

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF MCF
COMMUNICATIONS bg, INC. AND
OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 12 CARPENTER ROAD IN THE
TOWN OF BOLTON, CONNECTICUT

DOCKET NO. 323

DATE: APRIL 13, 2007

**POST-HEARING BRIEF OF MCF COMMUNICATIONS BG, INC. AND
OMNIPOINT COMMUNICATIONS, INC.**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A."), MCF Communications bg, Inc. ("MCF") and Omnipoint Communications, Inc. (the "co-Applicants") submit this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. The co-Applicants also submit their Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

The co-Applicants, in accordance with provisions of Connecticut General Statutes ("C.G.S.") §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies ("R.C.S.A."), applied to the

Connecticut Siting Council ("Council") on September 13, 2006 for a Certificate of Environmental Compatibility and Public Need ("Certificate").

Co-applicant MCF proposes to construct a 140-foot steel monopole telecommunications facility¹ in the northeastern portion of a 43 acre parcel of land owned by Terry Veo as Trustee known as 12 Carpenter Road, Map 6, Lot 27 of the Bolton Tax Assessor's Map ("Site"). The 10,000 square foot leased area will include a 70-foot by 70-foot fenced compound area and a monopole tower designed to accommodate the antenna arrays and associated equipment of Omnipoint Communications, Inc. ("T-Mobile"), Sprint Nextel Corporations ("Sprint/Nextel"), Verizon Wireless and the equipment of one (1) other telecommunications carrier ("Facility").

The purpose of this Facility is to provide wireless telecommunications services to Bolton, including along Interstate I-384 and surrounding areas. T-Mobile, Sprint/Nextel and Verizon Wireless all currently experience either significant gaps in coverage or inadequate coverage in the area. In addition, Sprint/Nextel is currently experiencing capacity problems, resulting in inadequate coverage in the area. A Facility at the Site will provide wireless coverage service to three of the four licensed wireless carriers in Connecticut in this area which is currently experiencing inadequate coverage.

During the public hearing process, State Representative Pamela Sawyer and members of the public identified eight locations in the area as potential alternative

¹ The original certificate application proposed a 130-foot steel monopole. Subsequent to the filing of the application, Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") intervened and has now requested a height extension to 140 feet.

sites for the proposed facility (the "Alternate Sites"). T-Mobile, Verizon Wireless and Sprint/Nextel all analyzed the Alternate Sites in order to determine their viability as alternatives to the proposed facility to fill their respective coverage gaps.

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

Connecticut General Statute ("C.G.S.") §16-50p(a) mandates that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need..." C.G.S. §16-50p(a). There can be no dispute that there is a significant public need for this Facility. In fact, residents in the area and the First Selectman of Bolton himself acknowledged during the hearing that there is a lack of coverage in this area, including in the area along I-384.

There are no other telecommunications facilities in this area of Bolton/Manchester and no utility structures or other suitably tall structures on which to locate a telecommunications facility, which are available for leasing. T-Mobile acknowledged that it is currently pursuing a second site in the area located at 1027 Middle Turnpike East in Manchester (Docket 328). T-Mobile testified that, despite the relative proximity of the Site and the Docket 328 site, T-Mobile required both sites to fill two different coverage holes in the Manchester/Bolton area. Adequate and reliable telecommunication capabilities are beneficial to persons who are traveling through, working, or living in the area. These communications issues can be alleviated with the construction of this Facility, which will provide benefits for both the residents and businesses in the Town.

T-Mobile, a co-Applicant, Sprint/Nextel and Verizon Wireless, both of whom intervened in this docket, have established that they are currently experiencing significant coverage gaps and capacity problems which result in inadequate coverage in this area. A Facility at the proposed Site will alleviate that inadequacy.

