Intervenors Robert and Cathleen Alex October 17, 2011 submission, Attachment 16);
6. the applicants’ consultant Mark Kiburz own testimony on Kestrel habitat (March 6, 2012 Hearing Transcript page 107 lines 20-21, also page 109 lines 15-19);
7. receipt of the DEEP’s January 6, 2012 letter listing the American Kestrel (Threatened Species) and the Eastern Meadowlark and Bobolink (both Species of Special Concern) as well as the letter noting “on-site surveys required for environmental assessments”.

The lack of any comprehensive on-site environmental assessment and review of the new tower location make the applicants in violation of NEPA t1.1307(a)(3)Listed, Threatened, or Endangered Species/Designated Critical Habitats which:

*“requires applicants, licensees, and tower owners (applicants) to consider the impact of proposed facilities under the Endangered Species Act (ESA), 16 U.S.C. s. 1531 et seq. Applicants must determine whether any proposed facilities may effect listed, threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed threatened or endangered species or designated critical habitats. Applicants are also required to notify the FCC and file an environmental assessment if any of these conditions exist”.*

1. Admitted into the record is a letter by Susan Tompkins (Intervenor Administrative Notice December 28, 2011) detailing her observations of prolific animal and insect behaviorat her family farm in Chester, Massachusetts *without* a nearby cell tower contrasting to another rented blueberry planting in Blandford, Massachusetts she managed *with* a nearby cell tower where a “noticeable *absence* of insects and animals” was noted. This was also confirmed by Alex Hoar at the Federal Fish and Wildlife office in Amherst, MA when he visited the Tompkins farms in person and as Susan stated, “His own impressions of insect and animal absence were congruent with mine”. Her information, although empirical in nature, is relevant to this project as it provides evidence as to the environmental incompatibility of a cell tower near a blueberry farm as it relates to animal and insect behavior (not health effects) and its potential negative environmental impact on the farms.
2. The applicants failed to answer or evaded the request to provide the actual power density released at the surface of the operating antennas they plan to use. This power density figure must be readily available and known to the engineer in order for him to calculate what the exposure might be to humans at varied distances from the antennas to meet FCC guidelines for thermal exposures. This is especially true for worker safety in close proximity to the antennas during maintenance. Despite repeated questioning at the March 6, 2012 Hearing regarding the power density of the antennas, this information was not provided with any specificity, only generalities that “all exposures would meet FCC guidelines” (March 6, 2012 Hearing Transcript pages 52-57). It was established that the antennas must be powered down for worker safety (March 6, 2012 Hearing transcript page 55 Lines 14-15) but the applicants refused to consider the consequences of this same power density on a perching American Kestrel or the bird abatement falcons for Evergreen Berry Farm when Lucia Chiocchio stated “I’m objecting to any questions regarding emissions and impacts [on falcons]” (March 6, 2012 Hearing page 118 line 12-13).
3. The applicants stated that with regard to the monitoring of power densities “that every site is different. In some cases it can be yearly” (March 6, 2012 Hearing page 63 Line 17-18) and that “I’d have to speak with counsel and ATT” in response to whether power density reports are available to the public (March 6, 2012 Hearing page 63 Lines 10-14). This answer raises concern as to why council would need to be approached to view data that should demonstrate full compliance with current FCC guidelines for human exposures unless there is concern by the applicants that the data may not be favorable or out of compliance with FCC guidelines.
4. The applicants stated that they do not obtain lightning strike data for potential tower sites and do not track lightning activity increases once the tower is in place (Applicants’ Responses to Q/A 49-50 Intervenor Interrogatories February 27, 2012). However the applicants do note in a letter to Dan Shriver on November 8, 2011 included in the applicants’ December 23, 2011 Supplemental that “the design acknowledges the height of a tower and the extension above the tree line makes it prone to receiving occasional lightning strikes.” This paucity of data collection on the part of the applicants does not provide any measure of confidence for the safety of visitors to Evergreen Berry Farm who may need to be evacuated sooner and more frequently from the berry fields when impending thunderstorms are in the area if a tower is constructed on an already lightning prone area. It was established at the October 27, 2012 public hearing at Watertown High School by adjoining landowner Donna Membrino that the ridge is prone to lightning strikes and has resulted in loss of property in the way of a barn fire, garage door strikes, and well strikes on both her and her mother Pricilla Membrino’s property both of whom are in close proximity and adjoining landowners to the proposed tower site (October 27, 2011 Public Hearing Transcript page 48 lines 6-10, 19-24).
