

CONNECTICUT SITING COUNCIL
DOCKET NO. 469

IN THE MATTER OF:

APPLICATION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN
KILLINGLY, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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EXECUTIVE SUMMARY

On July 26, 2016, Cellco Partnership d/b/a Verizon Wireless (“Cellco”) filed an application (“Application”) with the Connecticut Siting Council (“Council”) for a Certificate of Environmental Capability and Public Need (“Certificate”) to construct a wireless telecommunications facility on an approximately 648-acre parcel at 520 Bailey Hill Road in Killingly, Connecticut (the “Property”). The Property is owned by the TriLakes LLC (“Owner”).

Facility Description

Cellco proposes to construct an 150-foot monopole tower in the northerly portion of the Property. Cellco would install twelve (12) panel-type antennas at a centerline height of 150 feet above ground level (“AGL”). Cellco would also install a 10’ x 20’ equipment platform and steel canopy structure on the ground near the base of the tower to support its radio equipment and a 15 kW diesel-fueled back-up generator. The tower and equipment platform would be located within a 50’ x 50’ fenced compound and 100’ x 100’ leased area (the “Dayville Facility”). Access to the Dayville Facility would extend from Bailey Hill Road over an existing dirt and gravel driveway a distance of approximately 582 feet, then over a new gravel driveway extension, a distance of approximately 92 feet to the facility compound.

Public Need

The proposed wireless facility is needed to fill gaps in wireless service in Killingly, particularly along portions of Route 101 and provide capacity relief to Cellco existing Killingly cell site.

The proposed Dayville Facility will provide reliable wireless service to a 5.14 mile portion of Route 101, and an overall area of 39.18 square miles at 700 MHz frequencies; a 5.09 mile portion of Route 101, and an overall area of 34.53 square miles at 850 MHz frequencies; a 2.93 mile portion of Route 101, and an overall area of 14.53 square miles at 1900 MHz frequencies; and a 4.91 mile portion of Route 101, and an overall area of 14.94 square miles at 2100 MHz frequencies.

Nature of Probable Impacts

The record contains ample evidence to support a finding by the Council that the Dayville Facility would not have a significant adverse impact on the environment. Cellco has presented evidence that the location and development of the Dayville Facility will have no effect on historic resources in the area; will not adversely impact federal or State listed, threatened or endangered species or State species of special concern; will not have any direct or indirect impact on wetlands, watercourses and/or vernal pools on the Property or near the cell site; will not be considered to be an obstruction or hazard to air navigation and, therefore, will not require any FAA marking or lighting; and will operate well within safety limits established by the FCC for radio frequency emissions.

The overall areas where the tower would be visible above the tree canopy comprise approximately 23.5 acres, or 0.3 percent of the two-mile radius (8,042 acre) study area. Year-round visibility of the Dayville Facility tower are limited to locations on and in the immediate vicinity of the Property. Areas where seasonal views are anticipated comprise approximately 238 additional acres.

There are approximately six (6) residences within 1,000 feet of the Dayville Facility. The

closest off-site residence is located at 721 Bailey Hill Road, approximately 690 feet to the west.

Public Input

On December 1, 2015, Cellco representatives met with Killingly's Town Manager, Sean Hendricks to commence the ninety (90) day municipal consultation process. Mr. Hendricks received a copy of technical information summarizing Cellco's plans to establish a telecommunications facility as described above. At the request of the Town, Cellco representatives hosted a Public Information Meeting ("PIM") at Killingly Town Hall on June 16, 2016.¹ At this meeting, Cellco discussed, in detail, the aspects of the proposed Dayville Facility, the need for wireless service in Killingly and the Connecticut Siting Council application process. Notice of the PIM was sent to the owners of property whose land abuts the Property and on May 31, 2016, was published in *The Bulletin*.

Conclusion

The unrefuted evidence in the record clearly demonstrates that there is a need for the proposed Dayville Facility and that the environmental impacts from the proposed facility location would be minimal.

¹ Shortly after meeting with the Town Manager, Cellco placed the Dayville Facility "on-hold" and postponed the local input meeting originally scheduled for February 8, 2016.

