

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 ROUTE 198 IN THE
TOWN OF WOODSTOCK, CONNECTICUT

DOCKET NO. 423

April 9, 2012

NORTH ATLANTIC TOWERS, LLC & NEW CINGULAR WIRELESS PCS, LLC (AT&T)

POST HEARING BRIEF

Respectfully Submitted,

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PRELIMINARY STATEMENT

North Atlantic Towers, LLC (NAT) and New Cingular Wireless PCS, LLC (AT&T) (together the “Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post hearing brief in support of the Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for a tower facility in Docket 423. The Application addresses the public need for a new tower facility to provide service in the southwest portion of Woodstock along Routes 198 and 171 as well as surrounding areas and homes. Throughout the proceeding in this Docket, the Applicants provided data, testimony and responses to interrogatories demonstrating a comprehensive analysis of the public need for reliable service in this part of Woodstock, including review of possible siting alternatives and the potential environmental effects associated with the facility proposed in this Docket. The proceeding revealed that a tower facility is needed to provide service in this area of the State. Further, the proceeding established that the proposed Facility does not present any significant, aesthetic or environmental impacts to this part of the State. As such, the Applicants request that a Certificate be issued for the facility proposed in this Docket to meet the public need for wireless services to serve part of Woodstock.

STATEMENT OF FACTS

I. Public Need

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to access its wireless network. In this case, coverage gaps for reliable service exist in the southwest portion of Woodstock as evidenced by the RF data and testimony provided in this proceeding. (Applicants' Ex. 1, Attachment 1; Applicants' Ex. 2; Tr. March 8, 2012, 1:00 PM, pp.25-35).

As set forth in the record in this proceeding, there are no existing AT&T wireless facilities or other wireless facility structures or other tall structures within four (4) miles of the targeted search area that would sufficiently address AT&T's need for reliable service in this area. (Applicants' Ex.1, Attachments 1&2). Indeed, as demonstrated by Mr. Pollister's testimony in this proceeding, none of AT&T's existing sites or any of the existing towers facilities or approved tower facilities in Woodstock, Ashford or Pomfret would provide reliable service to this area of Woodstock. (Tr. March 8, 2012, 1:00 PM, pp.25-35).

II. NAT & AT&T Site Searches and Technical Consultation with the Town of Woodstock

Once it was determined that a new tower facility was needed to provide coverage in this part of Woodstock, AT&T began investigating properties in the site search area in February 2010. (Applicants' Ex. 2). NAT began its search for a site in this area in December 2009 based on its overall knowledge and understanding of existing carriers' networks and the coverage gap in this area of Woodstock. (Applicants' Ex. 2). After an initial search, AT&T agreed to pursue this project jointly with NAT. (Applicants Ex. 1, Attachment 2; Applicants' Ex. 2).

After confirming that there were no opportunities to locate a facility on a tower or other tall structure and determining that no other usable locations for a new tower facility were available, NAT's search yielded the host parcel of this Application located at Route 198, an approximately 128 acre undeveloped property located approximately 0.7 miles north of the intersection of Bigelow Hollow Road and Eastford Road. (Applicants' Ex. 1, Attachment 2).

By letter dated March 7, 2011, the Applicants filed a technical report with the Town of Woodstock with specific details regarding the proposed facility at Route 198. (Applicants' Ex. 1, Bulk Filing). The Technical Report included detailed information about the public need for a tower facility in this part of the State, explained the site selection process and the environmental effects of the proposed facility including a visual report. (Applicants' Ex. 1, Bulk Filing).

Prior to submission of the Technical Report, the Applicants met with the Woodstock Telecommunications Task Force in October of 2010 to discuss the preliminary plans for the proposed facility. (Applicants' Ex. 1, Attachment 8, pp. 23-24). Subsequent to the submission of the Technical Report, the Applicants met with the Woodstock Telecommunications Task Force on May 9, 2011, during which meeting the Telecommunications Task Force provided comments on the Applicants' proposal and requested information on potential alternative sites. (Applicants' Ex. 1, Attachment 8, pp. 23-24). On June 6, 2011, the Applicants submitted supplemental information to the Woodstock Telecommunications Task Force in response to their requests. (Applicants Ex. 1, Attachment 8).

