

# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

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April 9, 2009

TO: Parties and Intervenors

FROM: S. Derek Phelps, Executive Director

RE: **DOCKET NO. 366** - Optasite Towers LLC and Omnipoint Communications, Inc. application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 52 Stadley Rough Road, Danbury, Connecticut.

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As stated at the hearing in New Britain on January 26, 2009, after the Council issues its draft findings of fact, parties and intervenors may identify errors or inconsistencies between the Council's draft findings of fact and the record; however, no new information, evidence, argument, or reply briefs will be considered by the Council.

In addition the Council has drafted a document entitled "Conclusions of Law" which is also included for review.

Parties and Intervenors may file written comments with the Connecticut Siting Council on the Draft Findings of Fact and Conclusions of Law issued on this docket by April 21, 2009

SDP/CDM/cm

Enclosure

**LIST OF PARTIES AND INTERVENORS**  
**SERVICE LIST**

<b>Status Granted</b>	<b>Status Holder (name, address &amp; phone number)</b>	<b>Representative (name, address &amp; phone number)</b>
<b>Applicant</b>	Optasite Towers LLC and Omnipoint Communications, Inc.	Christopher B. Fisher, Esq. Lucia Chioocchio, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14 <sup>th</sup> Floor White Plains, New York 10601 914-761-1300 <a href="mailto:cfisher@cuddyfeder.com">cfisher@cuddyfeder.com</a> <a href="mailto:lchioocchio@cfwlaw.com">lchioocchio@cfwlaw.com</a>
<b>Party (Approved on August 28, 2008)</b>	City of Danbury	Laszlo L. Pinter, Esq. Robin Edwards, Esq. Deputy Corporation Counsel City of Danbury 155 Deer Hill Avenue Danbury, CT 06810 203-797-4518 203-796-8043 <a href="mailto:l.pinter@ci.danbury.ct.us">l.pinter@ci.danbury.ct.us</a>

**DOCKET NO. 366** - Optasite Towers LLC and Omnipoint }  
Communications, Inc. application for a Certificate of }  
Environmental Compatibility and Public Need for the }  
construction, maintenance and operation of a telecommunications }  
facility located at 52 Stadley Rough Road in Danbury, }  
Connecticut.

Connecticut

Siting

Council

March 25, 2009

## **DRAFT**

### **Findings of Fact**

#### **Introduction**

1. Pursuant to Chapter 277a, Sections 16-50g et seq. of the Connecticut General Statutes (CGS), as amended, and Section 16-50j-1 et. seq. of the Regulations of Connecticut State Agencies (RCSA), Optasite Towers LLC (Optasite) and Omnipoint Communications, Inc. (T-Mobile) applied to the Connecticut Siting Council (Council) on June 30, 2008 for the construction, operation, and maintenance of a telecommunications facility that would include a 140-foot steel monopole tower. The facility would be located at 52 Stadley Rough Road in the City of Danbury, Connecticut. (Applicants 1, pp. 1-2)
2. Optasite is a Delaware limited liability company with offices at One Research Drive, Suite 200C, Westborough, Massachusetts. It would construct and maintain the proposed facility. (Applicants 1, p. 3)
3. T-Mobile is a Delaware corporation with a Connecticut office at 35 Griffin Road South, Bloomfield, Connecticut. The company and its affiliated entities are licensed by the Federal Communications Commission (FCC) to construct and operate a personal wireless services system in Connecticut. T-Mobile does not conduct any other business in the State of Connecticut other than the provision of wireless services under FCC rules and regulations. (Applicants 1, p. 3)
4. The parties in this proceeding are Optasite, T-Mobile, and the City of Danbury. (Transcript, September 9, 2008, 3:05 p.m. [Tr. 1], p. 6)
5. Optasite would be the certificate holder. (Transcript, October 28, 2008, 11:00 a.m. [Tr. 3], p. 140)
6. The proposed Facility would provide wireless service in the northeast portion of the City of Danbury, particularly north of the I-84 junction with Route 7 in an area between Candlewood Lake, the Town of Brookfield's municipal boundary, and Padanaram Road. (Applicants 1, p. 1)
7. Pursuant to CGS § 16-50/(b), notice of the applicants' intent to submit this application was published on June 24 and 26, 2008 in the Danbury News-Times. (Applicants 1, p. 4; News-Times Affidavit of Publication dated June 26, 2008)