5. The applicants’ consultant engineer Mr. Stevens stated that they [the applicants] “can’t comply with …comment No. 2 on the new access road once it leaves Litchfield [town road] of trying not to exceed the town’s standard of 7% for non-residential uses. I can’t meet that standard” (March 6, 2012 Hearing Transcript page 44 lines 15-20). The applicants’ maps show multiple areas of the access road at 15- 20% grade for a total of 370’ on highly erodible and fragile soils that currently slope towards Fenn Brook (February 27, “2011” (actually submitted in 2012) Supplemental, drawing number Z3 and Applicant Responses to Intervenors Alex Interrogatories February 27, 2012 Q/A 81). There is concern that if the new access road is not developed and maintained properly the run-off/erosion could impact Fenn Brook that is part of the City of Waterbury watershed. The applicants did not answer Intervenor Q82 “How will the particularly steep areas of the access road be maintained?” but merely referenced A59 that in turn referenced CGS Section 16-50x(a) (Applicant Responses to Intervenors Alex Interrogatories February 27, 2012 Q82 and A59).
6. The applicants’ original submission on August 8, 2011 presented a tower design for 150’ that would accommodate up to six carriers. In an effort to satisfy SHPO, the tower was reduced in height to 130’ which can now accommodate only 4 carriers. Mr. Stevens stated on behalf of the applicants that the proposed tower is “designed to accommodate 3 additional antennas. Four Total” (March 6, 2012 Hearing Transcript page 12 line 7-10) also (February 27, 2011(actually submitted 2012) Supplemental Tab 1 Drawing Z6). The Siting Council is charged with “promoting the sharing of telecommunications towers in order to avoid their unnecessary proliferation” as referenced earlier and as detailed in the CGS CHAPTER 277a PUBLIC UTILITY ENVIRONMENTAL STANDARDS ACT Sec. 16-50aa on Tower Sharing. The applicants failed to provide our requested rendering of their potential coverage from the lowest carrier height and were unable to confirm if other carriers would be interested in a 130’ tower, knowing they would be co-located below the AT&T antenna array.
7. The applicants have stated that a 130’ tower at the Bassett Road location has the potential for better coverage than a 160’ tower at the Crestbrook location (as proposed by Sprint) but have failed to produce any specific coverage data for the Siting Council comparing the two sites in terms of Square Miles of Coverage and Population Coverage as they did for the proposed 150’ tower at Bassett Road (March 6, 2012 Hearing Transcript page 65 Lines 6-24 and page 66 lines 1-18). Specifically, the applicants provided a table in their August 8, 2011 submission Tab 1 pages 4-5 regarding the 150’ Bassett Road tower that indicated that “the current uncovered area of 8.2 square miles will be reduced to 5.4 square miles”. The applicants were also able to state “the current uncovered population of 3,795 will be reduced to 3,148”. This data was presented in easily read and interpretable charts. This is in contrast to the un-quantified coverage maps submitted by the applicants in Tab 4 of the February 27, “2011” (actually submitted in 2012) Supplemental for the 130’ tower.
8. The applicants did not generate any updated comparative charts that would show the reduction in Population Coverage and Square Mile Coverage between the original 150’ tower vs. the now proposed 130’ tower at Bassett Road; nor were any comparative charts for the Crestbrook location vs. the Bassett Road location provided to substantiate their claims that the Basset Road location is superior to the Crestbrook location.
9. Considering the Population Coverage and Square Mile Coverage detail the applicants provided for the 150’ Bassett Road tower, the un-quantified coverage maps for the 130’ tower submitted in the applicants Tab 4 of their February 27, “2011” (actually submitted in 2012) Supplemental cannot be considered useful comparative data to assist the Siting Council in their determination when they attempt to balance public need with limiting tower proliferation and environmental impact. The applicants have failed to clearly show with any specificity the degree of coverage loss both in Population Coverage and Square Mile Coverage with the tower reduction height to 130’.
10. The applicants have stated that other carriers including Sprint, T- Mobile, Metro PCS, and Verizon are aware of the site but that only Verizon is aware of the 130’ height. Mr. Howse reported on behalf of the applicants that “we didn’t get feedback from the site period, so the height itself has not come into question yet. Verizon is aware of the height” (March 6, 2012 Hearing Transcript page 68 lines 4-7). There is no commitment from other carriers to co-locate on the proposed 130’ monopine tower for 655 Bassett Road that can now support only 4 of the 5 carriers discussed at the March 6, 2012 Hearing.

Respectfully Submitted by Robert and Cathleen Alex