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Via Fed Ex

October 19, 2007

Daniel F. Caruso, Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

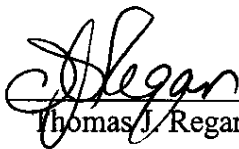
RE: Docket No. 338 / Sprint's Post-Hearing Brief

Dear Chairman Caruso:

On behalf of Sprint Nextel Corporation ("Sprint"), enclosed for filing are an original and 15 copies of Sprint's Post-Hearing Brief. An electronic copy of this document has been emailed to Ms. Fontaine and Ms. Mulcahy. Please let me know if you have any questions.

Very truly yours,

BROWN RUDNICK BERLACK ISRAELS LLP

By: 
Thomas J. Regan

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CONNECTICUT SITING COUNCIL

In re:

Sprint Nextel Corporation's Application for a : **Docket No. 338**
Certificate of Environmental Compatibility and :
Public Need for the Construction, Maintenance and :
Operation of a Telecommunications Facility Located :
at 160 West Street in Cromwell, Connecticut. : **October 19, 2007**

SPRINT NEXTEL CORPORATION'S POST-HEARING BRIEF

I. INTRODUCTION

The record in this matter unequivocally demonstrates that Sprint Nextel Corporation's ("Sprint") proposal to construct a telecommunications facility in Cromwell, Connecticut is necessary and will have minimal environmental impact. This brief summarizes Sprint's position concerning the evidence presented in its application to the Connecticut Siting Council ("Council") for a certificate of environmental compatibility and public need ("Certificate") authorizing the construction, maintenance and operation of a wireless telecommunications facility ("Facility") at 160 West Street in Cromwell (the "Application") and during the Application process.

II. JURISDICTION

Pursuant to Conn. Gen. Stat. § 16-50k, the Council has jurisdiction over the construction, operation and maintenance of certain "facilities" that may have a substantial adverse environmental effect on the state. Specifically,

[N]o person shall ... commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect, in the state without having first obtained a certificate of environmental compatibility and public need. . .

Conn. Gen. Stat. § 16-50k.

Under Conn. Gen. Stat. § 16-50i(a)(6), a “facility” includes “telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company or a certified telecommunications provider.” Sprint is a certified telecommunications provider licensed by the Federal Communications Commission¹ and therefore, Sprint’s proposed tower qualifies as a “facility” as defined by Conn. Gen. Stat. § 16-50i(a)(6). Thus, the Council has jurisdiction over this Application.

The criteria guiding the Council’s decision to grant Sprint’s Application are set forth in Conn. Gen. Stat. § 16-50p(a), which provides that the Council must determine:

(1) A public need for the facility and the basis of the need; (2) 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; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application

Sprint has established, by a preponderance of the evidence as set forth below, its need for a wireless telecommunications facility in Cromwell as well as the lack of any significant adverse environmental impact.

III. BACKGROUND

In June 2003 Sprint began its search for a new iDEN network site in this area by creating a computer model identifying where a telecommunications facility must be located to provide the requisite coverage and to offload capacity from surrounding sites.² Once a specific area was designated, Sprint’s Real Estate Department searched for existing structures suitable for its

¹ Sprint’s Exhibit (“SP”)-2 at 1.

² SP-1 at 8; SP-2 at 1.

purposes.³ Land use in the search area is comprised of medium-density residential parcels, commercial buildings and highway infrastructure.⁴ Within the search area there were no existing towers, utility transmission facilities, tall buildings or other sufficiently tall structures on which Sprint could locate a telecommunications facility.⁵ All existing towers were too far away to provide sufficient coverage.⁶ Sprint did investigate four raw land parcels in the search area (the Washington Ridge Condominiums on Highridge Road and Patricia Lane, the Chernock property at 80 Shunpike Turnpike, Two Bad Dudes Enterprises, LLC's property at 154 West Street and S&A Realty's property at 159 West Street). All four owners were not interested in Sprint's proposal to locate a tower on their property.⁷ Finally, Sprint decided to proceed with a raw land build on the commercial parcel at 160 West Street.⁸