8. In accordance with CGS § 16-50I(b), Optasite sent notices of its intent to file an application with the Council to each person appearing of record as owner of property abutting the property on which the site is located. (Applicants 1, p. 4, Attachment 11)
9. Optasite received return receipts from all of the abutting property owners to whom notices were sent. (Applicants 2, A1)
10. Pursuant to CGS § 16-50I (b), Optasite provided notice to all federal, state, regional, and local officials and agencies listed therein. (Applicants 1, p. 4, Attachment 9)
11. Optasite posted a sign informing the general public of its pending application with the Council on the premises of 52 Stadley Rough Road on August 24, 2008. The dimensions of the sign were four feet by six feet. The sign included the site and date of the initial hearing scheduled for this application and information about how to contact the Council. (Tr. 3, pp. 68-69)
12. Pursuant to CGS § 16-50m, the Council, after giving due notice thereof, held a public hearing on September 9, 2008, beginning at 3:05 p.m. and continuing at 7:00 p.m. in the auditorium of the Broadview Middle School, 72 Hospital Avenue in Danbury, Connecticut. (Tr. 1, p. 2 ff.)
13. The public hearing was continued on October 28, 2008 at the Institute of Technology and Business Development of Central Connecticut State University, 185 Main Street, New Britain, Connecticut beginning at 11:00 a.m. The hearing was adjourned at 3:00 p.m. (Tr. 3, p. 3 ff.; Tr. 3, 145)
14. The public hearing was concluded on January 26, 2009. The concluding session was held at the Institute of Technology and Business Development of Central Connecticut State University. It began at 10:00 a.m. and ended at 5:40 p.m. (Transcript, January 26, 2009, 10:00 a.m. [Tr. 4], pp. 3, 335)
15. The Council and its staff conducted an inspection of the proposed site on September 9, 2008, beginning at 2:00 p.m. On the day of the field inspection, the applicants flew a balloon beginning at approximately 7:45 a.m. Conditions for the balloon flight were difficult throughout most of the morning due to high winds and rain. One balloon was lost at approximately 11:00 a.m. Another balloon was sent aloft about 12:00 p.m. and remained aloft the rest of the afternoon. Visibility was limited due to cloud cover. (Tr. 3, p. 69)

#### State Agency Comments

16. Pursuant to CGS § 16-50I, the Council solicited comments on Optasite's application from the following state departments and agencies: Department of Agriculture, Department of Environmental Protection, Department of Public Health, Council on Environmental Quality, Department of Public Utility Control, Office of Policy and Management, Department of Economic and Community Development, and the Department of Transportation. The Council's letters requesting comments were sent on July 29, 2008 and January 29, 2009. (CSC Hearing Package dated July 29, 2008; Letter to State Department Heads dated January 29, 2009)



17. The Connecticut Department of Public Health responded to the Council's solicitation with no comments. (Connecticut Department of Public Health Memorandum, dated August 26, 2008)
18. The Connecticut Department of Transportation responded to the Council's solicitation with no comments. (Connecticut Department of Transportation letter, dated September 18, 2008)
19. Other than the comments received from the Connecticut Departments of Public Health and Transportation, the Council did not receive comments from any other state agencies. (Record)

