PETITION NO. 809 - Extenet Systems, Inc. petition for a declaratory ruling that the Connecticut Siting Council does not have jurisdiction or, in the alternative, that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction of a Distributed Antenna System along the Merritt Parkway from New York state line to Westport, Connecticut.	}	Connecticut Siting Council November 5, 2007

Opinion

On April 26, 2006, Extenet Systems Inc. (Extenet) submitted a petition to the Connecticut Siting Council (Council) for a declaratory ruling that the Connecticut Siting Council does not have jurisdiction over the proposed installation of a Distributed Antenna System (DAS) on the Merritt Parkway, or, in the alternative, that such installation would not require a Certificate of Environmental Compatibility and Public Need (Certificate). Extenet is an infrastructure provider to telecommunication carriers and implements DAS networks in areas where traditional wireless facilities are difficult to site.

Extent designed the network after being approached by several wireless carriers who were experiencing coverage deficiencies on several areas of the Merritt Parkway: specifically, the section of the parkway from Greenwich to Westport. Extenet examined the current locations of all wireless facilities and conducted several drive tests to prepare the network design. The proposed DAS could support all current wireless technologies (TDMA, GSM, CDMA, UTMS) and could support multiple technologies and or frequencies used by a single carrier.

Extenet proposes to install a DAS along 20 miles of the Merritt Parkway in areas that lack existing reliable coverage. Extenet would primarily utilize existing utility infrastructure and rights of way for the placement of its equipment and routing of fiber optic cable. The DAS would require the installation of 37 miles of fiber optic cable to connect the nodes and base stations. The cable would be installed overhead on existing utility infrastructure. Extenet has secured the necessary use agreements with the respective utilities.

The proposed DAS is comprised of two base stations and 27 nodes. The base stations would house the wireless service provider equipment and would be connected to the nodes by fiber-optic cable. The nodes consist of radio equipment connected to a small antenna that transmits wireless radio frequency signals to the coverage area. Node antennas would be mounted on cables spanning the highway that are attached to existing or new utility poles, on existing utility poles adjacent to the highway, or on new poles installed adjacent to the highway.

At 18 node locations, node antennas would be attached to two 3/8-inch braided cables that would span highway. Two of the cable highway spans would require the installation of new wood poles. One of these nodes would require the installation of one 25-foot pole to support the cables. The other node would require five new 25-foot poles: two to support the cables and three to extend existing utilities to the node location. The cable span node antennas would consist of two pairs of nine-inch square panel antennas.

Eight nodes would be installed on existing utility poles adjacent to the highway. The antennas associated with these nodes would be placed behind a PVC shroud 18 inches wide by 23 inches tall. The remaining node would be mounted on a new 40-foot high wood pole adjacent to the Den Road exit ramp in Stamford.

The proposed project would not affect any wetlands or watercourses or have any impact on stated endangered, threatened, or special concern species. Operation of DAS equipment would not exceed radio frequency limits for public exposure established by the Federal Communications Commission. New poles would be installed in areas that were previously disturbed for road construction. No vegetation would be removed for installation of the DAS equipment. The two base stations required for this project would be installed within the compounds of existing telecommunication facilities. The DAS nodes would be similar in appearance to surrounding utility infrastructure. The DAS equipment would not be visible to area residences.

The project would meet all criteria and requests by the Connecticut Department of Transportation. Extenet obtained a Certificate of Public Convenience and Necessity from the Department of Public Utility Control (DPUC) for the operation of intrastate telecommunication services. Further, Extenet would file its construction plans to the DPUC for review and approval. Extenet obtained all necessary agreements from the utility companies for use of the respective existing utility infrastructure.

The Merritt Parkway is listed on the National Register of Historic Places and is designated a National Scenic Byway by the U.S. Department of Transportation. The State Historic Preservation Office opined the proposed DAS would not have an adverse effect on the historic qualities of the parkway. The SHPO further recommended Extenet establish a fund in the amount of $50,000 per year for every year the DAS is in operation, to be administered by the Merritt Parkway Conservancy for the sole purpose of restoring and maintaining the scenic and historic qualities of the parkway. The Council finds no basis for this request since the project was determined to have no adverse effect without any recommendation for visual mitigation. Further, funding of improvements to the parkway is not the responsibility of Extenet or this Council.

Extenet seeks a declaratory ruling that the Council has no jurisdiction, or in the alternative, that no Certificate is required. First, the Council has jurisdiction. Such claim is based on the legislature's intent of the Council is to review projects of state-wide impact and cross multiple municipal boundaries. Generally, the Council's jurisdiction extends over "facilities" as defined Connecticut General Statute (CGS) §16-50i. For the Council to have jurisdiction over wireless telecommunications equipment and technology, it must fit within a provision of CGS §16-50i. Subsection (a)(6) includes "such telecommunications towers, including associated telecommunications equipment…used in a cellular system, which may have a substantial adverse environmental effect…." The phrase "substantial adverse environmental impact" is used in CGS §16-50k(a) in determining whether a Certificate is required. A telecommunications tower used in a cellular system does not require a Certificate if the Council determines that it does not have a substantial adverse environmental impact. If there is such an impact, the project must go through a certification proceeding, where the Council can balance that impact with other factors listed in CGS §16-50p.

The present petition does concern some free-standing structures that may be considered telecommunications towers under CGS §16-50i and Regulations of Connecticut State Agencies §16-50j-2a. Thus, the Council has jurisdiction to decide the next issue, whether the project "may have a substantial adverse environmental impact". The Council believes that there clearly is no such impact and thus no Certificate is required.