I. INTRODUCTION

On July 26, 2016, Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “Applicant”) filed with the Connecticut Siting Council (“Council”) an application (the “Application”) for a certificate of environmental compatibility and public need (“Certificate”), pursuant to Sections 16-50g *et seq.* of the Connecticut General Statutes (“Conn. Gen. Stat.”), for the construction, maintenance and operation of a wireless telecommunications facility (the “Dayville Facility”) on an approximately 648 acre parcel at 520 Bailey Hill Road in Killingly, Connecticut (the “Property”). The Property is owned by the TriLakes LLC and is undeveloped. (Cellco Exhibit 1 (“Cellco 1”); October 6, 2016 Site Visit). The proposed wireless facility is needed to fill gaps in wireless service in Killingly, particularly along portions of Route 101 and provide capacity relief to Cellco existing Killingly cell site. (Cellco 1, pp. 7-8, Tab 1).

II. PROCEDURAL BACKGROUND

On October 6, 2016, the Council conducted an evidentiary hearing and an evening public hearing on the Application (October 6, 2016 Transcript (“Tr. 1”)). Prior to the evidentiary hearing, at 2:00 p.m. the Council conducted a site visit at the Property. Between the hours of approximately 8:00 a.m. and 6:00 p.m. on October 6, 2016, Cellco caused a red balloon to be flown as prescribed by the Council. (Tr. 1, pp. 13-14).

This Post-Hearing Brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies (“R.C.S.A.”). The brief evaluates the Application in light of the Council’s review criteria, as set forth in Section 16-50p of the Connecticut General Statutes and addresses other issues raised throughout the course of this proceeding.

III. FACTUAL BACKGROUND

A. Pre-Application History

Cellco is licensed to provide wireless services in the 700 MHz, 850 MHz, 1900 MHz and 2100 MHz frequency ranges throughout Connecticut. Cellco currently provides wireless service in Killingly and the surrounding towns from its existing Killingly, Killingly North, Killingly Center, Danielson, Danielson South and Danielson 2 cell sites. Plots showing the extent of reliable wireless service in the area reveal significant “coverage gaps” along Route 101 in Cellco’s operating frequencies. These coverage gaps will be filled by service from the Dayville Facility. (See Attachment 6). In addition to the coverage benefits, the proposed Dayville Facility will provide capacity relief to Cellco’s Killingly cell site (Beta sector). (Cellco 1, pp. 7-8, Tab 6).

As a first step in its site search process, Cellco investigates whether there are existing towers or non-tower structures of suitable height in an area that can be used to satisfy its wireless service objectives in an area. Cellco maintains six (6) existing facilities, on towers within approximately five (5) miles of the Dayville Facility location. These sites along with others in the area will interact with the proposed Dayville Facility. (Cellco 1, Tabs 6 and 8). These adjacent sites cannot, however, satisfy Cellco’s need for additional wireless along portions of Route 101 in Killingly. Cellco also regularly investigates the use of existing, non-tower structures in an area, when available, as an alternative to building a new tower. No existing non-tower structures of suitable height exist. If a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the facility could be reduced to the greatest extent possible. (Cellco 1, pp. 11-15, Tab 8

and Tab 9). After investigating and evaluating an alternative parcel, Cellco selected the Property at 520 Bailey Hill Road to present to the Council. Cellco determined that an antenna centerline height of 150 feet AGL at this location would satisfy its wireless service objectives and that the site selected represents the most feasible alternative of the sites investigated.

B. Local Contacts

On December 1, 2015, Cellco representatives met with Killingly's Town Manager, Sean Hendricks to commence the ninety (90) day municipal consultation process. Mr. Hendricks received a copy of technical information summarizing Cellco's plans to establish a telecommunications facility as described above. At the request of the Town, Cellco representatives hosted a Public Information Meeting ("PIM") at Killingly Town Hall on June 16, 2016.² At this meeting, Cellco discussed, in detail, the aspects of the proposed Dayville Facility, the need for wireless service in Killingly and the Connecticut Siting Council application process. Notice of the PIM was sent to the owners of property whose land abuts the Property and on May 31, 2016, was published in *The Bulletin*. (Cellco 1, pp. 18-19).