On September 7, 2006, Sprint provided notice of the filing of the Application to Paul Beaulieu, the First Selectman for the Town of Cromwell and Sebastian Giuliano, Mayor for the Town of Middletown. On November 2, 2006, Sprint's representatives met with the Cromwell Town Planner, Mr. Craig Minor, to discuss Sprint's proposal and, specifically, its site selection process. Mr. Minor subsequently discussed the proposal with the Cromwell Planning and Zoning Commission. Sprint did not receive any comments from the Planning and Zoning Commission. The Town of Middletown did not respond to Sprint's notice.⁹

In late December 2006 and early January 2007 Sprint published notice of its intent to file the Application in The Hartford Courant and The Middletown Press.¹⁰ Concurrently, Sprint sent registered letters to the abutting property owners notifying them of Sprint's intent to file its

³ SP-1 at 8.

⁴ SP-1 at 10.

⁵ SP-1 at 8.

⁶ Id.

⁷ Id.

⁸ Id.

Application.¹¹ Any property owners that did not sign their return receipts were sent another copy of the notice via first class mail, no return receipt requested.¹² On May 23, 2007 Sprint proceeded to file its Application with the Council.¹³ Subsequently, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) was granted Intervenor status in the proceeding.¹⁴

The Council, after giving due notice thereof, held a public hearing on this Application on September 20, 2007, pursuant to Conn. Gen. Stat. § 16-50m, at the Cromwell Town Hall (the “Public Hearing”).¹⁵ Sprint flew a red balloon at a height of 80 feet beginning at noon on the day of the Public Hearing in order for the public to ascertain the visibility of the Facility.¹⁶ A gust of wind knocked the red balloon down and it was replaced with a black balloon that stayed aloft until 6:00 p.m.¹⁷ Sprint also posted a sign with the Public Hearing information at the subject property on September 4, 2007.¹⁸ The Public Hearing began at 4:04 p.m. and reconvened at 7:08 p.m.¹⁹ Prior to the Public Hearing, the Applicant, Verizon, the Council and the Council’s staff completed a field inspection of the site beginning at 3:00 p.m.²⁰

IV. NEED

The first prong of the Council’s decision making process as to whether or not a Certificate should be granted is to determine the requisite need for the Facility. The United States Congress, in the Telecommunications Act of 1996, determined that there exists a national

⁹ SP-1 at 9.

¹⁰ SP-1 at 4.

¹¹ Id.

¹² Id.

¹³ SP-1.

¹⁴ Record.

¹⁵ Record.

¹⁶ Public Hearing Transcript (“Tr.”) 4:04 p.m. at 65.

¹⁷ Id.

¹⁸ Tr. 4:04 p.m. at 66.

¹⁹ Record.

need for wireless services such as those provided by Sprint. In making such a determination, the federal government preempted the states' need to make that determination. The Telecommunications Act of 1996 also sought to foster competition in the marketplace and prohibit states from discriminating against functionally equivalent wireless carriers. Therefore, although a particular area may already have wireless coverage provided by a different carrier, Sprint also has the right to offer its services in that same area.²¹

Specifically, the Council must find adequate need for this particular Facility. To that end, Sprint and Verizon unquestionably demonstrated, through testimony and exhibits, their need for this Facility in Cromwell. Sprint's coverage plots, computer modeling, dropped call data and Public Hearing testimony all verify Sprint's gap in iDEN network coverage along Route 3, Route 9, Route 372 as well as in the immediately surrounding areas of Cromwell.²² Currently, coverage in this area is well below Sprint's minimum acceptable signal strength of -81 dBm.²³ To fulfill its deficiency in coverage and off-load volume from surrounding sites, Sprint needs an 80-foot tower.²⁴ At a lesser height, Sprint would lose coverage along Route 72 and Route 3.²⁵ Verizon also provided evidence through testimony and exhibits of their need to collocate at the proposed Facility in order to fulfill their gaps in coverage in this area of Cromwell.²⁶

Clearly, the cumulative effect of the evidence presented by Sprint and Verizon demonstrates an acute deficiency in the wireless services currently provided along Routes 3, 9 and 372 and the need to locate a Facility at 160 West Street to fulfill this deficiency. Coupled

²⁰ Record.

