

DOCKET NO. 518 – New Cingular Wireless PCS, LLC d/b/a } Connecticut
AT&T and Tarpon Towers III, LLC application for a Certificate of }
Environmental Compatibility and Public Need for the construction, } Siting
maintenance, and operation of a telecommunications facility }
located at 99 Dart Hill Road, South Windsor, Connecticut. } Council

April 5, 2024

DRAFT

Opinion

On August 22, 2023, New Cingular Wireless PCS, LLC d/b/a AT&T (AT&T) and Tarpon Towers III, LLC (TT), collectively the Applicants, applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance, and operation of a 165-foot wireless telecommunications facility at 99 Dart Hill Road, South Windsor, Connecticut. The purpose of the proposed facility is to provide reliable wireless communications services for AT&T customers and address significant coverage deficiencies in AT&T's network in portions of western South Windsor.

The Applicants are the only party to this proceeding. There are no Connecticut Environmental Protection Act (CEPA) Intervenors to this proceeding. In this Opinion, the Council incorporates its record disposition of all substantive and procedural motions that were raised during the course of the proceeding.

The United States Congress recognized a nationwide need for high quality wireless services through the adoption of the Federal Telecommunications Act of 1996 and directed the Federal Communications Commission (FCC) to establish a market structure for system development and develop technical standards for network operations. The FCC preempts state or local regulation on matters that are exclusively within the jurisdiction and authority of the FCC, including, but not limited to, network operations and radio frequency emissions. Preservation of state or local authority extends only to placement, construction and modifications of telecommunications facilities based on matters not directly regulated by the FCC, such as environmental impacts. The Council's statutory charge is to balance the need for development of proposed wireless telecommunications facilities with the need to protect the environment.

Under Connecticut General Statutes (CGS) §16-50p(b), there is a presumption of public need for personal wireless services and the Council is limited to consideration of a specific need for any proposed facility to be used to provide such services to the public.

The Applicants would construct, maintain and own the proposed facility and would be joint Certificate Holders. TT owns and operates numerous tower facilities in the state. AT&T is licensed by the FCC to provide personal wireless communications service throughout the state.

The total estimated cost of the proposed facility is \$684,000, inclusive of costs associated with AT&T's equipment installations. Neither the project, nor any portion thereof, is proposed to be undertaken by state departments, institutions or agencies or to be funded in whole or in part by the state through any grant or contract. TT and AT&T are private entities.

AT&T's network does not have reliable service in portions of western and northwestern South Windsor including, but not limited to, Route 74, Avery Street, Dart Hill Road and Miller Road. AT&T provides wireless service to portions of South Windsor from twelve facilities within a four-mile radius of the

proposed site. Due to distance and the geographical terrain, none of these facilities are able to provide adequate coverage and/or improve network reliability to the proposed service area.

Coverage objectives include the deployment of reliable in-vehicle service on roads, outdoors and within buildings in the proposed service area. AT&T would deploy 700 MHz, 850 MHz, 1900 MHz, 2100 MHz, 2300 MHz, 3550 MHz and 3700 MHz wireless service at the site, all of which transmit voice and data services. The 3500 MHz and 3700 MHz wireless service band is designed to support 5G services.

AT&T's proposed installation at the 150-foot level of the proposed tower would provide an additional 1.15 square miles of 700 MHz coverage footprint at -83 dBm Reference Signal Received Power (RSRP) and 3.2 square miles at -93 dBm RSRP. Within the -93 dBm RSRP footprint, 2.27 miles of main roads and 24.8 miles of secondary roads would have reliable service.

Small cells or distributed antenna systems would not be a practicable or feasible means of addressing the existing coverage deficiency within the proposed service area. Small cells limit the number of frequencies that can be deployed, limit structure sharing with other carriers, and lack space for emergency backup power. To provide wireless service to the proposed service area would require a significant number of small cell deployments either on existing utility poles or on new utility poles along roadways or on private parcels throughout the proposed service area and would not be economically viable as a replacement for a single tower site. Therefore, the Council finds small cells are not a feasible alternative to the proposed facility.

Based on a lack of reliable wireless service for AT&T in western and northwestern South Windsor and adjacent areas, the Council finds a specific need for a new tower to provide wireless services to the public.

Tarpon Towers II, LLC entered into a lease agreement for a site with the property owner of 99 Dart Hill Road in December of 2015. The lease was reassigned to TT in June of 2022. AT&T established a search ring for the proposed service area in April of 2022, and coordinated with TT in selecting a suitable site for tower development within the search radius. The search ring was centered at 99 Dart Hill Road and had a radius of about 0.15 miles.

For any site to be considered a feasible and prudent alternative to a proposed facility site, it must be available to host the proposed facility. The Applicants investigated six sites. Except for the proposed site, none of the property owners were interested in a lease agreement for a wireless facility. The Council has no authority to compel a property owner to sell or lease property, or portions thereof, for the purpose of siting a facility nor shall the Council be limited in any way by the applicant having already acquired land or an interest therein for the purpose of siting a facility.

