

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

In Re:

APPLICATION OF MESSAGE CENTER
MANAGEMENT INC. (MCM) FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION,
MAINTENANCE AND OPERATION OF A
TELECOMMUNICATIONS TOWER FACILITY AT 4
DITTMAR ROAD IN THE TOWN OF
REDDING, CONNECTICUT

DOCKET NO. 425

April 26, 2012

MESSAGE CENTER MANAGEMENT INC. (MCM)

POST HEARING BRIEF

Respectfully Submitted,

Christopher B. Fisher, Esq.
Daniel M. Laub, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, New York 10601
(914) 761-1300

PRELIMINARY STATEMENT

Message Center Management, Inc. (MCM) (the “Applicant”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post hearing brief in support of its Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for a replacement tower facility as proposed in Docket 425. The Application addresses principally the public need for a replacement tower facility (“Facility”) to provide service for T-Mobile in Northern Redding, and Southern Bethel to portions of Route 107, Route 58, other local roads as well as surrounding areas and homes. Throughout the proceeding in this Docket, the Applicant provided data, testimony and responses to interrogatories regarding the existing tower facility and its lack of structural capacity of the existing tower to support additional telecommunications equipment for current wireless carrier tenants AT&T and Sprint/Nextel, a proposed carrier T-Mobile, and future carriers and the Town of Redding Police Department. Additionally, the application process has resulted in a thorough disclosure of the potential environmental effects associated with the proposed replacement facility proposed in this Docket, all of which are highly localized. In fact, many of the areas of potential concern are proposed to be mitigated when compared with the existing facility through replacement of the guyed lattice tower with a slightly taller monopine and the addition of screening and noise reduction improvements through the use of solid compound fencing and plantings. Further, this proceeding presents the opportunity for the Council to formally issue a Certificate for the facility, which is currently under its jurisdiction, and in turn provide greater regulatory oversight and enable MCM to take a greater role in the maintenance and operation of the site for the benefit of all parties.

STATEMENT OF FACTS

A. Public Need

The existing tower's history dates back prior to cellular communications and was originally a paging and communications tower approved locally by the Town of Redding Planning & Zoning Commission ("Commission"). The tower was approved by the Commission in 1992 and is owned by the property owner. The Applicant, MCM, acquired an operating interest in the tower site in 1996. In 2002, the Siting Council, having taken jurisdiction of telecommunications towers in the state, approved AT&T's shared use of the tower. In 2005, a petition for a declaratory ruling by Nextel to extend the existing guyed lattice tower by 10' was denied. See CSC Petition No. 735. In 2006, the Council subsequently allowed an exempt modification of the existing tower for Nextel's (now Sprint) use of the facility. The existing tower facility is listed on the Siting Council's statutory database of approved telecommunications sites and as such is a preferred location for any shared use by wireless carriers pursuant to Sections 16-50p and 16-50aa of the Connecticut General Statutes. (Applicant's Ex. 1)

MCM has received requests for additional shared use of the tower from commercial wireless carriers. In lieu of any piecemeal modifications to the tower which were rejected previously by the Council, and in light of the existing tower's structural limitations, MCM is proposing a replacement tower and modified facility to comprehensively address the current and future operation of the site under a formal Certificate. MCM's Application incorporates numerous requests from abutting property owners that provided their input through a coordinated technical consultation with Natalie Ketcham, the Town of Redding First Selectman. While the Council's regulations do have procedural opportunities for tower replacement by exempt modification or a petition for a declaratory ruling, MCM decided to submit a full application to

the Council given the lack of a formal Certificate for the existing tower facility and to facilitate MCM's acquisition of the tower site by lease to more specifically address neighboring property owner concerns regarding long term maintenance and operation of the site.

