

DOCKET NO. 56A

METRO MOBILE CTS OF NEW HAVEN, INC., : CONNECTICUT SITING
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY :
AND PUBLIC NEED FOR THE CONSTRUCTION, : COUNCIL
MAINTENANCE, AND OPERATION OF FACILITIES
TO PROVIDE CELLULAR SERVICE IN NEW HAVEN
COUNTY; AMENDMENT RESOLUTION. : September 10, 1986

D I S S E N T I N G O P I N I O N

Metro Mobile proposes to place five antennas on an existing tower located within West Rock Ridge State Park. Although the tower stands on a small private in-holding within the park, the tower is within the perimeter boundaries of the park and impacts the park just as much as if it was actually on park land. For this reason the standard of review for the proposed facility should be same as that applied to other facilities proposed for parkland.

Connecticut's "Environmental Protection Act" declares that there is a "public trust in air, water and other natural resources of the state". CGS §22a-15. To implement that policy the act further provides that no state agency may authorize impairment of that trust so long as there is a "feasible and prudent alternative". CGS §22a-19. The burden of persuasion rests on a party before an agency to demonstrate that there is no such alternative, not on an agency that there is such an alternative.

Docket 56 was reopened to afford Metro Mobile an opportunity to offer evidence as to alternatives to the park site. One alternative identified in Docket 56 was downtown New Haven, but Docket 56A is not limited to the New Haven alternative. While Metro Mobile supplied the Council with data on the New Haven alternative, it chose not to do so on

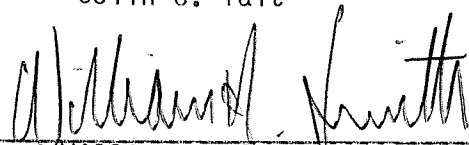
other alternative sites. When questioned about other sites, Metro Mobile responded with generalized statements that without the park site it would need two or more other towers in surrounding towns. The Applicant did not identify these sites or evaluate them. Apparently Metro Mobile assumes that two towers are always worse than one tower and for that reason there is no feasible and prudent alternative to the park site.

The "feasible and prudent" standard, however, is a qualitative standard, not a quantitative standard. The majority acknowledges that our job is not to count towers, but evaluate them. Whether one tower inside a park is better than several towers outside a park is not immediately apparent and requires a comparison of the sites and their attendant environmental impacts. While under many circumstances one tower would be preferable to two towers, under some circumstances two might be preferable to one. This might be the case where that one tower lies within a state park.

Like the proverbial person from Missouri, what I ask is that Metro Mobile "show me" that there is no feasible and prudent alternative. To do this Metro Mobile should have located the actual sites it would need to provide adequate service and furnished the Council with data on all such sites. Without information on specific alternatives, a comparison with the park site is not possible; without such a comparison, a finding that there is no feasible and prudent alternative is not possible; without such a finding, the approval of a facility in a park is not possible.



Colin C. Tait



William H. Smith