C. Tower Sharing

Cellco will design the facility tower and compound to be shared by other wireless carriers. . This type of tower sharing arrangement would reduce, if not eliminate, the need for these other carriers or municipal entities to develop a separate tower in this same area in the future. As of the date of this filing, no other wireless carriers or the Town have expressed any interest in the Dayville Facility. (Cellco 1, p. 12).

² Shortly after meeting with the Town Manager, Cellco placed the Dayville Facility "on-hold" and postponed the local input meeting originally scheduled for February 8, 2016.

D. The Dayville Facility Proposal

The Dayville Facility would be located within a 50' x 50' fenced compound and 100' x 100' leased area in the northerly portion of an approximately 648 acre parcel at 520 Bailey Hill Road in Killingly. At this location, Cellco would construct an 150-foot self-supporting monopole tower. Cellco would install twelve (12) panel-type antennas at the 150-foot level. Vehicular access to the site would extend from Bailey Hill Road over an existing dirt and gravel driveway a distance of approximately 582 feet, then over a short gravel driveway extension an additional distance of 92 feet. Utilities will extend from existing service along Bailey Hill Road. (Cellco 1, pp. iii, 7-8, Tab 1).

Cellco would also install a 10' x 20' equipment platform and steel canopy structure on the ground near the base of the tower to support its radio equipment and a 15 kW diesel fueled back-up generator. The tower and equipment platform would be located within a 50' x 50' fenced compound. Cellco's equipment would be equipped with a silent intrusion and system alarms and will be monitored on a 24-hour basis to receive and to respond to incoming alarms or other technical problems. (Cellco 1, pp. 7-8, Tab 1).

IV. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50P FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act ("PUESA"), Conn. Gen. Stat. § 16-50g *et seq.*, sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate The council shall file, with its

order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (A) . . . a public need for the facility and the basis of the need; (B) The nature of the probable environmental impact . . . including a specification of every significant adverse effect . . . whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish . . . and wildlife; (C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a “public need for the facility.” Conn. Gen. Stat. § 16-50p(a)(3)(A). Second, the Applicant must identify “the nature of the probable environmental impact” of the proposed facility through review of the numerous elements specified in Conn. Gen. Stat. § 16-50p(a)(3)(B), and then demonstrate that these impacts “are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3)(C). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for a Dayville Facility

The first step in the review of the pending Application addresses the public need for the proposed facility. As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and a degree of competition in mobile telephone service. The Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal

wireless telecommunications services of all varieties. The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to encourage the rapid deployment of new telecommunications technologies. (Council Adm. Notice 4).

In 2009, President Obama issued Presidential Proclamation 8460, in which “cellular phone towers” were identified as critical infrastructure vital to national security. (Council Adm. Notice 11). The same year, the United States Congress directed the FCC to develop a national broadband plan to ensure that every American has access to (wireless) broadband capability. The FCC released Connecting America: The National Broadband Plan (the “Broadband Plan”) a year later, which recognized broadband as a “foundation for economic growth, job creation, global competitiveness and a better way of life.” One of the Plan’s goals for 2020 is for the United States to “lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.” (Council Adm. Notice 19).

The proposed Dayville Facility would be part of Cellco’s expanding wireless telecommunications network envisioned by the Telecommunications Act and the Broadband Plan and has been developed to help meet these nationwide goals. In particular, Cellco’s system has been designed, and the cell site proposed in this Application has been selected, so as to maximize the geographical coverage, improve network capacity and improve the overall quality of wireless service to allow for the efficient and reliable use of Cellco’s network. (Cellco 1, pp. 6-7). As the Council is aware, Cellco holds licenses to provide wireless services in the 700 MHz, 850 MHz, 1900 MHz and 2100 MHz frequency ranges in Windham County, and throughout the State of Connecticut. (Cellco 1, Tab 5).

