

December 28, 2012

VIA FEDERAL EXPRESS

Robert Stein, Chairman  
And Members of the Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051  
Email: [siting.council@ct.gov](mailto:siting.council@ct.gov)


Re: Docket No. 429  
New Cingular Wireless  
Willington, Connecticut

Dear Chairman Stein and Members of the Council:

On behalf of New Cingular Wireless PCS, LLC ("AT&T"), please find enclosed an original and 15 copies of a Post-Hearing Brief with respect to the above referenced Docket.

Please do not hesitate to contact me should the Council or staff have any questions regarding the enclosed.

Very truly yours,



Daniel M. Laub

DML/rh

Enclosures

cc: Michele Briggs, AT&T  
David Vivian, SAI  
Anthony Wells, C Squared  
Dean Gustafson, VHB  
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STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF 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 LOCATED IN  
WILLINGTON, CONNECTICUT

DOCKET NO. 429

DECEMBER 28, 2012

NEW CINGULAR WIRELESS PCS, LLC ("AT&T")  
POST HEARING BRIEF

Respectfully Submitted,

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## PRELIMINARY STATEMENT

New Cingular Wireless PCS, LLC (“AT&T”), by its attorneys Cuddy & Feder LLP, respectfully submits this post-hearing brief in support of its application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 429. AT&T’s Application addresses the public need for a new tower facility so that wireless carriers may provide their services to residents, travelers along State Routes 74 and 320 and local roads and areas in the Town of Willington. Throughout the proceedings in this Docket, AT&T provided data, testimony and otherwise responded to matters raised by the Town and parties to the Docket to give the Council a full and complete picture of the public need for reliable service in this part of Willington. AT&T proposed two possible siting alternatives and provided the potential environmental effects associated with each proposed tower facility. Further, that while there are some impacts associated with each proposed Facility candidate, these impacts can be appropriately mitigated and do not outweigh the demonstrated public need for a Facility in Willington. As such, AT&T is requesting a Certificate for a new tower facility to meet the public need for wireless services in this area of Willington.

## STATEMENT OF FACTS

### **I. AT&T's Need & Comprehensive Site Search**

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, AT&T experiences a gap in coverage in Willington along Routes 74 and 320 and local roads and areas. AT&T Ex. 1. p. 9., Tab 1. Thus, AT&T's RF engineers established a site search area (SR1107) based on this documented gap in coverage AT&T Ex. 1. p. 9, Tab 1. Indeed, AT&T's coverage gap in this area of Willington was further documented by drive-test data. AT&T Ex. 1, Tab 1.

AT&T began its search for sites by identifying all existing sites in Willington and surrounding towns as shown on the existing coverage map and list of neighboring sites included in the Application. AT&T Ex. 1, pg. 11, Tabs 1 & 2. AT&T also searched the Siting Council database to identify other existing or proposed wireless sites outside of its site search area. AT&T Ex. 1, pg. 11-12. AT&T currently maintains a number of existing facilities on surrounding wireless sites in proximity to the site search area and other structures were analyzed and determined not to be viable alternatives for providing service to AT&T's identified coverage gap. Wells, Tr. October 11, 2012, 3:00, pp. 43-44.

Once it was determined that a new tower facility was needed to provide coverage in this part of Willington, AT&T investigated numerous properties within the site search area, AT&T Ex. 1, pg. 12 - 13, Tab 2 (Site Search Summary). As set forth in the Application itself, AT&T investigated a total of nine (9) locations. AT&T Ex. 1, pg. 12 - 13, Tab 2.

Representatives for AT&T originally identified eight (8) parcels for a potential facility ultimately identifying the Candidate A location on Tolland Turnpike as one which could host a

facility and provide reliable service to the targeted coverage area. AT&T Ex. 1, p. 12, Tab 2. As originally contemplated, this location would have hosted a 190' tall monopole. Review by the State Historic Preservation Officer ("SHPO") deemed a tower at that height to have a potentially adverse impact on the Willington Green located near the intersection of Routes 302 and 72, a historic resource. The Town of Willington Conservation Commission also noted its objection to a facility at the Candidate facility for similar reasons. AT&T Ex. 1, Tab 6. AT&T was able to subsequently reduce the height of the proposed monopole at this location to 160'.

