

CONNECTICUT SITING COUNCIL

PETITION OF NEW CINGULAR)
WIRELESS PCS, LLC ("AT&T") TO THE)
CONNECTICUT SITING COUNCIL FOR) PETITION NO. 1152
A DECLARATORY RULING THAT NO)
CERTIFICATE OF ENVIRONMENTAL) MAY 20, 2015
COMPATIBILITY AND PUBLIC NEED IS)
REQUIRED FOR A PROPOSED)
TEMPORARY TOWER TO BE)
LOCATED OFF OF ANCIENT HIGHWAY)
IN THE TOWN OF EAST LYME,)
CONNECTICUT)

RESPONSE TO EAST LYME RESIDENTS FOR RESPONSIBLE CELL
TOWER PLACEMENT & TOWN OF EAST LYME
LIMITED APPEARANCE STATEMENTS

On April 9, 2015, New Cingular Wireless PCS, LLC ("AT&T"), the "Petitioner", petitioned the Connecticut Siting Council ("Council") pursuant to Sections 16-50j-38 and 16-50j-39 of the Regulations of Connecticut State Agencies ("R.C.S.A.") for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need ("Certificate") is required to install a temporary tower off of Ancient Highway in the Town of East Lyme, Connecticut (the "Site"). The temporary tower is needed by AT&T and T-Mobile to partially replace wireless service that will be disrupted when an existing 150' tall tower located off of Scott Road is decommissioned at the

requirement of the underlying property owner. In order to minimize disruption to AT&T & T-Mobile's customers, AT&T has proposed a temporary tower which will provide reduced service until a permanent and relocated tower site can be constructed and put into operation in AT&T & T-Mobile's network. As noted in AT&T's Petition, the company has identified two potential permanent tower site locations and anticipates filing a technical report with the Town of East Lyme for those sites later this month. In the interim, this Petition was filed for deployment of a temporary tower on one of the properties proposed for development of a permanent tower in order to minimize disruption to AT&T and T-Mobile's services and allow for an orderly removal of the existing tower facility on Scott Road in East Lyme. Responses to Siting Council interrogatories and this response to the Limited Appearance Statements filed by attorneys for "Residents For Responsible Cell Tower Placement" ("RRCTP") and the Town of East Lyme ("Town") dated May 4, 2015 and May 8, 2015 and the intervention requests by such parties are respectively being filed with the Council in support of Petition 1152.

1. There is No State Legal Presumption that All Telecommunications Towers Require Certificates of Environmental Compatibility and Public Need

Section 16-50i(a) of the Connecticut General Statutes specifically defines a "Facility" as

...(6) such telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company or a certified telecommunications provider or used in a cellular system, as defined in the Code of Federal Regulations Title 47, Part 22, as amended, which **may** have a substantial adverse environmental effect, as said council shall, by regulation, prescribe (emphasis supplied).

Similarly, Section 16-50k of the Connecticut General Statutes only requires a Certificate for such facilities that **may** have a substantial adverse environmental effect in the state. Siting Council regulations in turn incorporate both exemptions for certain classes of towers or tower site modifications and also incorporate the authority to grant fact specific declaratory rulings on a case by case basis. In fact, Sections 16-50j-38 and 16-50j-39 of the Council's regulations expressly provide authority for a declaratory ruling finding that a specific tower proposal does not have substantial adverse environmental effects and that no Certificate is required under the Public Utility Environmental Standards Act.

Section 16-50j-71 of the Council's regulations, as cited by interveners RRCTP and the Town, relate to exempt modifications, a regulation not at issue in this Petition. Moreover, RRCTP and the Town's erroneous interpretation of the Siting Council's regulations seek to make Sections 16-50j-38 and 39 governing site specific declaratory rulings meaningless. Such a result would violate recognized rules of statutory and regulatory construction. See C.G.S. §

1-1, 1-2z (plain meaning rule) and R.C.S.A § 16-50j-4 (“rules shall be so construed by the council as to secure just, speedy and inexpensive determination of the issues”). Indeed, arguments by attorneys for RRCTP and the Town run counter to decades long statutory, regulatory and administrative interpretations and rulings by the Siting Council that certain specific towers do not present substantial adverse environmental effects (examples include temporary towers, rooftop towers, lightpole replacements and even some shorter permanent at grade tower sites). It is respectfully submitted that the Council is well within its authority to grant the declaratory ruling sought by AT&T, namely that the proposed temporary tower at a height just above the ambient tree line on a large parcel in the woods as needed to provide continuity of service while an existing site is decommissioned and a permanent tower site secured does not involve substantial adverse environmental effects for purposes of Section 16-50k of the Connecticut General Statutes.

2. The Temporary Tower Will Not Have A Significant Visual Impact on a Residential Neighborhood or any Documented Scenic Vista

AT&T provided a visual assessment as Exhibit D to its Petition which includes a 2012 aerial photo and additional details of the environment in the area of the temporary tower site location.¹ AT&T is also responding to Siting

¹ Counsel for RRCTP and the Town reference a “map that is so old”, but it is not clear from

Council Interrogatories which requested among other items, some additional information regarding the Visibility Assessment. These materials demonstrate factually that the opinions from counsel for RRCTP and the Town regarding a significant visual impact associated with the temporary tower are misplaced and cannot be supported by quantitative or qualitative criteria that are recognized in the field of visual impact assessment.