III. The Applicants' Certificate Application & Pre-Hearing Filings

On October 20, 2011, the Applicants submitted their application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility located at

Route 198 in Woodstock, Connecticut. The application was subsequently identified by the Siting Council as Docket No. 423.

The Application detailed a proposed facility which would consist of a 150' high self-supporting monopole within a 75' x 75' fenced equipment compound enclosed by a chain link fence in the southeast portion of the parcel. AT&T would install up to twelve (12) panel antennas on a platform at a centerline height of 147' above grade level (AGL) and unmanned equipment cabinets within the compound. Both the monopole and equipment compound were designed to accommodate the facilities of at least five (5) other wireless carriers. The original vehicular access to the facility detailed in the October 20, 2011 Application was provided from Route 198 by an easement over the adjacent parcel located at 530 Route 198 over an existing driveway a distance of approximately 425', then along a new 12-foot wide gravel access drive on the subject parcel a distance of approximately 4, 275'. The route of the original access drive on the subject parcel followed an existing trail. Utilities to serve the facility would be extended from a utility pole on the adjacent parcel. (Applicants' Ex. 1, Attachment 3).

On December 2, 2011, the Applicants conducted a noticed balloon float at the proposed facility site. On December 20, 2011 the Applicants submitted responses to Siting Council pre-hearing interrogatories and on December 22, 2011, the Applicants submitted an updated visual analysis incorporating "leaf-off" conditions. A public hearing was scheduled by the Siting Council in the Town of Woodstock for January 10, 2012. This proceeding did not include any parties or intervenors.

IV. Public Hearing, Supplemental Submission, Access Drive Update and Continued Hearing

On January 10, 2012 several members of the Siting Council conducted an official site visit hiking the proposed access drive and touring the proposed location of the tower and proposed equipment compound area. The Applicants raised a balloon at the proposed site to a height representative of the proposed tower height. The balloon was placed approximately 21.5' to the east of the proposed tower location due to the fact that the tree canopy at the tower location prohibited the balloon float. (Applicants' Ex. 10). Due to the wind conditions that afternoon, five balloon replacements were required between approximately 2:00 pm and 4:02 pm, at which time the balloon float was concluded. (Applicants' Ex. 10). At the start of that day's public evidentiary hearing, a facility/site walk video was shown for the members of the Siting Council that did not hike the access drive. (Tr. January 10, 2012, 3:00 PM, pp.9-12). At the evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the proposed facility, the investigation of alternative sites and any environmental effects associated with construction of a tower at the proposed location.

A continued hearing was then scheduled for March 8, 2012 for continued cross examination by the Siting Council. On February 22, 2012, the Applicants submitted responses to a second set of Siting Council interrogatories which responses detailed a replacement access drive via an easement on the parcel located at Route 171 (Map/Block/Lot 5789/37/16) and owned by Michael Farley. As detailed therein, the replacement access drive is approximately 1,725' shorter than the original access drive, thus requiring less disturbance and tree removal than the original access drive. (Applicants' Ex. 10). In addition, utilities to serve the facility will extend from Route 171 and be installed underground. (Applicants' Ex. 10).

The continued hearing for Docket 423 was held on March 8, 2012 and closed on that day.
(Tr. March 8, 2012, 1:05PM, p. 50).

All interested persons, including interested members of the public have been given a full and fair opportunity to present information to the Siting Council as part of the hearing and Application process.

POINT I

A PUBLIC NEED EXISTS FOR A NEW TOWER FACILITY IN WOODSTOCK

Pursuant to Connecticut General Statutes (“CGS”) Section 16-50p, the Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need.” CGS § 16-50p(a)(1). In this Docket, AT&T provided coverage analyses and expert testimony that clearly demonstrated the need for a new tower facility to provide reliable wireless services to residents and the traveling public in the southwest portion of Woodstock along Routes 198 and 171 as well as the surrounding area. The RF evidence and Mr. Pollister’s testimony established that due to the terrain in this area of Woodstock and the size of the coverage gap, none of the existing surrounding facilities are viable sites for providing reliable service to this area Woodstock. (Applicants’ Ex. 1, Attachment 1; Tr. March 8, 2012, 1:00 PM, pp.25-35).