As demonstrated in this Docket, T-Mobile's level of existing wireless service in the area surrounding the proposed replacement Facility is below its minimum design threshold (T-Mobile's Exhibits 1 & 2, Responses to Council Interrogatories see also T-Mobile's Exhibit 1, Propagation plots included in MCM's Application dated January 6, 2012). Testimony supported that a 120 foot height is necessary in order for T-Mobile to provide its services in the area (Tr. March 27, 2012 3:00 pm, p.106; see also propagation plots included as Applicant's Ex. 1, Attachment 1 / T-Mobile's Ex. 1). In fact, even if the existing tower could structurally accommodate T-Mobile antennas, the next available space on the existing tower is at 85' AGL which would allow for only degraded coverage that is unreliable and unable to meet T-Mobile's coverage requirements in this area of the State. (Tr. March 27, 2012 3:00 pm, p.106). As such there has been uncontroverted evidence supplied in the proceeding that a new tower with a minimum height of 120' is required for service to be reliably provided to the public.

B. MCM's Technical Consultation with the Town of Redding

The Applicant reached out to Redding's First Selectman early in 2011. At preliminary meetings, MCM representatives shared information about the need to replace the existing tower and provided the First Selectman with a visual analysis of a proposed lattice tower replacement on May 5, 2011. (Applicant's Ex. 1, Attachment 7). As part of an ongoing dialogue, First Selectman Ketcham inquired about various alternative tower designs and an updated visual analysis was forward to First Selectman Ketcham on May 24, 2011, which included photo simulations of a monopine tower. (Applicant's Ex. 1, Attachment 7)

MCM then submitted a formal Technical Report to the First Selectmen of Redding and Bethel on August 2, 2011. (Applicant's Ex. 1, Bulk File Item E). The Technical Report and subsequent additional submissions included detailed information about the public need for a new Facility in this part of the State and explained the environmental effects of the proposed facility including visual photo simulations. (Applicant's Ex. 1, Attachment 7; Applicants Ex. 1 Bulk File Item E). The Town of Bethel, within 2500' of the Facility site, sought no consultation from MCM even after follow up correspondence. (Applicant's Ex. 1, Attachment 7).

In Redding, the First Selectman convened a series of meetings with abutting property owners and MCM continued to elicit and received input on various alternative tower locations on the property, tower designs, and screening options. Through the Town of Redding First Selectman, abutting property owners shared with MCM various requests and preferences for any replacement facility and a subsequent application to the Council. MCM's Application was responsive to these requests in that it confined the tower replacement to the "same" location (i.e. immediately adjacent to the existing tower), incorporated a monopine design with faux bark and a significant density of branching, and included residential character fencing with significant compound landscaping for both screening and noise reduction.

C. The Applicant's Certificate Application & Pre-Hearing Filings

On January 9, 2012, MCM submitted its application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility located at 4 Dittmar Road in Redding, Connecticut. The application was subsequently identified by the Siting Council as Docket No. 425. The Application details a proposed replacement facility which would consist of a 120' high self-supporting monopole with stealth features to resemble an evergreen tree (overall height of 127') and a 2,360 square foot expansion to the existing fenced

equipment compound, enclosed by an 8 foot wood slat fence in largely the same location as the existing facility. (Applicant's Ex. 1, Attachment 3). T-Mobile would install up to nine (9) panel antennas at a centerline height of 120 feet above grade level along with unmanned equipment at grade. (Applicant's Ex. 1, Attachment 3). Both the replacement monopole and expanded equipment compound are designed to accommodate the existing and expanded facilities of carriers currently on the existing tower. Vehicular access and utilities to the facility would be maintained in the same locations with improvements such as modest grading and gravel and an improved power supply to the site. (Applicant's Ex 1, Attachment 3)

The Town of Redding sought party status which was granted on February 16, 2012. The Applicant submitted responses to Siting Council pre-hearing interrogatories dated January 27, 2012. On March 20, 2012, the Applicant submitted responses to interrogatories of the Town of Redding. (Applicant's Ex. 4). A public hearing was scheduled by the Siting Council in the Town of Redding for March 27, 2012.

D. Public Hearing

On March 27, 2012 the Siting Council conducted an official site visit touring the existing access drive, the location of the existing tower and compound as well as the location of the proposed replacement Facility including the tower and expanded compound. The Applicant attempted to raise a balloon at the proposed site to a height representative of the proposed tower height of 120' AGL though weather conditions were not conducive to a sustained or successful flight (Tr. March 27, 2012 3:00 pm, p. 13). At that day's public evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicant's panel of witnesses as well as those of T-Mobile on the need for the proposed facility and the minimal environmental effects associated with construction of a replacement tower at the 4 Dittmar Road location.