#### Municipal Consultation

20. On January 31, 2006, Optasite submitted a letter and a technical report to the City of Danbury. The technical report included specifics about the proposed site, Optasite's plans for it, the site selection process, and the environmental effects of the proposed facility. (Applicants 1, p. 17)
21. On March 21, 2006, representatives of Optasite met with Danbury's Mayor, Corporation Counsel, and Associate Planner to discuss the proposed facility. At this meeting, Danbury officials suggested that Optasite present its plans to an information session of the Planning Commission. This session was held on May 3, 2006. Subsequent to this meeting, the Planning Commission provided written comments about the proposed facility in a letter dated May 23, 2006. (Applicants 1, pp. 17-18)
22. During its May 3, 2006 information session with Optasite, the Danbury Planning Commission heard concerns about: the tower's height, the tower's proximity to an elementary school located in a nearby church, the proximity of wetlands to the proposed facility, the visual impact on the surrounding residential areas and the possible visual impact on historical properties, the proximity of the facility to residential properties, and the impact on private wells should blasting be required for the foundation. (Applicants 1, Attachment 8)
23. After the May 3, 2006 meeting, the Danbury Associate Planner prepared a memorandum for the planning commission summarizing the concerns raised at the meeting. The memorandum included concerns over the tower's location in a residential district, which is the 6th least preferred location for a wireless facility according to Danbury's zoning regulations; the height of the tower; the potential of the facility to impact the foundation of the church; the safety of helicopters flying close to the facility; the tower posing an attractive nuisance for neighborhood children; potential impact on wetlands and wildlife habitat; and the visual impact on surrounding residences and six historic properties located within the proposed tower's viewshed. The memorandum also listed recommendations for Optasite that included exploring alternative sites, considering a stealth treatment for the tower, and using landscaping and a stockade fence as visual buffer for the ground equipment. (Applicants 1, Attachment 8 – Memorandum to Planning Commission dated May 17, 2006)

24. Following the public information session with the planning commission, Optasite investigated several alternative sites, including sites suggested by the city. Optasite also redesigned and relocated its proposed facility in response to the city's comments. Revisions included moving the facility's location 100 feet towards the southeast corner of the church property and using flush mounted antennas. Optasite also submitted a bell tower design to the church that owns the host property. After reviewing this design, the church rejected it as too visually obtrusive. (Applicants 1, p. 18; Attachment 8)
25. At the September 9, 2008 public hearing, the Mayor of Danbury, Mark Boughton, expressed concern over the proposed tower's location in a residential neighborhood and his belief that better, alternate sites were available. (Tr. 1, pp. 8-9)
26. Optasite would provide space for City of Danbury emergency services antennas free of charge should the City wish to use the proposed tower. (Applicants 1, p. 9)

#### **Public Need for Service**

27. The United States Congress, through adoption of the Telecommunications Act of 1996 (Act), recognized the important public need for high quality telecommunication services throughout the United States. The purpose of this Act, which was a comprehensive overhaul of the Communications Act of 1934, was to "provide for a competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans." (Applicants 1, p. 5)
28. The Act prohibits local and state bodies from discriminating among providers of functionally equivalent services. (Council Administrative Notice, Telecommunications Act of 1996)
29. The Act prohibits any state or local agency from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions to the extent that such towers and equipment comply with FCC's regulations concerning such emissions. This Act also blocks the Council from prohibiting or acting with the effect of prohibiting the provision of personal wireless service. (Council Administrative Notice, Telecommunications Act of 1996)
30. In an effort to ensure the benefits of wireless technologies to all Americans, Congress enacted the Wireless Communications and Public Safety Act of 1999 (the 911 Act). The purpose of this legislation was to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. (Applicants 1, pp. 6-7)
31. The proposed facility would be an integral component of T-Mobile's wireless network in this area of the state, where T-Mobile experiences a gap in coverage along I-84 west of the junction with Route 7 and in the area north of I-84 and south of Candlewood Lake. (Applicants 1, p. 5)



32. As an outgrowth of the 911 Act, the FCC required wireless carriers to provide enhanced 911 services (E911) as part of their communications networks. These services would allow 911 public safety dispatchers to identify a wireless caller's geographical location within several hundred feet. (Applicants 1, p. 7)
33. T-Mobile has deployed network technologies implementing the FCC's E911 requirements, and the proposed facility would be an integral component of T-Mobile's E911 network. (Applicants 1, p. 7)
34. Verizon Wireless has stated that it has a need for a facility at the applicants' proposed location and that it would co-locate on the tower when budgets allow. (Applicants 1, Attachment 6)
35. Nextel Communications of the Mid-Atlantic, Inc. (Sprint/Nextel) executed a lease agreement with Optasite to locate antennas on the proposed tower. It has reserved an antenna centerline mounting height of 127 feet. (Applicants 1, Attachment 6; Applicants 2, A10)