As discussed supra, T-Mobile, Verizon Wireless and Sprint/Nextel all performed radio frequency analyses of the Alternate Sites in order to determine their viability as alternates to the proposed Site. T-Mobile determined that five of the eight Alternate Sites would provide adequate coverage to the target area but that, at each of the five sites, T-Mobile would require significant additional height than that proposed at the Site. Verizon Wireless determined that, in order for any of the Alternate Sites to provide the same coverage to the target area as the proposed Site, it would require heights well in excess in 200 feet above ground level ("AGL"). In particular, at the DOT Garage site and Liberty Candle site, Verizon Wireless would require 240 feet AGL in order to provide comparable coverage to that which it can achieve at 140 feet AGL at the Site. Sprint/Nextel determined that only two of the Alternate Sites would provide comparable coverage to the proposed Site; the Liberty Candle Site at 175 feet AGL or the DOT Garage site at 190 feet AGL, well above the 120 feet AGL Sprint/Nextel would require at the proposed Site. In addition, even with either of these alternatives, Sprint/Nextel testified that it would still require a second, additional site in the area in order to provide comparable coverage to the single proposed Site.

III. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, the co-Applicants have identified “the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, 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, aquaculture and wildlife...” as required by C.G.S. §16-50p(a). Indeed, the record in this matter convincingly demonstrates that the Facility will have a minimal environmental impact on the surrounding areas, and will not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff'd, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

The co-Applicants conducted a complete and comprehensive environmental analysis of this proposal, which can be found at Exhibits: J (Phase I Environmental Assessment), K (Visual Evaluation) L (State Agency Correspondence) and N (NEPA Compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The environmental analysis concluded that:

- i. No wetlands within the immediate vicinity of the Site; neither the access nor the compound are located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See App. at Exhibit J; 3:00 Tr. at 70);
- ii. No species of concern on Site (See App. at Exhibit L; March 14th Tr. at 34-36);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (See App. at Exhibit N);
- iv. No listed species or designate critical habitats occur on or near the site. (See App. at Exhibit L, Exhibit N; March 14th Tr. at 34-36; Interrogatory Responses and Supplemental Information);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (See App. at Exhibit L);
- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See App. at Exhibit N);
- vii. The Facility will be located outside of the 100 year flood zone; (See App. at Exhibit N); and
- viii. The tower will not be lit (See App. at Exhibit P; Verizon Supplemental Information at Exhibit 4).

As far as the Facility's potential visibility, the Facility is proposed to be located on the Site in order to minimize impact to residential receptors. The topography and the mature vegetation at the Site will significantly limit the visual impact of the Facility. In addition, the size of the Site itself will assist in reducing the visual impact of the Facility. The Site is 43 acres in size and much of the anticipated visibility will occur on the Site itself.

Views of the Facility are expected to be limited to primarily within 0.5 miles of the Site and the proposed Facility will be visible from only 37 acres within a two-mile

radius of the tower, which is less than one half percent (<.5%) of the study area. Of note, there will be no visibility from any scenic roads or areas, state parks or cultural or recreational receptors. In addition, the proposed Facility will be visible from approximately three (3) residences year-round and twenty (20) residences will experience limited seasonal views of the Facility.

As the foregoing demonstrates, any environmental impacts associated with the Facility will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of Bolton, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

None of the Alternate Sites were analyzed for any potential environmental impact therefore any potential impact is unknown. However, it is clear from the record that the two alternate sites, the Liberty Candle site and the DOT Garage site, that were viable from a radio frequency perspective would have a far greater visual impact since a facility at either location would require a tower 240 feet high (100 feet higher than the proposed Facility) and that, unlike the Site, these two locations provide no natural screening.

IV. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. C.G.S. §16-50aa. In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council "may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state." "The sharing of facilities is


encouraged, if not required by General Statutes §16-50p(b)(1)(A)." Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. In fact, three of the four licensed carriers have committed to co-located on the proposed Facility. Accordingly, the issuance of a Certificate will help avoid the construction of new telecommunications tower(s) in this area of Connecticut. Because all major telecommunications carriers could utilize the Facility as well as local emergency services, if requested, approval by the Council will uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

It is clear from the evidence presented in the docket that approval of the Facility in this area of Bolton is necessary to provide adequate wireless coverage. The co-Applicants have demonstrated that utilization of the Site provides the best location for a Facility in this area of Bolton. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, the co-Applicants, MCF Communications bg, Inc. and Omnipoint Communications, Inc. respectfully urge the Council to issue a Certificate for the proposed Facility.

MCF COMMUNICATIONS BG, INC.
OMNIPOINT COMMUNICATIONS, INC.

By: _____

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Certification

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

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