All interested persons, parties and intervenors, 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 REDDING

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, MCM together with intervenor T-Mobile provided coverage analyses and expert testimony that clearly demonstrated the need for a new tower replacement to provide reliable wireless services to residents and the traveling public in the northwest portion of Redding along Routes to portions of Route 107, Route 58, local roads as well as to surrounding areas and homes. (Applicant Ex. 1, Attachment 1, T-Mobile Ex. 1). Indeed, T-Mobile’s Development Operation Manager Mr. Hans Fiedler testified that due to existing coverage gaps in Redding T-Mobile requires more than one facility to provide service to the Town of Redding and that they will be similarly utilizing other existing and approved tower sites in the community. (Tr. March 27, 2012, 3:00 PM, p. 87).

The radio frequency evidence in this proceeding also established that T-Mobile requires its antennas to be located at 120 feet to adequately serve this area of Redding. (Tr. March 27, 2012, 3:00 PM, p. 97). Mr. Scott Heffernan, radio frequency expert for T-Mobile, testified at the March 27, 2012 hearing that, as established through empirical data, a reduction in height of the T-Mobile antennas to a height of 85’ would not be viable even if the existing tower had such structural capacity and would not meet the coverage objective in this area. (Tr. March 27, 2012, 3:00 pm, p. 106).

The public need for the proposed facility was also validated by the fact that no evidence or testimony was offered by other parties or intervenors to rebut the testimony on the subject of a public need for a new tower in this part of Redding. Based on the verified radio frequency evidence in this proceeding, the Applicant submits that the public need for a replacement tower Facility in this area of Redding to provide coverage where adequate and reliable coverage does not exist today is simply not in controversy in this Docket.

POINT II

THE SITE HOSTS AN EXISTING TELECOMMUNICATIONS STRUCTURE AND MUST BE REPLACED TO ACCOMMODATE T-MOBILE AND OTHER WIRELESS CARRIERS ALREADY LOCATED ON THE EXISTING TOWER

The existing lattice tower at 4 Dittmar Road is inventoried on the Siting Council database as an approved Telecommunication Facility. As an already approved location hosting an existing tower and compound, the site is preferred by aspects of law, specifically 16-50aa and 16-50p of the Connecticut General Statutes. It is noteworthy that no other viable alternative sites were offered by other parties or intervenors and that no other parties or intervenors presented any evidence to rebut the Applicant's evidence that there might be other viable alternative site locations. In reviewing the existing tower, MCM determined that the existing lattice tower owned by the property owner has little or no capacity for an additional carrier and is past its useful life. (Applicant's Ex. 1, Attachment 2). As such, the Applicant submits that there is simply no other viable alternative location for the siting of a tower Facility.

POINT III

THE PROPOSED REPLACEMENT TOWER FACILITY AT 4 DITTMAR ROAD 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 Applicant respectfully submits 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 the existing tower height of 110' with antennas above as compared with the proposed replacement tower height of 120' AGL will produce no material change in viewshed (Applicant's Ex. 1, Attachment 3). The proposed replacement tower will simply not add additional areas of visibility and a 120' tall facility is not expected to produce significant views in leaf on or leaf off conditions. (Applicant's Ex. 5). Localized and limited views from abutting properties will be further addressed effectively through a monopine design. (Applicant's Ex. 5). The Council received expert testimony that while the replacement tower will be 10' taller, there will not be a significant change in views and due to proposed monopine stealthing (with faux bark and dense branching) the overall effect would be a reduction in visibility when compared to existing conditions. (Tr. March 27, 2012 3:00 pm, pp.16-17). Potential visual impacts of the replacement facility have been further addressed by the proposed vegetative screening around the compound and along the access drive. (Applicant's Ex. 3). The Applicant respectfully submits that the verified visual exhibits and testimony in this proceeding demonstrate that the proposed facility consisting of a 120' monopine will not have a significant visual impact and actually be an improvement over existing visual conditions of the 110' guyed lattice tower.