Pursuant to CGS §16-50x, the Council has exclusive jurisdiction over telecommunications facilities throughout the state. It shall consider any location preferences provided by the host municipality under CGS §16-50gg as the Council shall deem appropriate.

TT presented the Town of South Windsor (Town) with a technical report for the site in March 2023 and met with Town officials in April 2023 to discuss the proposed facility. As a result of that meeting, TT revised its proposed tower height from 155 feet to 165 feet above ground level (agl) to accommodate the Town's antennas.

Pursuant to CGS §16-50p(b), the Council shall examine whether the proposed facility may be shared with any public or private entity that provides service to the public, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, and may impose reasonable conditions as it deems necessary to promote the immediate and shared use of

telecommunications facilities and avoid the unnecessary proliferation of such facilities in the state. The proposed facility is designed to accommodate four wireless carriers, including AT&T, and municipal antennas.

The host parcel is undeveloped and is mostly landlocked with frontage on Dart Hill Road. It is located adjacent to an existing Eversource electric transmission line right of way (ROW). The ROW passes through the central portion of the host parcel and features 55-foot-tall wood poles supporting three 115-kilovolt electric transmission lines. The wood poles are not tall enough or structurally sufficient to support telecommunications attachments.

The proposed facility consists of a 165-foot monopole within a 3,600 square foot compound located in the southern portion of the approximately 3.57-acre residentially zoned irregular shaped parcel. No other wireless carriers have expressed an interest in co-locating on the tower at this time.

AT&T proposes to install 9 antennas on an antenna platform at a tower centerline height of 155 feet agl. The Town would install two omni antennas at a centerline height of 165 feet agl that would extend to a height of 183 feet agl. AT&T would install one equipment cabinet and a diesel fueled emergency backup generator on a 12-foot by 20-foot concrete pad within the compound. The compound can support equipment for three other tenants. The compound would be enclosed by an eight-foot-tall chain link fence and accessed through a 14-foot wide double swing access gate that would be locked for security purposes.

In the event of an outage of commercial power, AT&T would rely on its 15-kilowatt diesel-fueled generator and associated 54-gallon double walled fuel tank that would provide approximately 53 hours of run time before refilling is necessary. AT&T would also utilize a battery backup power source to prevent a reboot condition and provide between 3 to 4 hours of battery power in the event that the generator does not start.

The compound would be accessed via the existing 20-foot wide gravel access drive extending from Dart Hill Road to the electric transmission line ROW and a new 250 foot long access drive to the compound. The proposed extension would include a 12-foot wide gravel driveway and a 12-foot by 20-foot vehicle turnaround at the facility entrance. The existing access drive from Dart Hill Road would be resurfaced as needed. Utilities servicing the facility would be installed underground along the access road to an existing utility pole on Dart Hill Road.

The existing electric transmission line ROW is gated and an application for a permitted use of the ROW must be approved by Eversource. TT filed a Permitted Use Application in October of 2023. The Council will order the Applicants to submit an approved application for permitted use of the ROW, or an alternative plan for access to the site, as part of the Development and Management (D&M) Plan.

There are 60 residences within 1,000 feet of the site. The nearest residential property line from the proposed compound is approximately 60 feet to the southeast at 40 Mara Trail. The nearest residential building from the proposed tower is approximately 355 feet to the south at 35 Mara Trail.

The nearest property boundary from the proposed tower is approximately 72 feet to the east at 37 Paper Chase Road, which is Town-owned open space. The Eversource ROW is approximately 50 feet east of the proposed compound and approximately 90 feet east of the proposed tower. The tower setback radius would extend beyond the boundary of the ROW to the north by 75 feet and the boundary of the host parcel to the east by 93 feet. The Council will order the Applicants to design the tower with a yield-point to ensure the tower setback radius does not encroach upon the ROW and remains within the boundaries of the host parcel.

A geotechnical survey would be performed prior to construction to evaluate existing subsurface conditions as part of the D&M Plan. No more than three trees would be removed to allow access for the drill rig to the boring locations.

The site slopes gently to the south with ground elevation ranging from 385 feet above mean sea level (amsl) on the northern portion of the property to 369 feet amsl on the southern portion of the property. The equipment compound would have a finished grade of 375 feet amsl. Construction at the site would require approximately 35-40 cubic yards of fill and 10 cubic yards of cut.

Blasting is not expected to be necessary to construct the facility. If bedrock is encountered, a jack hammer would be used for rock removal.

Development of the site would disturb an approximate 12,000 square feet (0.28-acre) area and would not require a DEEP-issued Stormwater Permit. The Applicants would develop a construction erosion and sedimentation control plan that is consistent with the *2002 Connecticut Guidelines for Soil Erosion and Sedimentation Control*.