²¹ SP-1 at 5-6; Tr. 4:04 p.m. at 4-5.

²² SP-1 at 12-13; SP-2; Tr. 4:04 p.m. at 32.

²³ SP-1 at 12.

²⁴ SP-1 at 13; SP-2; Tr. 7:08 p.m. at 14.

²⁵ Tr. 4:04 p.m. at 31.

²⁶ Verizon's Exhibit 1; Tr. 7:08 p.m. at 27.

with the FCC's determination of a general public need for wireless service, the evidence in the record establishes the requisite "public need" as set forth in Conn. Gen. Stat. § 16-50p(a).

V. IMPACT

In the Application Sprint proposed the tower be camouflaged as a flagpole with a flag flying.²⁷ However, after listening to public comments, Council comments and the desire of the Town to reserve a spot on the tower for its antennas as voiced during the Public Hearing, Sprint is now proposing to camouflage the tower as a tree.²⁸ In fact, even the property owner is more amenable to the tree configuration versus the flagpole.²⁹ The tree tower will be the same height as the originally proposed flagpole, 80 feet.³⁰ A tree configuration will have many benefits including decreased visibility, increased opportunity for collocation and improved technical performance.

Specifically, Sprint will locate all of its antennas on the same level thereby freeing up the space below it (originally, Sprint intended to locate at two levels inside the flagpole with centerlines at 69 feet and 75 feet).³¹ This will allow Verizon to increase its location on the tower by 10 feet.³² Given that this is an 80-foot tower with a surrounding tree line of approximately 40 to 50 feet, a 10-foot increase in height, as well as the ability to install a full array of antennas, will be a significant benefit to Verizon.³³

²⁷ SP-1 at 3.

²⁸ Tr. 7:08 p.m. at 7-9.

²⁹ Tr. 7:08 p.m. at 14.

³⁰ Id.

³¹ SP-1 at 3; Tr. 7:08 p.m. at 12.

³² Tr. 7:08 p.m. at 12.

³³ Tr. 7:08 p.m. at 20, 25.

A tree configuration will also increase the opportunity for collocation. During the Public Hearing the Town expressed interest in reserving a spot on the tower if technically feasible.³⁴ A tree configuration would much more easily accommodate a whip antenna than would a flagpole.³⁵ In addition, a tree tower could be expanded to accommodate additional carriers.³⁶

Finally, the tree configuration will most likely have less visual impact than the flagpole. Primarily, for the neighboring residents, the tree configuration would be less intrusive because it will not require the lighting that a flagpole flying a flag would.³⁷ Furthermore, with a backdrop of existing pine trees and a relatively low proposed height of 80 feet, a tree configuration will be somewhat consistent with the surrounding landscape.³⁸ The originally anticipated visibility of the Facility will not change. Sprint still expects only 24 residences to have year round views of the tower with the majority of the homes being located to the north.³⁹ To limit the visual impact on the nearby residences, Sprint and Verizon will both use a brick façade on their equipment buildings to match the brick exterior of the existing building on the property.⁴⁰

To ensure that relocating the Facility 50 feet to the south would not decrease visibility, Sprint floated a second balloon for comparison and did a brief drive test of the nearby subdivision during the break in the Public Hearing. Sprint found no appreciable difference in the visibility with the relocation of the Facility 50 feet to the south.⁴¹

Finally, Sprint will submit photographic simulations with its Development and Management Plans (if the Certificate is granted) to the Council, Mr. Jim Hite (an abutter) and the

³⁴ Tr. 4:04 p.m. at 54.

³⁵ Tr. 7:08 p.m. at 13.

³⁶ Tr. 7:08 p.m. at 12.