3. AT&T Knows of No Better Alternative Site for a Temporary Tower

In the Fall of 2014, AT&T representatives spoke with the prior First Selectman for the Town of East Lyme regarding: a) the need to decommission the Scott Road Tower Facility in 2015; b) the need to replace the facility with a permanent tower site in East Lyme; c) whether the Town might have any suggested or preferred locations for review by AT&T including municipal property; and d) AT&T's intent to deploy a temporary tower facility to provide for continuity of AT&T and T-Mobile services in this part of East Lyme (i.e. west of Flanders along the Boston Post Road towards the Old Lyme border). Because of the time needed to identify sites, lease properties, formally consult with the Town, apply to the Council and otherwise secure approvals and build a permanent replacement tower (a process that is often 2+ years in duration), AT&T noted for the Town the need for a temporary tower regardless of any

their limited appearance statements what map they are referring to.

permanent replacement tower solution.

Notably, in December of 2014, at the direction of the prior First Selectman, AT&T representatives met with the Town's Director of Public Safety and other personnel responsible for the Town's emergency communications network to discuss all of the above in greater detail and share property locations AT&T had identified for a tower site that were either qualified or rejected as a technical matter by AT&T radiofrequency engineers. AT&T shared with the Town's Director of Public Safety its site search results for a permanent location, explained why sites such as the tower in Flanders at the Fire Department near the High School would not work technically, and identified the one leased location for a permanent tower site location AT&T was aware of at that time (a site leased by American Tower Company as of November 2014). AT&T noted for Town representatives that it was still exploring lands along Ancient Highway at the higher ground elevations also. Other than properties along Ancient Highway, no other sites discussed with the Town at that time were deemed viable by AT&T's radiofrequency engineers as either temporary or permanent tower replacement site locations.

Thereafter, a separate tower company, Ancient Highway Towers, LLC ground leased the Drabik property ("AHT Site") in early 2015. AT&T has no ownership interest in AHT and subsequently, in March of 2015, entered into agreements

for development of a temporary tower and presentation of the AHT Site as one of two potential permanent tower site locations. AT&T determined that the AHT Site was the best location for at least a temporary tower site based on several criteria including relative service area of the Scott Road Tower Facility, relative terrain, lower ground elevations of the American Tower Site location and similar temporary site development profiles relative to tree clearing etc. As such, AT&T developed with T-Mobile a plan for deployment of a temporary tower at the AHT Site which is the subject of Petition 1152 and filed same with the Council in April of 2015.

Since the time the Petition was filed, the Town of East Lyme and Residents for Responsible Cell Tower Placement have intervened and requested AT&T to evaluate alternative site locations for even the temporary tower. Generally, all of the locations suggested are at much lower ground elevations south or east of the existing Scott Road Tower Facility and actually in the service area of existing AT&T sites that serve Flanders, I-95 and areas to the south including Niantic. None have been deemed viable for purposes of mitigating the loss of service anticipated from the Scott Road Tower Facility. Attached to AT&T's interrogatory responses is a map showing sites AT&T has evaluated as permanent and/or temporary tower site locations, none of which can replace services at the level the AHT Site can. At this point, AT&T has evaluated

some thirty locations.

4. Public Notice

AT&T provided mailed notices on April 2, 2015 and April 29, 2015 to owners of property whose land abut the two separate lots owned by Drabik and which are the subject of this temporary tower petition. As such, any claimed deficiency of notice for purposes of Petition 1152 has been cured and is not a basis to defer any action in the proceeding.

5. Timelines for Permanent and Temporary Tower Site Development

While beyond the scope of the legal and factual questions presented in this Petition, we note for the Council that the owner of the property underlying the Scott Road Facility had granted a two year extended lease for the existing tower site in late 2011. Two years later in December of 2013 another two year extended lease was granted, but the property owner placed express conditions in the lease amendment regarding AT&T asking for further extensions and a requirement to remove the Facility within forty-five days of lease expiration later this year or face a substantial financial penalty. Over the course of the past sixteen months, AT&T, American Tower and others have searched for a replacement tower site for the Scott Road Facility. These efforts have been diligently pursued, including alternatives to present to the Town of East Lyme and ultimately the Siting Council, and currently include the

AHT Site and another tower site leased by American Tower. In reviewing the limited appearance statements by counsel for the interveners, the opinions and tone are misplaced and simply fail to recognize the regulatory and siting process in Connecticut for towers which takes a significant amount of time and includes leasing, due diligence, municipal consultations, Siting Council applications, utility provisioning and other variables associated with deploying wireless infrastructure.

It is respectfully requested that the Siting Council find that the proposed temporary tower facility presents no significant adverse environmental effects for purposes of PUESA and approve the Petition. Such a ruling provides no legal precedent for a future Docket in which permanent tower replacement options are presented for the tower to be decommissioned and which was issued a Certificate in Docket 67. Indeed, it is respectfully submitted that the time and resources of all parties will be better served in an active municipal consultation pursuant to Section 16-50I of the Connecticut General Statutes which AT&T intends to initiate later this month for the two tower sites it has identified as potential permanent tower site locations.

A handwritten signature in black ink, appearing to read 'CBF', with a horizontal line underneath it.

Christopher B. Fisher, Esq.

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CERTIFICATE OF SERVICE

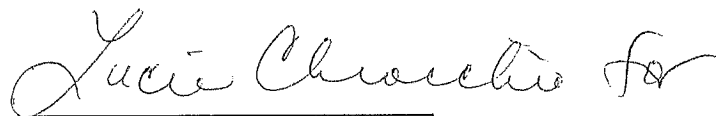
I hereby certify that on May 20, 2015 an original and fifteen copies of AT&T's Responses to Limited Appearance Statements were sent by Overnight Mail and electronic mail to the Connecticut Siting Council and:

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Dated: May 20, 2015

A handwritten signature in cursive script, reading "Lucia Chocchia for". The signature is written in black ink and is positioned above a horizontal line.

Christopher B. Fisher, Esq.
Commissioner of the Superior Court