The record contains ample, written evidence and testimony that an antenna height of 150 feet AGL at the Dayville Facility would allow Cellco to satisfy its wireless service objectives in the area and continue to provide high-quality reliable wireless service in southerly portions of the Town. (Cellco 1, pp. 6-7, Tab 6; Cellco 3 Q. 14).

B. Nature of Probable Impacts

The second step in the statutory review procedure addresses the probable environmental impacts of the Dayville Facility and particularly the following factors:

1. Natural Environment and Ecological Balance

The proposed development of the Dayville Facility has eliminated, to the extent possible, impacts on the natural environment. All facility improvements would be located within a 50' x 50' fenced compound and 100' x 100' leased area, previously cleared by the Owner. Access to the tower site would extend from Bailey Hill Road over an existing dirt and gravel driveway, a distance of approximately 582 feet, then over a 92 foot gravel driveway extension to the facility compound. No trees, larger than 6" diameter at breast height will need to be removed and minimal grading would be required for construction of the tower, site compound and gravel access drive. (Cellco 1, Tab 1). Overall, Dayville Facility development would have a negligible impact on the physical environment of the Property. No evidence to refute this conclusion was presented to the Council.

2. Public Health and Safety

Cellco has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the Dayville Facility would be minimal or nonexistent.

First, the potential for the facility tower to fall does not pose an unreasonable risk to health and safety. The approved tower would be designed and built to meet Electronic Industries Association standards. The closest off-site residence is located approximately 690 feet to the west of the proposed tower site at 721 Bailey Hill Road. (Cellco 1, p. 14, Tab 1).

Second, worst-case potential public exposure to Radio Frequency (“RF”) emissions from the proposed facility would be well below the FCC Safety Standards. (Cellco 1, p. 16, Tab 1, p. 8, Tab 14).

If approved, the Cellco will design the facility tower and compound to be shared by other wireless carriers, and the Town’s emergency service providers, if a need exists. This type of tower sharing arrangement would reduce, if not eliminate, the need for other carriers or municipal entities to develop a separate tower in this same area in the future. (Cellco 1, p. 12; Tr. pp. 15-16).

Overall, the nature and extent of potential, adverse public health and safety impacts resulting from construction and installation of the Dayville Facility would be minimal or nonexistent. The public safety benefits, however, would be substantial. No evidence to refute these conclusions was presented to the Council.

3. Scenic Values

As noted in the Application, the primary impact of any tower is visual. Cellco’s site search methodology, described in the Site Search Summary, is designed in large part to minimize such visual impacts. As discussed above, wherever feasible, Cellco avoids construction of a new tower by first attempting to identify use and existing towers or other tall non-tower structures in or near a particular search area. Cellco currently shares six (6) existing towers, all within approximately five (5) miles of the Dayville Facility location. These sites will interact with the proposed Dayville

Facility. However, these adjacent sites cannot satisfy Cellco's need for wireless service in and near the designated Dayville Facility search area. Cellco also regularly investigates the use of existing, non-tower structures in an area, when available, as an alternative to building a new tower. No such non-tower structures of suitable height exist or were available for lease. (Cellco 1, pp. 11-12, Tab 6, Tab 8). If it determines that a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the site may be reduced to the greatest extent possible. (Cellco 1, Tab 8).

Cellco submitted a Visibility Analysis prepared by All-Points Technology Corporation ("APT") as a part of the Application. Prior to preparing its report, APT conducted a balloon float and field reconnaissance to obtain photographs for use in the Visibility Analysis. (Cellco 1, Tab 9). APT determined that top portions of the tree tower would be visible above the tree canopy from approximately 23.5 acres or 0.3 percent of the two-mile radius (8,042 acre) study area. Year-round visibility of the Dayville Facility is generally limited to select areas on the Property. Areas where seasonal views are anticipated comprise approximately 238 additional acres. (Cellco 1, pp. 13-14, Tab 9).