³⁷ Tr. 7:08 p.m. at 9.

³⁸ Tr. 7:08 p.m. at 10.

³⁹ Tr. 4:04 p.m. at 28.

⁴⁰ SP-1 at Tab 7; Tr. 4:04 p.m. at 38; Tr. 7:08 p.m. at 27.

⁴¹ Tr. 7:08 p.m. at 10.

Town in order to ensure everyone has the opportunity to view and comment on the type and configuration of the tree.⁴²

Besides having a minimal visual aspect, Sprint's proposed Facility will not have a significant adverse effect on the environment, including public health and safety.

A) Ecological Resources

The development activities proposed at the Site will not significantly impact any wetlands or watercourses. There will be no daily water usage or wastewater discharge associated with building or maintaining the Facility, and no water supply or sanitary facilities are proposed at the Site. The plan of development includes erosion and sediment control measures to minimize soil exposure, control run-off, shield and/or bind the soil, and trap sediments. Sprint will also use common building materials that will not produce any environmentally damaging leachates and will not use transformers containing poly-chlorinated biphenyls.⁴³

No air pollutants will be generated during the development of the Site or during the normal operations of the Facility. In addition, the only noise associated with the Facility will be during its construction. The noise from such activity, however, is equal to the noise produced when constructing a single family home and will cease when the construction ends. The construction period is estimated at approximately six weeks. Post-construction, Sprint does not anticipate having an affect on the traffic pattern in the area as Sprint will make only one monthly maintenance and inspection visit to the Site.⁴⁴

In addition, although there is a forested area to the west of the Facility, the Facility is not expected to have a significant impact on wildlife because Sprint's activities will take place entirely on existing cleared areas consisting of pavement and maintained lawn. In addition,

⁴² Tr. 7:08 p.m. at 17-18; 31-32.

⁴³ SP-1 at 15-16.

due to its location adjacent to a commercial building, there is extensive nearby human disturbance.⁴⁵

B) Cultural & Historic Resources

There will be no adverse impacts on any cultural resources in the Cromwell area as a result of the Facility. Sprint, as part of its site investigation process, conducted a thorough review of the environmental resources outlined in the National Environmental Policy Act ("NEPA"). The review assists Sprint in determining if the Facility lies in an environmentally or culturally sensitive area. As part of the investigation, Sprint reviewed several criteria including: officially designated wilderness areas, wildlife preserves, threatened or endangered species habitats, the National Register of Historic Places, Indian religious sites and flood plains. The NEPA review concluded that the Facility will not lie within an environmentally or culturally sensitive area and there will be no adverse impact on any historical resource as a result of the Facility.⁴⁶

C) Safety

The Facility will not pose any risk to human health, be it the community-at-large or employees who visit the Facility. Sprint's calculations demonstrate that the power density will be significantly less than the FCC mandated limits in all locations around the Facility, even with extremely conservative assumptions.⁴⁷

⁴⁴ SP-1 at 16-17.

⁴⁵ SP-1 at 18.

⁴⁶ SP-1 at 22-24, Tabs 14, 15.

⁴⁷ SP-1 at 21, Tab 13.

VI. CONCLUSION

Sprint has provided ample evidence in this docket for the Council to conclude that a Facility is necessary at 160 West Street for Sprint to provide iDEN network coverage to Routes 3, 9 and 372. Moreover, Sprint has proven that a Facility in this location will have minimal environmental impact, particularly given the proposed tree configuration. Therefore, Sprint respectfully requests that the Council grant its Application for a Certificate at 160 West Street in Cromwell, Connecticut.

Respectfully submitted,
Sprint Nextel Corporation

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Certificate of Service

On October 19, 2007, a copy of Sprint Nextel Corporation's Post-Hearing Brief was sent via first class mail to:

Cellco Partnership d/b/a Verizon Wireless

c/o

Kenneth C. Baldwin, Esq.

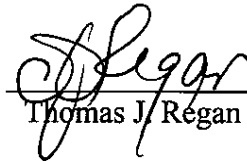
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