In light of SHPO's concerns, however, AT&T subsequently identified an alternate location proposed in this Docket as the Candidate B Facility. By letter dated October 4, 2011 AT&T provided a Technical Report with details of both candidate facilities to the Town of Willington. Bulk Filing dated July 23, 2012. Subsequent discussions with the First Selectman and Town Staff indicated a preference for the proposed Candidate A Facility noting that the reduced height (160') appeared to minimally impact the Willington Green and the proposed location was in an existing gravel mining operation near other commercial ventures. AT&T Ex. 1 p. 12. The Candidate B Facility is less preferred by the Town of Willington due to its proximity to residential homes and Old Willington Road, a local dirt road of generally rural nature. AT&T Ex. 1, Tab 6 (Municipal Correspondence).

The Candidate A Facility provides AT&T with superior coverage along Route 74 and is AT&T's preferred Candidate. Tr. October 11, 2012, 3:00, p 56. Given the Town preference for the Candidate A Facility, the proximity and visibility of other utility infrastructure in the area, and the superior coverage, representatives for AT&T asked SHPO to once again review the proposal and SHPO subsequently issued a determination of No Adverse Impact". SHPO Letter dated November 28, 2012; Administrative notice requested December 5, 2012.

## **II. AT&T's Technical Consultation with the Town of Willington**

In October of 2010, AT&T filed a technical report with Willington which included specifics about the proposed site, the public need for the facility, the site selection process and the environmental effects of the proposed facility including a visual report. AT&T Ex. 1, pp. 22-23, See also, Technical Report bulk filed with Siting Council. A meeting and site walk were subsequently conducted with town officials. AT&T Ex. 1, pg. 23.

## **III. AT&T's Certificate Application, Parties & Intervenors & Pre-Hearing Filings**

On July 24, 2012 AT&T submitted its application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility at one of two candidate locations. The site of AT&T's proposed Candidate A Facility is Tolland Turnpike. The proposed Facility consists of a new 160' monopole and associated unmanned equipment. AT&T will mount up to twelve (12) panel antennas and twelve tower mounted amplifiers on a low profile platform at a height of 157' AGL. A 12' by 20' equipment shelter will be installed adjacent to the tower within a 45' x 80' gravel compound. The site of AT&T's proposed Candidate B Facility is Old South Willington Road. The proposed Facility consists of a new 190' monopole and associated unmanned equipment. AT&T would mount up to twelve (12) panel antennas and twelve tower mounted amplifiers on a low profile platform at a height of 187' AGL. A 12' by 20' equipment shelter will be installed adjacent to the tower within a 75' x 75' gravel compound.

Intervenors admitted to the proceeding were Robert and Marissa Golden. AT&T submitted responses to Siting Council pre-hearing interrogatories on September 4, 2012. AT&T Ex. 3. On October 4, 2012, AT&T submitted responses to a second set of Siting Council pre-hearing

interrogatories. AT&T Ex. 4. A field visit, balloon float and public hearing were scheduled by the Council for October 11, 2012.

#### IV. Public Hearings and AT&T Supplemental Submissions

On October 11, 2012, AT&T raised balloons at both candidate locations and the Siting Council conducted a viewing of each candidate. Due to weather conditions, the balloons were raised to the full height on a limited basis. Tr. October 11, 2012, 3:00, pp 32-33. At the hearing, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the need for the facility, lack of other alternative sites and any environmental effects associated with construction of a tower at the site at each candidate location. After the public hearing evening session, the intervenors cross-examined AT&T's witnesses.

Thereafter, the public hearing was adjourned and subsequently closed on December 3, 2012 after all of the Applicant and intervenors were given a full and fair opportunity to present their direct cases and the Applicant rebutted same.

**POINT I**  
**A PUBLIC NEED CLEARLY EXISTS**  
**FOR A NEW TOWER FACILITY IN WILLINGTON**

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 demonstrates the need for a new tower facility to provide reliable wireless services to residents and the traveling public along Routes 74 and 320 in Willington. Indeed, the application materials provided by AT&T fully demonstrate that a tower is needed in this area at a minimum height of 160’ AGL in the case of Candidate A and 190’ in the case of Candidate B to provide reliable wireless telecommunications service to the public. AT&T Ex. 1, Tab 1; AT&T Ex. 3, Response A16.