4. Historical Values

As it does with all of its tower proposals, prior to filing the Application with the Council, Cellco requested that the State Historic Preservation Office ("SHPO") of the Connecticut Historical Commission (the "Commission") review the proposed facility and provide a written response. In a letter dated August 23, 2016, the SHPO confirmed that no historic properties will be affected by the proposed Dayville Facility. (Cellco 3, Q. 39).

5. Recreational Values

There are no recreational activities or facilities on the Property that would be adversely impacted by development of the Dayville Facility. (Cellco 1, pp. 16-17, Tab 9).

6. Forests and Parks

There is no State or local forests or park land that will be adversely impacted as the proposed Dayville Facility tower. (Cellco 1, Tab 9). No evidence to refute this conclusion was presented to the Council.

7. Air and Water Quality

a. Air Quality.

Under normal operating conditions, the Cellco equipment at the Dayville Facility would generate no air emissions. During power outage events and periodically for maintenance purposes, Cellco would utilize a diesel-fueled generator to provide emergency back-up power. Cellco's back-up generator will be managed to comply with the "permit by rule" criteria established by the Connecticut Department of Energy and Environmental Protection ("DEEP") Bureau of Air Management pursuant to R.C.S.A. § 22a-174-3b, and therefore is exempt from general air permit requirements. (Cellco 1, p. 20).

b. Water Quality.

The proposed Dayville Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private waste water disposal system. Dean Gustafson, Professional Soil Scientist with APT, conducted a field investigation and completed a Wetlands & Vernal Pool Evaluation for the Dayville Facility. According to this evaluation, the closest on-site wetland area to the tower is located approximately 425 feet southeast of the proposed tower site. In the Wetlands Evaluation, Mr. Gustafson concludes that the Dayville

Facility will have no temporary or permanent direct impact to wetlands and watercourses, and no direct physical impact on any vernal pools located on the Property. (Cellco 1, p. 18, Tab 1, Tab 15; Tr. 1, p. 9). No evidence to refute these conclusions was presented to the Council.

8. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, Cellco received comments on the Dayville Facility from the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and the Connecticut Department of Energy and Environmental Protection (“DEEP”). According to the USFWS Compliance Determination dated May 3, 2016, two (2) federally listed “threatened” species, the *Northern Long-Eared Bat* (NLEB) and *Small Whorled Pogonia* (flowering plant) may occur in Killingly, Connecticut. In response to this determination, Dean Gustafson with APT Corporation prepared a NLEB Streamlined Consultation report and submitted that report to the USFWS. This report concludes that the proposed Dayville Facility “is not likely to adversely affect” an NLEB or *Small Whorled Pogonia*”. (Cellco 1 p. 15, Tab 10). DEEP does not anticipate negative impacts to State-listed species resulting from the construction of the proposed Dayville Facility. (Cellco 1, p. 15; Tab 11).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the Dayville Facility site, Conn. Gen. Stat. § 16-50p requires that the Applicant demonstrate why these impacts “are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts associated with the proposal would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application.

As discussed above, the only potential adverse impact from the proposed tower involves “scenic values.” As the record overwhelmingly demonstrates, the Dayville Facility would have minimal impacts on scenic values in the area. (Cellco 1, Tab 9). These limited aesthetic impacts may be, and in this case are, outweighed by the public benefit derived from the establishment of the facility. Unlike many other types of development, telecommunications facilities do not cause indirect environmental impacts, such as increased traffic and related pollution. The limited aesthetic and environmental impacts of either alternative site can be further mitigated by the sharing of the facility. Cellco intends to design the tower so that it could be shared by other wireless carriers, and the Town, or local emergency service providers, if a need exists. (Cellco 1, p. 12).

In sum, the potential environmental impacts from the Dayville Facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the Application. The site, therefore, satisfies the criteria for a Certificate pursuant to Conn. Gen. Stat. § 16-50p, and the Applicant’s request for a Certificate should be granted.

V. CONCLUSION

Based on the overwhelming evidence in the record, the Applicant has established that there is a need for a Dayville Facility and that the environmental impacts associated with the Application would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application. Therefore, the Council should approve the Application as submitted.

Respectfully submitted,
CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

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