Mr. Pollister testified at the March 6, 2012 hearing and established through empirical data that 110’ AGL is AT&T’s minimum height at the proposed site to provide reliable service to this area. (Applicants’ Ex. 10; Tr. March 8, 2012, 1:05PM, pp. 39-41).

The public need for the proposed facility is also validated by the fact that no competent evidence or testimony was offered by others to rebut the testimony on the subject of a public need for a new tower in this part of Woodstock.

Based on the verified RF evidence in this proceeding, the Applicants submit that the public need for a new tower facility in this area of Woodstock to provide coverage where adequate and reliable coverage does not exist today is simply not at issue in this Docket.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE PROPERTIES FOR SITING THE PROPOSED WIRELESS FACILITY

The Applicants submitted comprehensive evidence demonstrating that there are no existing structures or other viable alternative properties for providing reliable service to this area of Woodstock. Siting options in this area of Woodstock are limited by the mountainous terrain and valley to the east. NAT's and AT&T's searches included the review of several larger parcels in the area and a property owned by the Connecticut Department of Transportation (CTDOT). (Applicants' Ex. 1, Attachment 2). The evidence in this proceeding established that none of these alternatives were feasible sites for providing needed service to this area of Woodstock. (Applicants' Ex. 1, Attachment 2; Applicants' Ex. 10).

In response to Siting Council interrogatories, the Applicants demonstrated that a Town-owned parcel on Hawkins Road in this area of Woodstock was not a viable alternative given that a facility at this location would not provide reliable service to the area where service is needed. (Applicants' Ex. 10). The Applicants also demonstrated that the CTDOT property in the area is also not a viable alternative site as a facility at this location would leave significant gaps to the north and along Route 198. (Applicants' Ex. 10).

It is noteworthy that no other viable alternative sites were offered by others in this proceeding and that the record contains no evidence to rebut the Applicants' evidence that there are no other viable alternative sites.

Based on its comprehensive investigation of alternative sites and locations, the Applicants submit that there is simply no other viable alternative location for the siting of its needed tower facility.

POINT III
THE PROPOSED TOWER FACILITY AT ROUTE 198 PRESENTS
NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to CGS Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. The Applicants respectfully submit that the proposed Facility will have no significant environmental effects on the resources listed in Section 16-50p of the General Statutes and clearly do not outweigh the public need for the facility as proposed in this Docket.

A. Potential Visual Effects

The record in this Docket demonstrates that at the proposed height of 150' AGL, the proposed tower facility will not have a significant visual impact. (Applicants' Ex.1, Attachment 5; Applicants' Ex. 3). The total area of visibility of the proposed 150' tall tower is less than two percent of the approximately 8,042 acre study area. (Applicants' Ex. 3). Anticipated year-round views of the upper portion of the proposed 150' tall tower from the area of the Shaw Road Triangle and Barber Road, approximately 0.5 miles from the proposed facility, are limited to five residences. Visibility of the proposed 150' tall facility is not expected from the Chamberlain Mill Site or the Stoggy Hollow Restaurant & General Store. (Applicants' Ex. 3). The two designated historic sites in Woodstock are located more than two miles from the proposed facility and the proposed facility is not expected to be visible from either historic designated site. (Applicants' Ex. 3). Indeed, upon review of the proposed facility, the State Historic Preservation Officer (SHPO) issued a no adverse effect determination for the proposed facility. (Applicants' Ex. 1, Attachment 7).

The Applicants also provided evidence of the visibility of a facility at AT&T's minimum height of 110' AGL and photosimulations of a monopine designed facility at both 150' AGL and 110' AGL. (Applicants' Ex. 10).

The Applicants respectfully submit that their verified visual exhibits and testimony in this proceeding demonstrate that the proposed facility at 150' AGL will not have a significant visual impact.

