STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

MESSAGE CENTER MANAGEMENT INC. ("MCM") AND NEW CINGULAR WIRELESS PCS, LLC ("AT&T") APPLICATION FOR CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR A TELECOMMUNICATIONS TOWER FACILITY IN REDDING, CONNECTICUT	DOCKET NO. 449 February 9, 2015

MESSAGE CENTER MANAGEMENT AND NEW CINGULAR WIRELESS PCS, LLC OPPOSITION TO THE CONNECTICUT STATE HISTORIC PRESERVATION OFFICER'S MOTION TO REOPEN MOTION TO REOPEN

Message Center Management and New Cingular Wireless, PCS, LLC ("AT&T"), Applicants in the above captioned Docket ("Applicants"), by their attorneys, Cuddy & Feder LLP respectfully submit this brief in opposition to the letter motion of the Connecticut State Historic Preservation Officer ("SHPO") dated January 2, 2015 requesting a reopening of the evidentiary/public hearing process in Docket 451.

I. The Docket may not be reconsidered under § 4-181a(a)(1) as SHPO is not a party, the time for requesting reconsideration has passed and there are no new facts, errors of law or other cause for reconsideration

The Uniform Administrative Procedures Act ("UAPA") provides that a party in a contested case may, within fifteen days after the personal delivery or mailing of a final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) An error of act or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. See C.G.S. § 4-181a(a)(1). As more fully set forth

herein, SHPO's motion for reconsideration must be denied on both a procedural and substantive basis under UAPA.

a. SHPO is not a party in Docket 449

SHPO did not request and was not granted party status in Docket 449. As the Siting Council (or "Council") Findings of Fact in Docket 449 reflect, the Application was served on SHPO and the Council itself provided follow up correspondence requesting comments from various state agencies including SHPO. Docket 449 Findings of Fact paras. 11, 18. The Siting Council received no correspondence from SHPO and there was no request for party status. Docket 449 Findings of Fact para. 22. Even if SHPO sought party status at this time, we note that the request to reopen the hearing was not made within fifteen days of the mailing of the final decision on November 3, 2015. As such, SHPO has no standing under UAPA to move the Council at this late date to become a party and seek to reopen and reconsider Docket 449.

b. There are no "new" facts or errors of law

The sole basis for SHPO's motion is a signed letter that is dated July 14, 2014 and which was apparently issued as part of MCM's consultation with SHPO in accordance with the FCC's National Environmental Policy Act ("NEPA") regulations governing tower siting. The existence of SHPO's signed correspondence was only made known to the Applicants once it was forwarded by SHPO to the Siting Council on December 23, 2014. Of note and while not relevant to the motion, SHPO's letter to the Siting Council on December 23, 2014 was actually in response to a December 8, 2014 letter from MCM's consultants to SHPO which noted the Siting Council's approval in Docket 449 for a 150' tall tower and that MCM's consultants were not in receipt of any

formal letter from SHPO as part of MCM's FCC NEPA consultations with that agency. As such, MCM's consultant advised SHPO in its December 8, 2014 letter that MCM intended to move forward with the project as approved by the Siting Council.[1]

Regardless and as the Council will recall, MCM's consultants at All-Points Technology had diligently sought any comments from SHPO (whether in furtherance of Section 106 of the National Historic Preservation Act or as part of the Council's consideration of potential historic impacts on any state and local resources) during the Council's evidentiary process in Docket 449. In fact, MCM's consultants were able to source a "draft" letter from SHPO staff that the SHPO might be making an adverse effect determination for the 150' tower for federal purposes and issuing a conditional no adverse effect letter for a 120' tower height. Docket 449 Findings of Fact para. 133. That draft letter was read in its entirety into the record for Docket 449 as part of sworn testimony by Mr. Libertine so as to inform the Council of SHPO's potential findings. Docket 449 Findings of Fact para. 133, Transcript 1, pp 16-20, 65-66).

As testified by Mr. Libertine in July of 2014, at that time MCM and its consultants were not in receipt of any final signed copy of a SHPO letter, a statement that was true. Transcript 1, pp 16-20. Indeed, the project team considered that SHPO might review MCM's historian's submissions shared with SHPO in its submittals in April of 2014 and compared them with its own agency staff recommendations (incorporated into the draft letter) and ultimately conclude that a 150' tower had no adverse effect for federal purposes. Only as of December 23, 2014 was it made clear to MCM's consultants that SHPO concluded a 150' tower would have an adverse effect (by implication) in its

[1] Under FCC rules and regulations and the NEPA Programmatic Agreement with all State SHPOs, in the absence of any formal correspondence from SHPO, a no adverse effect determination is presumed and a licensee may file paperwork with the FCC as part of meeting its federal obligations and commencing construction.

formal letter conditioning a no adverse effect determination for the project on a 120' tower height.

In any event, for purposes of SHPO's motion in this Docket, we note that there is no material difference between the draft letter read into the record for Docket 449 and the final signed letter which was received in December of 2014. Indeed, as the record reflects, the Siting Council fully considered SHPO's informal comments as part of its deliberations prior to approving the 150' tower facility as proposed in Docket 449. Docket 449 Findings of Fact para. 133, Opinion p. 3. The Council carefully weighed and consider the benefits of a tower 150' in height over that of one 120' in height and concluded that there were very significant trade-offs in AT&T's coverage from a 120' tower versus the proposed 150' tower. Opinion, page 3. The Council found a 150' tower preferable as it will provide more reliable service to the area, maximize coverage to two state parks and provide collocation opportunities for other carriers and avoid the proliferation of towers consistent with state policy and CGS 16-50aa. The Council considered these findings in context with any historic impacts including SHPO's preliminary findings and comparison of a 150' tower versus a 120' tower. As such, there is no new fact for purposes of the Council's decision to issue a Certificate that would warrant reconsideration of the decision made pursuant to the Public Utility Environmental Standards Act.

II. At this time, there are no changed conditions which would warrant a reopening to consider modification of the final decision under § 4-181a(b)

At this moment in time, there are no changed conditions which would warrant a reopening of Docket 449 under Section 4-181a(b) of UAPA to consider a 120' tower height. In fact, as part of FCC NEPA obligations, MCM's consultants and SHPO are

now actively engaged in further and continuing consultations pursuant to Section 106 and FCC regulations. Until that consultation is completed and/or MCM seeks and is denied a determination from the FCC overruling SHPO's conditional no adverse effect determination for the 150' tower, there is no reason to consider a modification to the approved tower height. To the extent a future event takes place that would constitute a changed condition, MCM as the Certificate holder would take such matter under advisement as to how it does or does not impact the Certificate for a 150' tower facility issued to it in Docket 449 and the need for any motions to the Council (e.g. modifications to the tower site required as part of SHPO/FCC resolution of the Section 106 Consultation).

III. Conclusion

SHPO's motion should be denied. To the extent there is disagreement between SHPO and MCM over the tower height (30' in total) as part of SHPO's federal regulatory review pursuant to Section 106 of the National Historic Preservation Act, FCC rules and procedures will need to be followed to resolve same including further consultations with SHPO which are ongoing. At this time and until there are any changed conditions to report by the Certificate holder, the motion for reconsideration by SHPO should be denied.

Dated: February 9, 2015

Message Center Management and
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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing was sent electrically to the Connecticut Siting Council with copy to the below with hard copies following separately due to inclement weather conditions. :

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