#### Site Selection

36. The search for a telecommunications site in this area of Danbury was originally initiated by Sprint PCS sometime prior to the fall of 2000. Sprint applied to the Danbury Planning Commission, which had jurisdiction at the time, for approval of a site on Great Plain Road. The Planning Commission denied Sprint's application in December, 2000. (Applicants 2, A3)
37. Verizon Wireless has made efforts to find a site in this area of Danbury. (Applicants 2, A3)
38. T-Mobile initiated a search ring in this area following Sprint's denial by the Danbury Planning Commission and continued its site search efforts through early 2005. (Applicants 2, A3)
39. In 2005, Optasite, through its ongoing business relationships with wireless carriers, became aware that this area of Danbury was considered a "dead zone." (Applicants 2, A3)
40. In June of 2005, Optasite received a call from the previous owner of the property at 52 Stadley Rough Road indicating that the owner was interested in leasing a portion of the property for a wireless site. (Applicants 2, A3)
41. Optasite began its efforts to find a site in this area in June, 2005. Optasite used information gathered during the previous site searches by the wireless carriers to focus its own search efforts. (Applicants 2, A4)
42. During its site search, Optasite contacted wireless carriers licensed to provide service in Fairfield County to ask for suggestions about potential sites. (Applicants 2, A5)



43. Optasite identified 15 communications towers within approximately four miles of the proposed Stadley Rough Road site. T-Mobile has antennas on six of these towers. The towers are listed in the following table.

<b>Tower Location</b>	<b>Ht. and Type of Tower</b>	<b>Tower Owner</b>	<b>Distance and Direction to Site</b>
7 Stony Hill Road, Bethel	140' utility pole	CL&P	2.0 miles to southeast
2 Huckleberry Hill, Brookfield	60' flagpole	AT&T	1.9 miles to northeast
33 Carmen Hill Road, Brookfield	80' lattice tower	Charter Communications	4.2 miles to north
39 Carmen Hill Road, Brookfield	500' guyed lattice tower	Aurora of Danbury	3.8 miles to north
Park Ridge Road, Brookfield	115' utility pole ( <i>T-Mobile on at top of pole</i> )	CL&P	1.5 miles to east
181 Clapboard, Danbury	85' flagpole ( <i>T-Mobile on at 59'</i> )	T-Mobile	3.1 miles to west
39 West Street, Danbury	70' building mount	SNET	3 miles to southwest
41 Padanarum Road, Danbury	80' wood pole ( <i>T-Mobile on at top</i> )	T-Mobile	1.8 miles to southwest
48 Newtown Road, Danbury	100' monopole	Fifty Newtown Rd.	2.1 miles to south
50 Newtown Road, Danbury	100' guyed lattice tower	Fifty Newtown Rd.	2.3 miles to south
Boxwood Lane Ext, Danbury	100' lattice tower	WCSU	3.9 miles to southwest
7 West View Drive, Danbury	133' lattice tower ( <i>T-Mobile on at 50'</i> )	Robert Kaufman	2.6 miles to south
302 Ball Pond Road, New Fairfield	175' monopole ( <i>T-Mobile on at 145'</i> )	Town of New Fairfield	4 miles to northwest
Dick Finn Road, New Fairfield	60' lattice tower	Crown Media	4.2 miles to north
6 Fairfield Drive, Newtown	163' monopole ( <i>T-Mobile on at 160'</i> )	Spectrasite	3 miles to east

(Applicants 1, Attachment 3)

44. During its search for a facility location, Optasite and T-Mobile investigated several locations where a new tower might be feasible. The following table lists those properties that were investigated and includes a statement about their suitability to host the proposed facility.