B. Potential Impacts to the Natural Environment

As clearly established in this Docket, impacts to the natural environment from MCM's proposed facility are not significant. In response to a request by the Applicant for Natural Diversity Database (NDDB) State Listed Species review, the DEEP determined that the proposed facility will not impact the grassland bird species occurring on or within vicinity of the site. (Applicant's Ex. 1, Attachment 4). 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. (Siting Council Administrative Notice Item 10). The record in this proceeding demonstrates that the proposed Facility complies with the Federal Communications Commissions' (FCC) guidelines for radio frequency emissions and the U.S. Fish and Wildlife Service Guidelines for Recommendations on Communications Tower Siting, Construction and Decommissioning. (Applicant's Ex. 2 – Response to Siting Council Interrogatories, dated February 16, 2012; Applicant's Ex. 1, Attachment 4). The Applicant respectfully submits that the proposed replacement Facility will not significantly impact wildlife or any ecological balance in this area of Redding.

As detailed in the record in this proceeding, the use of the existing access drive and compound area minimizes clearing and grading needed for the proposed replacement Facility and in particular the expanded compound. While some cut and fill is required, finished grading will be modest and no retaining walls will be required. (Applicant's Ex. 1 Attachment 3; Tr. March 27, 2012 3:00 pm, pp. 61-62). It is respectfully submitted that the proposed Facility will not have a significant impact to the natural environment.

C. Potential Noise Impacts

A noise study conducted by consultants for MCM concluded that the Facility as proposed will comply with the strictest applicable State noise standards for residential properties. (Applicant's Ex. 1 Attachment 6). The noise study included assumptions regarding the HVAC equipment used by existing carriers and it was noted for the record that T-Mobile's use of outdoor cabinets makes additional HVAC equipment unnecessary. (Tr. March 27, 2012 3:00 pm pp. 77-78). The applicant will conduct a post construction noise study to confirm the site's compliance with applicable noise standards. (Applicant's Ex. 4 – Responses to Town of Redding Interrogatories dated March 20, 2012). The Council also received professional expert testimony that in the unlikely event it was determined that the site did not comply with applicable noise standards, several mitigation measures and engineering controls would be available to reduce noise impacts to ensure compliance (Applicant's Ex. 4 – Responses to Town of Redding Interrogatories dated March 20, 2012; Tr. March 27, 2012 3:00 pm, p. 80).

D. 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 MCM has few if any environmental effects.

CONCLUSION

The Applicant, together with intervenor T-Mobile, has demonstrated a public need for and lack of any significant adverse environmental effects associated with its proposed 120' replacement tower Facility at 4 Dittmar Road in Redding. MCM's evidence, together with that of T-Mobile as Intervenor, established a public need for the proposed Facility. MCM and T-

Mobile's evidence demonstrated that the replacement Facility is the only location for the siting of the needed facility and that it poses minimal environmental effects, if any. Indeed, none of the information submitted by others to the Council altered these threshold considerations.

The Applicant, in collaboration with the Town and abutting property owners, has further addressed localized environmental effects through the use of several start of the art design techniques that, while expensive, are appropriate in the residential setting associated with this existing tower site. These include replacing the tower in the relatively same location which will require a concerted effort to coordinate with existing tower tenants to avoid disruption of existing services, the use of a monopine with a branch density that is well advanced as compared with early "tree" standards, the addition of faux bark to the tower, the inclusion of significant compound plantings and other site features. The Applicant respectfully submits that the Application as filed is appropriate for approval, subject to any reorientation of the plantings proposed by the Applicant that the Council could require in a D&M Plan filing. For the reasons set forth in this legal brief and as more fully evidenced by the record in this Docket, the Applicant submits that a Certificate should be issued for the proposed replacement and modified Facility at 4 Dittmar Road.

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 with copy to:

T-Mobile Northeast LLC
Julie D. Kohler, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT
jkohler@cohenandwolf.com

Town of Redding
Brad N. Mondschein, Esq.
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103
bmondschein@pullcom.com

Dated: April 26, 2012



Daniel M. Laub

cc: Maria Scotti, MCM
Virginia King, MCM
Hans Fiedler, T-Mobile
Christopher B. Fisher, Esq.