

ORIGINAL

AN APPLICATION SUBMITTED BY THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF FACILITIES TO PROVIDE CELLULAR SERVICE IN THE HARTFORD AND MIDDLESEX COUNTIES. : CONNECTICUT SITING COUNCIL May 15, 1984

O P I N I O N

The Southern New England Telephone Company applied to the Connecticut Siting Council for a certificate of environmental compatibility and public need for the construction, maintenance, and operation of six telecommunications towers and associated equipment in the towns of Southington, Hartford, East Hartford, South Windsor, Middlefield, and Middletown to provide Domestic Cellular Radio Telecommunications service (cellular service) in the Hartford New England County Metropolitan Area (NECMA). An alternate to the Middletown site was proposed in Berlin and an alternate to the original South Windsor site was proposed in South Windsor.

On March 21, 1984, the Council visited proposed sites and held a public hearing in Middlefield. On March 22, 1984, the Council visited proposed sites and held a public hearing in South Windsor. The Council took administrative notice of its record in its Docket 35 proceeding, which pertained to the Southington, Hartford, and East Hartford sites and which was denied without prejudice by the Council. In that docket, the Council visited the sites on September 27, 1983, and held public hearings on September 29 and 30 in New Britain.

The nonwireline operators have moved to dismiss SNET's application on the grounds that:

1. The FCC prohibits SNET from operating a cellular telecommunications system except through a subsidiary;

2. Jurisdiction over SNET and not over the nonwireline operators conflicts with the constitutional guarantees of equal protection and would deprive the citizens of the benefits to be derived from fair competition.

The Council denies this motion and accepts jurisdiction of SNET's application for the following reasons:

The Council's statutory authority to consider applications for certificates of environmental compatibility and public need is constrained by the definitions in Connecticut General Statutes Section 16-50i, which, as applied to this proceeding, defines facility as telecommunication towers owned or operated by a public service company.

SNET has applied to the Council for a certificate as a public service company defined under Connecticut General Statutes Section 16-1. SNET has represented that its cellular phone service will be provided by the company as a regulated public service company. These factors are dispositive in the instant proceeding and the issues raised by the nonwireline operators are properly left to the FCC.

As to the question of equal protection for competitors in the cellular phone industry, the Council has only the authority delegated to it by the legislature, as embodied in its governing statutes. The legislature, in its wisdom, has decided to regulate telecommunication towers owned or operated by the State and public service companies. The Council is bound by the limits imposed by its statutes.

The Council recognizes that, given the volatile nature of the new cellular technology, both Connecticut legislation as to regulation and FCC orders as to the structural form of the companies offering cellular

phone service are subject to change at any time. However, the Council must entertain and act on applications for certificates under the law as it presently exists.

Based on the findings of fact attached hereto, the Council concludes that a certificate of environmental compatibility and public need should be issued in accordance with the attached decision and order for the proposed facilities.

In reaching this decision, the Council considered the potential adverse environmental effects of the proposed facilities, including their visibility, construction impacts, possible health effects of radio frequency electromagnetic radiation, and compatibility with present and potential land uses in the vicinity of each proposed and alternate site. The latter included consideration of the proximity of the original South Windsor site to recreational and wildlife areas, and consideration of the probable visibility of a tower at the original Middletown site. In each case, the Council determined that the alternate sites were preferable.

In addition, the Council examined the technological and other requirements imposed on the applicant by the Federal Communications Commission. The FCC has also determined that a public need for the proposed service exists. The Council determined that these facilities are necessary to provide cellular service and to be compatible with future adjacent cellular systems. The use of these facilities to provide cellular service is not contingent on future siting decisions in adjacent areas.

Therefore, the Council will order that a certificate of environmental compatibility and public need be issued for the construction, maintenance, and operation of the proposed telecommunications towers and associated equipment.