<b>Property Address and Size</b>	<b>Owner</b>	<b>Suitability</b>
52 Stadley Rough Road; 5.2 acres	Christ the Shepherd Church	Host property
40 Stadley Rough Road; 10.5 acres	Colonial Baptist Church	Owner was not interested in leasing property
85 Great Plains Road; 14.3 acres	St. Gregory the Great RC Church Corp.	Optasite lease proposal was rejected by diocese
Great Plains Road - Map J07, Lot 72; 15.37 acres	Albert Salame	Property owner has other development plans for this parcel
Great Plains Road – Map J05, Lot 101; 28.6 acres	Albert Salame	All Salame-owned parcels rejected for similar reasons
Great Meadows Road – Map J06, Lot 081; 37 acres	Albert Salame	All Salame-owned parcels rejected for similar reasons
Stadley Rough Road – Map J05, Lot 102; 7 acres	Albert Salame	All Salame-owned parcels rejected for similar reasons
73-79 Stadley Rough Road; 15.9 acres	City of Danbury	This is the site of an elementary school; city not interested in leasing here.
14 Indian Spring Road; 3.5 acres	Jose & Christina Carvalheiro	Single family home on this parcel
10 Stadley Rough Road; 8.8 acres	City of Danbury	This is the site of an elementary school; city not interested in leasing here.
Sterling Woods Condominium Complex, Nabby Road	Sterling Woods Condominiums	City of Danbury leases portion of this property for an 80' water tank; T-Mobile could not cover its target area from this site; antennas at this location would create redundancy problems; Condominium Association will not lease property for wireless telecommunications facility.
State Department of Transportation Garage, Rockwell Road	State of Connecticut	This location is too far south of target area to cover it adequately and is at base of a plateau, which would cause shadowing of radio propagation.

(Applicants 1, Attachment 3; Applicants 13, I.D.1., I.D.2.)

45. Sites in the above table that Optasite investigated at the city's suggestion include the water tank at the Sterling Woods Condominium complex on Nabby Road and the state Department of Transportation garage located on Rockwell Road. (Applicants 2, A2)



46. Antennas at the Sterling Woods Condominiums water tank site that would be high enough to reach T-Mobile's coverage objectives would also create problems with interference and redundant coverage for existing sites along I-84. (See Figure 7) (Tr. 3, pp. 78-79)
47. A 140-foot tower located at the federal penitentiary would not be able to cover the area along Stadley Rough Road that would be covered from the proposed site. (Tr. 3, pp. 80-81)
48. In order to approximate the coverage possible from the proposed site, a tower at the State Department of Transportation garage on Rockwell Road would have to be approximately 170 feet tall. Antennas mounted at this height would create interference problems and redundant coverage. (See Figure 6) (Tr. 3, pp. 87-88)
49. Both Sprint/Nextel and T-Mobile indicated to Optasite that they would need antennas to be mounted at a minimum height of 127 feet above ground level (agl) in order to cover their respective target areas. Since the two carriers could not have their antennas at the same height, Optasite proposed a 140-foot high tower in order to be able to accommodate both carriers. (Applicants 2, A6)
50. T-Mobile avers that repeaters, microcell transmitters, distributed antenna systems and other types of transmitting technologies are not a practicable or feasible means to provide service within the coverage gap it is seeking to cover due to significant terrain variations and tree cover in the area, as well as other practical considerations. (Applicants 1, pp. 7-8)

#### Distributed Antenna Systems

51. Distributed antenna systems (DAS) consist of a centralized location where signal processing equipment is housed and numerous antenna nodes, which are connected to the central location by fiber optic cable. The antennas are installed at low heights—telephone poles are a good example of the types of structures on which antennas could be placed. DAS are usually used in areas where extra capacity or very localized coverage footprints are required. Because antennas are mounted at relatively low heights, usually within the tree canopy, it is difficult to achieve much lateral coverage with these systems. (Tr. 4, pp. 88-89)
52. T-Mobile did not consider a DAS solution to its coverage problems in its target area because of the difficult terrain in the area and because it felt the proposed tower was a more viable solution. (Tr. 4, p. 103)

#### Site Description

##### Proposed Site

53. The applicants' proposed facility is located at 52 Stadley Rough Road in Danbury in the southwest corner of a 5-acre parcel owned by Christ the Shepherd Church. (See Figures 1 and 2) (Applicants 1, p. 2; Attachment 4)
54. The church property is zoned RA-40 Single Family Residential. (Applicants 1, p. 2)