Approximately 44 trees with a diameter of six inches or greater at breast height would be removed to develop the site.

No wetlands or vernal pools were identified within 100 feet of the site. The nearest watercourse is a pond located approximately 110 feet southeast of the proposed facility.

The proposed facility is not located within a DEEP Natural Diversity Data Base buffer area.

Although the northern long-eared bat (NLEB), a federally-listed and state-listed endangered species, is known to occur throughout Connecticut, there are no known NLEB hibernacula or known maternity roost trees within 0.25 miles and 150-feet, respectively, of the proposed facility. Additionally, the U.S. Fish and Wildlife Service (USFWS) determined that the proposed facility would not have an impact on the NLEB. The USFWS also indicated that other species that may occur within the vicinity of the site includes the monarch butterfly. TT would coordinate with the USFWS to ensure that the proposed facility would not have an impact on this species.

The proposed facility is not proximate to a National Audubon Society designated Important Bird Area (IBA). The nearest IBA to the proposed site is the Station 43 Marsh/Sanctuary in South Windsor located approximately 5.0 miles southwest of the proposed site. The proposed facility would comply with the USFWS guidelines for minimizing the potential for telecommunications towers to impact bird species.

The proposed facility would have no effect on sites listed on or eligible for listing on the National Register of Historic Places.

The site is not located within a public water supply watershed. The site is not within a flood zone, an aquifer protection area or within an area with prime farmland soil. Operation of the facility would comply with DEEP Noise Control Standards.

The Applicants prepared a visual impact assessment utilizing a one-mile radius study area (Study Area-4,021 acres). Based on the visual impact assessment, the proposed tower would be visible year-round (above the trees) from approximately 58 acres (2.89%) of the study area, which includes the immediately surrounding areas along Dart Hill Road and the Eversource ROW. The tower would be seasonally visible (leaf-off conditions) from approximately 88.3 acres (4.39%) of the study area.

Approximately 129 residences within 0.5 miles of the proposed facility would have views of the facility. 53 of those residences, mostly from the immediate area northeast of the site including the host parcel, would have year-round views and 76 residences would have seasonal views. Most views would consist of the upper-most part of the tower.

Pursuant to CGS §16-50p(b), the Council shall examine whether the proposed facility would be located in an area of the state which the Council, in consultation with DEEP and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance and the latest facility design options intended to minimize aesthetic and environmental impacts.

The Town's Plan of Conservation and Development identifies Main Street, which is approximately 5.2 miles southeast of the site, as the only locally-designated scenic road in South Windsor. The proposed tower would not be visible from Main Street. No comments were received from the Town, Office of Policy and Management or DEEP regarding any impacts to scenic quality or resources.

There are no Connecticut blue-blazed hiking trails or state designated scenic roads located within two miles of the proposed site.

Pursuant to CGS §16-50p(a)(3)(F), for a telecommunications facility proposed to be installed on land near a building containing a school, the facility will not be less than 250 feet from the building containing a school unless the location is acceptable to the chief elected official of the municipality or the Council finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which such school is located. No schools or commercial child day care facilities are located within 250 feet of the proposed site.

The Council finds that the proposed facility would not be located in an area of the state that possesses scenic quality of local, regional or state-wide significance and would not substantially affect the scenic quality of its location or surrounding neighborhood.

According to a methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997), the cumulative worst-case maximum power density from the radio frequency emissions from the operation of AT&T's proposed antennas to be installed on the tower have been calculated to amount to 3.6 percent of the FCC's General Public/Uncontrolled Maximum Permissible Exposure (MPE) using a far-field methodology for the proposed facility that accounts for a 6-foot tall person at ground level and the actual antenna patterns. This is conservatively based on the antennas emitting maximum power. This percentage is below federal standards established for the frequencies used by wireless companies.

If federal power density standards change, the Council will require that the tower be brought into compliance with such standards. The Council will require that the power densities be recalculated in the event other entities add antennas to the tower. The Telecommunications Act of 1996 prohibits any state or local agency from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions to the extent that such towers and equipment comply with FCC's regulations concerning such emissions. Potential harm to wildlife from radio frequency emissions, like the potential harm to human health from radio frequency emissions, is a matter of exclusive federal jurisdiction. The Council's role is to ensure that the tower meets federal permissible exposure limits.

The Council finds that the proposal would not cause unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state. The Council has considered all

reasonable alternatives and finds that the proposal represents the best alternative consistent with the reasonable requirements of the public health, safety and welfare.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, operation, and maintenance of the telecommunications facility at the proposed location, including effects on the natural environment, ecological balance, public health and safety, scenic, historic, and recreational values, agriculture, forests and parks, air and water purity, and fish, aquaculture and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with policies of the state concerning such effects, and are not sufficient reason to deny this application. Therefore, the Council will issue a Certificate for the construction, maintenance, and operation of a 165-foot monopole telecommunications facility, at 99 Dart Hill Road, South Windsor, Connecticut.