Importantly, it should be noted that no competent evidence or testimony was offered by other parties or intervenors to rebut AT&T’s testimony on the subject of a public need for a new tower in this part of Willington. Based on the AT&T evidence, State knowledge of the existing wireless network infrastructure in this part of the State for all the carriers and the lack of any evidence to the contrary, AT&T submits that the public need for a new tower facility in this area of Willington 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**  
**FOR SITING THE PROPOSED WIRELESS FACILITY**

AT&T submitted significant evidence that there are no existing structures, or other viable alternative properties for providing reliable service to this area of Willington. AT&T’s search for sites included a comprehensive investigation of nine (9) locations prior to the submission of



its Application. AT&T Ex.1, Tab 2. As demonstrated by AT&T's evidence and testimony, due to the terrain challenges in this area of Willington, many properties were not viable alternatives for radio frequency reasons. AT&T Ex.1, Tab 2. Other parties offered no other viable alternative sites or configurations or intervenors and no other party or intervenor rebutted AT&T's evidence that there are no other viable alternative sites. Based on its comprehensive investigation of alternative sites and locations AT&T submits that there is simply no other viable alternative location for the siting of its needed tower facility.

### POINT III

#### **NEITHER OF AT&T'S CANDIDATE TOWER FACILITIES PRESENTS ANY 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. AT&T respectfully submits that while some impacts will be associated with the proposed facility, such impacts 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.

#### **1. Potential Visual Effects**

AT&T respectfully submits that the evidence and testimony in this proceeding, as summarized below, demonstrates that visibility of either proposed Candidate facility will not result in a significant adverse visual impact.

#### **a. Candidate A**

The record in this Docket demonstrates that the proposed Candidate A tower facility at Tolland Turnpike will have no significant visual impact. A resource listed on the National Register of Historic Places, the Willington Green, is located approximately 0.5 mile from the proposed facility. The record indicates that a very small portion of a 160' tower may be seen beyond trees and telephone poles. AT&T Ex. 3(B), Libertine, Tr. October 11, 2012, 3:00, p. 16. The State Historic Preservation Officer (SHPO) determined, however, that the proposed facility will "have no adverse effect" on the defining characteristics of the National Register-listed site. Given the SHPO determination and AT&T's visual evidence, it is respectfully submitted that the proposed facility will not have a significant visual impact to the Willington Green. Indeed, of

the over 8,000 acre study area within a 2-mile radius of the Candidate A Facility , visibility will be limited to approximately 88 acres with the majority of year-round visibility occurring on the property of the underlying property owner; land utilized for gravel mining. AT&T Ex. 1, Tab 3(B). Tr. October 11, 2012, 3:00, p.17. With respect to residential visibility an estimated 11 residential properties can have year-round views of a portion of a tower and 6 residential properties along Old Farms Road may have at least partial year-round views of the proposed Facility. AT&T Ex. 1, Tab 3(B). In order to reduce visibility of the structure, AT&T can implement an appropriate design to minimize the obtrusiveness of the tower. Tr. October 11, 2012, 3:00, p. 67.

**b. Candidate B**

The proposed Candidate B tower facility at Tolland Turnpike will have no significant visual impact. The areas where the proposed tower would be visible above the tree canopy comprise just 20 acres within the over 8,000 acre study area. AT&T Ex. 1, Tab 4(B). Indeed a majority of year-round visibility occurs over open water or undeveloped land. AT&T Ex. 1, Tab 4(B). With respect to residential visibility an estimated six (6) residential properties can have at least partial year-round views of a portion of a tower and 3 residential properties may have partial seasonal views of the proposed Facility. AT&T Ex. 1, Tab 4(B). The Council also received expert testimony that topography and vegetation will likely screen the tower from the neighboring residence in a manner that limits views to the upper portion of the facility. Libertine, Tr. October 11, 2012, 3:00, pp 52-53.

**2. Potential Impacts to the Natural Environment**

As clearly established in this Docket, impacts to the natural environment from AT&T's proposed facility are not significant.

#### **a. Wetlands, Watercourses, and Floodplains**

Two wetlands are associated with the Candidate A parcel. One system, close to Tolland Turnpike would be approximately 33 feet from the access road at its closest point and 415 feet from the tower compound. Gustafson, Tr. October 11, 2012, 3:00, p. 29. Best Management practices will be implemented to control storm water and erosion control during construction and no impacts to this system are anticipated. AT&T Ex. 1, Tabs 3 and 5.