55. Wireless telecommunications towers are permitted in any zoning district as a special exception use. (Bulk filed exhibit: Danbury Zoning Regulations)
56. The Danbury zoning regulations designate residential zoning districts as the least preferred location for wireless telecommunications towers. (Bulk filed exhibit: Danbury Zoning Regulations)
57. On the church property, Optasite would lease a 100-foot square parcel within which it would install a 55-foot by 90-foot equipment compound and a 140-foot monopole. Antennas would be flush mounted on the monopole tower. The compound would be enclosed by an eight-foot high chain link fence with green privacy slats. (See Figure 3) (Applicants 1, p. 2; Attachment 4)
58. As an alternative to the monopole tower, Optasite designed a bell tower made of RF transparent materials. The church, however, considered this design more obtrusive than a monopole with flush-mounted antennas. (Tr. 3, pp. 135-136)
59. The proposed tower would be located at 41° 25' 59.17" north latitude and 73° 25' 54.9" west longitude. Its ground elevation would be 545 feet above mean sea level. (Applicants 1, Attachment 4)
60. The proposed tower would be designed in accordance with the 2005 Connecticut State Building Code and the Electronic Industries Association Standard EIA/TIA-222-G, "Structural Standards for Steel Antenna Towers and Antenna Support Structures." The base of the tower would be approximately five feet in diameter. The top of the tower would be approximately one and a half feet in diameter. It would be engineered to accommodate the antennas of up to four carriers and the antennas of the City of Danbury's emergency services, if requested. (Applicants 1, p. 9, Attachment 4, and Attachment 5)
61. Optasite would require all antennas on the tower to be flush mounted. (Tr. 4, pp. 26-27)
62. Optasite would be willing to design the tower as a tree in order to mitigate concerns over its visibility. (Tr. 4, p. 29)
63. If the proposed tower were to be disguised as a tree, its overall height would increase to 147 feet above ground level in order to accommodate the artificial tree branches. (Tr. 4, pp. 27-28)
64. The proposed tower would be designed with a yield point at the approximate height of 100 feet agl because of the tower's proximity to an abutting property, the closest point of which is 42 feet from the tower's proposed location. (Tr. 3, pp. 70-71)
65. T-Mobile would initially install three antennas at a height of 137 feet agl. T-Mobile could install up to six antennas in the future. (Tr. 3, p. 74; Applicants 1, p. 9)
66. T-Mobile would utilize battery back up power at the site. (Applicants 2, A13)
67. Landscaping would be planted along the northern and western sides of the equipment compound to provide additional screening. (Applicants 1, Attachment 4)

68. Developing this site would require 140 cubic yards of cut. No fill would be required. (Applicants 2, A11)
69. Vehicular access to the proposed facility would extend from Stadley Rough Road over an existing paved driveway along the rear of the church's premises and then along a gravel driveway that would be approximately 175 feet in length. (Applicants 1, p. 9; Attachment 4)
70. Utility service for the proposed facility would be extended underground from existing service on Stadley Rough Road. The utility lines would closely parallel the access drive to the compound. (Applicants 1, pp. 9-10; Attachment 4, Sheet A02)
71. No blasting is anticipated for the development of this site. (Applicants 2, A12)
72. The proposed tower's setback radius would extend approximately 98 feet onto adjacent property to the west owned by José and Christina Carvalheiro and approximately 103 feet onto property to the south owned by Colonial Hills Baptist Church. (Applicants 1, Attachment 4; Tr. 3, pp. 71-72)
73. The facility's compound would be located approximately 15 feet from the boundary of the Cavalheiro property and approximately 15 feet from the nearest point of the Baptist Church's property. (Applicants 1, Attachment 4, Sheet A02)
74. There are approximately 53 residences within 1,000 feet of the proposed tower. (Applicants 1, p. 12)
75. The closest residence is located 142 feet to the northwest of the proposed compound at 14 Indian Spring Lane. It is owned by José and Christina Carvalheiro. (Applicants 1, p. 12; Attachment 4)
76. Land use in the area is a mix of single and multi-family residences. There are a number of institutional uses, churches and a school, in the vicinity as well. (Applicants 1, Attachment 4)
77. Optasite's estimated cost of construction for this facility, which does not include T-Mobile's antennas and support equipment, is:

Tower and foundation	\$112,000
Site development	66,000
<u>Utility installation</u>	<u>38,000</u>
Total costs	\$216,000

(Applicants 1, p. 19)

78. The cost of the equipment T-Mobile would install at this facility would be between \$125,000 and \$150,000. (Applicants 2, A22)