B. Potential Impacts to the Natural Environment

As clearly established in this Docket, while the proposed facility will result in some impacts to the natural environment, the proposed facility design will minimize impacts such that any impacts will not be significant and do not outweigh the public need for the proposed facility.

1. Wetlands, Watercourses, and Floodplains

As shown in the record in this proceeding, the replacement access drive represents an approximately 50% reduction in wetland and watercourse area of disturbance. (Applicants' Ex. 10). The Applicants demonstrated that the wetlands crossings associated with the access drive are designed to minimize wetland discharges to the maximum extent. (Applicants' Ex. 10). It is expected that the proposed wetlands crossing will meet all Army Corp of Engineers (ACOE) Category 1 Programmatic General Permit conditions. Impacts will be further minimized by the installation of the proposed access drive in accordance with the CTDOT Highway Design Manual and the fact that both the access drive and facility will be constructed in accordance with the Connecticut Guidelines for Soil Erosion and Sediment Control. (Applicants' Ex. 10). Indeed, as demonstrated by the Applicants, the design of the proposed access drive and facility will have less of an impact to the natural environment than the existing logging road disturbances on the

access drive parcel and the water quality on this parcel will be enhanced by the access drive design. (Applicants' Ex. 10).

In addition, the record details the protection and monitoring measures that the Applicants will incorporate given the location of the host property within a public water supply watershed. (Applicants' Ex. 4). In correspondence dated December 27, 2011, the Connecticut Department of Public Health confirmed that these measures were appropriate and protective of the watershed.

Therefore, the Applicants submit that the proposed facility will not result in a significant impact to wetlands or watercourses.

2. Wildlife

In response to a request by the Applicants for Natural Diversity Database (NDDDB) State Listed Species review, the DEEP determined that there are no extant populations of Federal or State Endangered, Threatened or Special Concern Species that occur on the property. (Applicants' Ex. 10). The Applicants respectfully submit that the proposed facility will not significantly impact wildlife or any ecological balance in this area of Woodstock.

3. Clearing and Grading

As detailed in the record in this proceeding, the replacement access drive represents a reduction in the required area of disturbance by approximately 50% from the original access drive. (Applicants' Ex. 10). The replacement access drive will follow an existing woods trail to minimize clearing and grading. (Applicants' Ex. 10). The record details the stormwater design for the access drive which includes roadside swales to direct water to the stone berm level spreaders and stone-lined swales for areas where the access drive slope exceeds 12%. Indeed,

the record demonstrates that the proposed access road design and stormwater management plan will ensure that pre and post runoff rates remain the same. (Applicants' Ex. 10).

Accordingly, the Applicants submit that the proposed facility will not have a significant impact to the natural environment.

C. Other Environmental Considerations

There are no other relevant or disputed environmental factors for consideration by the Council in this Docket. The tower facility will comply with all public health and safety requirements. Additionally, since the facility is unmanned with few vehicle trips, there will be no impacts to traffic, air or water. As such, the Council should find and determine that the facility proposed by NAT and AT&T has few if any environmental effects.

CONCLUSION

The Applicants have demonstrated a public need for and lack of any significant adverse environmental effects associated with its proposed 150' tower facility at Route 198 in Woodstock. AT&T's evidence and testimony established a public need for the proposed facility and no competent evidence challenging the public's need for the tower to provide reliable wireless services was presented in this proceeding. NAT and AT&T's evidence demonstrated that it conducted an exhaustive review of alternatives and the results of these analyses shows that the proposed site at Route 198 is the only viable location for the siting of the needed facility. Moreover, the Applicants have established that any environmental effects associated with the proposed facility are not significant and do not outweigh the established public need for the facility.

For the reasons set forth in this legal brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for the proposed facility at Route 198 in Woodstock.

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.

Dated: April 9, 2012


Lucia Chiochio

cc: Randy Howse, North Atlantic Towers, LLC
John Stevens, Infinigy Engineering
Michele Briggs, AT&T
John Favreau, Infinigy Engineering
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