One wetland is associated with the Candidate B Facility; a forested swamp approximately 100 feet east of the proposed access road and 79 feet from the closest area of disturbance. AT&T Ex. 1, Tab 5; Gustafson, Tr. October 11, 2012, 3:00, pp. 29-30. Best Management practices will be implemented to control storm water and erosion control during construction and no impact on this wetland is associated or anticipated with the proposed Candidate B Facility. AT&T Ex. 1, Tabs 4 and 5.

#### **b. Habitat Assessment and Wildlife**

As demonstrated in the record, AT&T conducted a habitat evaluation for both Candidate locations and submitted the results to the Connecticut Department of Energy and Environmental Protection (“DEEP”) for review. Upon review of AT&T’s habitat evaluation, in correspondence dated July 11, 2012, the DEEP determined that the proposed activities either Candidate “will not impact any extant populations of Federal or State Endangered, Threatened or Special Concern Species that occur in the vicinity.” AT&T Ex. 1, Tab 3(D) and 4(D). Given AT&T’s evaluations and the DEEP determination, AT&T respectfully submits that neither proposed facility will significantly impact wildlife or any ecological balance in this area of Willington.

#### **c. Clearing, Grading and Drainage Assessment**

The proposed access drive at Candidate A includes the improvement of 331' of an existing access way and a new portion of access drive 581' in length. AT&T Ex.1, Tab 3(A). The access drive and tower compound will require grading and clearing. AT&T Ex.1, Tab 3(A). Approximately 55 trees with a diameter at breast height of 6" or larger will be removed. AT&T Ex.1, Tab 3(A). The development of the proposed compound and access drive improvements will require approximately 111 cubic yards of cut and 151 cubic yards of fill. AT&T Ex. 2., response A5.

The proposed access drive at Candidate B includes the installation 958' of new access drive. AT&T Ex.1, Tab 4(A). The access drive and tower compound will require grading and clearing. AT&T Ex.1, Tab 4(A). Approximately 115 trees with a diameter at breast height of 6" or larger will be removed. AT&T Ex.1, Tab 4(A). The development of the proposed compound and access drive improvements will require approximately 590 cubic yards of cut and 289 cubic yards of fill. AT&T Ex. 2., response A5.

As noted, AT&T's facility design for either candidate will incorporate all appropriate sediment and erosion control measures in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Council of Soil and Water Conservation. AT&T Ex. 1, Tab 3(A). Of note, the intervenors in this Docket did not provide any empirical data or evidence regarding drainage or runoff to rebut AT&T's evidence.

AT&T respectfully submits that it established that the proposed improvements for the access drive at either candidate will have no significant impact on the surrounding area and will allow for the safe access.

### **3. Other Environmental Considerations**

There are no other relevant or disputed environmental factors for consideration by the Council in this Docket. A tower facility at either candidate location will comply with all public health and safety requirements. Additionally, since the facility is unmanned, there will be no impacts to traffic, air or water. As such, the Council should find and determine that the facility proposed by AT&T will not have any significant environmental effects that outweigh the demonstrated public need for the proposed facility.

## CONCLUSION

AT&T has demonstrated a public need for and lack of any significant adverse environmental effects associated with a tower facility at either candidate location presented in this Docket in Willington. AT&T's evidence and testimony established a public need for the proposed facility and no party or intervenor presented competent evidence challenging the public's need for the tower to provide reliable wireless services. AT&T's evidence demonstrated that it conducted an exhaustive review of alternatives and the results of its analyses shows that the proposed Candidate locations are the only viable locations for the siting of the needed facility. Indeed, none of the information submitted by parties and intervenors rebuts the demonstrated lack of alternative siting options.

While there are environmental effects associated with the proposed facility, AT&T established that the effects are not significant and will not have a significant adverse impact. More importantly, any environmental effects associated with the proposed facility do not outweigh the established public need for the facility. The submissions by the parties and intervenors in this proceeding did not include any competent empirical data or analyses that rebutted AT&T's evidence.

For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for a facility at one of the two candidate locations proposed in Docket 429.

**CERTIFICATE OF SERVICE**

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

Robert and Marissa Golden  
52 Old South Willington Road  
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Dated: December 28, 2012



Daniel M. Laub

cc: Michele Briggs, AT&T  
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