



Daniel F. Caruso  
Chairman

# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Internet: [ct.gov/esc](http://ct.gov/esc)

October 1, 2008

TO: Parties and Intervenors

FROM: S. Derek Phelps, Executive Director

RE: **DOCKET NO. 360** - Celco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 188 Route 7 South, Falls Village (Canaan), Connecticut.

---

In light of the legal issues raised during the evidentiary hearing of the above-referenced proceeding and in the post-hearing briefs the Connecticut Siting Council (Council) wishes to schedule oral arguments by counsel. This proceeding will be held on Thursday, October 23, 2008, at 1:00 p.m., at the CCSU Institute of Technology and Business Development (ITBD), 185 Main Street, 3<sup>rd</sup> Floor, Room 3190000, New Britain, Connecticut.

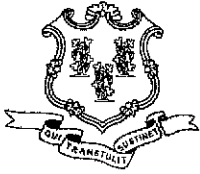
The Council is particularly interested in the issues noted in its memorandum dated August 14, 2008 (copy attached); responding to the opposing counsel's brief; and bringing to the attention to the Council any new cases or legislation decided or enacted since the briefs were prepared.

The Council wishes to utilize the Connecticut Supreme Court practice as a guide for these oral arguments. Given that the Applicant has the burden to persuade the Council to grant the application, the following procedure and time schedule has been developed:

1. The Applicant shall begin the oral argument and have the opportunity to end the argument.
2. Council members will have the discretion to ask questions at a specific point in argument or to wait until the end of a prepared presentation.
3. Time limits will include prepared presentations, Council questions, and answers to questions.
4. Time limits will be enforced, with a small amount of flexibility (for example, to complete a question, answer, or discussion of a discrete topic).
5. The total time for argument will be 1 ½ hours:
  - 45 minutes for the Applicant with the opportunity to reserve time up to 15 minutes of its 45 minutes for closing
  - 45 minutes for Intervenor Jaeger
6. The order of oral arguments will be as follows:
  - Applicant
  - Intervenor Jaeger
  - Applicant Final Rebuttal

Rebuttal argument shall be confined to the points presented by the argument of opposing counsel. If Intervenor Jaeger believes there is a compelling reason to address remarks made by the Applicant in its closing, five (5) additional minutes may be allotted to the Intervenor, with five (5) additional minutes to the Applicant for rebuttal. No further time may be granted for either side.

A timer device will be used to assist in the adherence of this schedule. A transcript will be made of this proceeding. Please direct any questions about these procedures or practices to Assistant Attorney General Robert L. Marconi at (860) 827-2682.



Daniel F. Caruso  
Chairman

# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Internet: [ct.gov/csc](http://ct.gov/csc)

August 14, 2008

To: Parties & Intervenors

From: Daniel F. Caruso, Chairman

Re: **DOCKET NO. 360** - Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 188 Route 7 South, Falls Village (Canaan), Connecticut.

---

During the recently-concluded hearing on the above-captioned docket before the Connecticut Siting Council ("Council"), a number of legal issues were raised. In addition to any matters that the parties and intervenors wish to include in their briefs, it would be particularly helpful to the Council if the briefs included:

- 1) A discussion of the standard which must be applied by the Council in approving or denying the subject application, including, but not limited to the issue of public need (what constitutes public need) as it is used in Conn. Gen. Stat. § 16-50p;
- 2) A discussion of the requirements of municipal consultation, as it is referenced in Conn. Gen. Stat. § 16-50f;
- 3) A discussion of the issue of preemption as to whether 47 U.S.C. § 332 (c)(7)(B)(iv) preempts Council consideration of issues of the effects of "radio frequency emissions" on human health if the levels of such emissions are within the levels set by the Federal Communications Commission (FCC), and whether it makes a difference whether the effects are thermal effects or not;
- 4) A discussion of the issue of preemption as to whether 47 U.S.C. § 332 (c)(7)(B)(iv) preempts Council consideration of issues of the effects of "radio frequency emissions" (RF emissions) on wildlife if the levels of such emissions are within the levels set by the FCC;
- 5) A discussion of whether any other Federal statutes or any treaties (including any treaties related to migratory birds) affect the applicability of 47 U.S.C. § 332 (c)(7)(B)(iv) to the case at hand;
- 6) A discussion of whether there is field preemption of the radio frequency area, namely, whether, even if 47 U.S.C. § 332 (c)(7)(B)(iv) or any other statutory provision does not specifically preempt Council consideration of the effects of RF emissions that are within FCC established limits, Congress preempted the field of RF emissions. (Note: as to items 3-6, the legislative history of any relevant Federal statutes, including the Telecommunications Act of 1996 and the specific provision of 47 U.S.C. § 332 (c)(7)(B)(iv), as well as any ratification proceedings of any relevant treaties would be helpful.);
- 7) A discussion of the relevance (or lack of relevance) of any speculation of future litigation and the costs thereof regarding the municipality;



CONNECTICUT SITING COUNCIL  
Affirmative Action / Equal Opportunity Employer

- 8) A discussion of the relevance (or lack of relevance) of issues raised regarding the relationship of the volunteer fire department with the town, including on matters concerning any lease;
- 9) A discussion of any effects not related to radio frequency emissions that the proposed facility may have on wildlife, including, but not limited to, bird strikes;
- 10) A discussion of whether the evidence in the record indicates that Verizon calls can "roam" on other carrier networks.

The deadline to submit briefs for this proceeding is September 2, 2008. Please notify the Council if more time is needed.

The Council thanks you for your thoughtful consideration of these matters.