Suggested Alternate Sites

79. At the public hearing of September 9, 2008, local area residents submitted to the Council a package of documents expressing reasons why they are opposed to the proposed facility. Among the documents was a list of eight locations that the residents suggested as possible, alternate sites. (Exhibit No. 2 of the Exhibit List submitted by the City of Danbury, dated August 29, 2008)
80. The applicants investigated the alternate locations suggested by the residents and submitted a summary of their findings to the Council. (Applicants 6 – Applicants’ Submission of Supplemental Information, dated October 10, 2008)
81. The location of the Alternate 1 site identified by local residents appears to be the location of a 9 to 12 lot subdivision. The subdivision of this property would not allow sufficient space for a wireless telecommunications facility. (Applicants 6, p. 1)
82. The Alternate 2 site identified by local residents appears to be the location of a 5,400 square foot residence. (Applicants 6, p. 2)
83. The Alternate 3 and 4 sites are located on or near the shore of Candlewood Lake. Alternate 3 appears to be Latting Landing, a boat launching area owned by the State of Connecticut. Alternate 4 is a marina that does not have sufficient size for the placement of a wireless telecommunications facility. (Applicants 6, p. 2)
84. Alternate sites 5 and 6 are in an area characterized by steep slopes and dense vegetation. Significant cut and fill and vegetation removal would be required to construct a facility at either of these locations. (Applicants 6, p. 3)
85. Alternate site 7 identified by the residents appears to be the Johnson property that was also suggested by the City of Danbury as an alternate site. This property is characterized by steep slopes and dense vegetation that would require significant cut and fill and clearing. In addition, the Johnson property is landlocked with the only access through the adjacent Federal Correctional Institution. There is no recorded easement for the Johnson property to have access through the prison property. (Applicants 6, p. 3)
86. Alternate site 8 appears to be the federal prison and is not available for other uses. (Applicants 6, p. 4)
87. On October 20, 2008, Robert Kaufman, who owns property at 21 Hollandale Road in Danbury, submitted a letter in which he suggested that his property, on which a water tank is located, would be suitable as an alternative site. (City of Danbury 11: Letter from Robert Kaufman, dated October 20, 2008)
88. Optasite representatives investigated the Kaufman property and determined that the water tank was approximately 40 to 45 feet high, too low to be used to mount antennas that could provide coverage to T-Mobile’s target area. (See Figure 8) (Applicants 7: Applicants’ Supplemental Information, dated October 24, 2008; Transcript, December 8, 2008, 11:20 a.m. [Tr. 4], pp. 192-193)



89. In response to a request from the City, the applicants investigated the feasibility of a city-owned property located at 35 Hayestown Road, which is the site of the Danbury Police Athletic League. (City of Danbury Third Set of Pre-Hearing Interrogatories, dated December 16, 2008; Applicants 13)
90. The applicants determined that the 35 Hayestown Road property is almost completely cleared and is located adjacent to numerous single family and multifamily homes to the east and west. The property is also just south of a city park next to Candlewood Lake and just north of a city recreation area. (Applicants 13, I.A.2.)
91. T-Mobile determined that a tower at 35 Hayestown Road would not be able to provide coverage to its target area because signals from this location would be blocked to the north by a ridge line. A site at this location would also provide coverage redundant to existing sites. (See Figure 9) (Applicants 13, I.A.1.)
92. The applicants investigated property located at 82 Stadley Rough Road, which is approximately 3,000 feet north of the 52 Stadley Rough Road site, and determined that the coverage possible from this site is similar to the coverage from their proposed site. It is located on the same ridge line as the proposed site and subject to similar terrain limitations. This property consists a single family residence and an open field. It is also registered under the Public Act 490 program that seeks to preserve agricultural uses and open space. (See Figure 10) (Applicants 13, II.A.1. and II.A.2.)
93. The applicants investigated a parcel east of Stadley Rough Road and just north of the Great Plains School. They determined that this property was denoted as open space on the City's tax records. They, therefore, did not consider it to be a viable alternative. (Transcript, December 8, 2008 [Tr. 4], pp. 196-197; Applicants 13, II.B.)

#### Multi-Site Solutions

94. In response to a request by the Council, the applicants investigated a two-site solution that would consist of a lower tower (97 feet high) at the proposed site at 52 Stadley Rough Road and a tower of a similar height at one of two churches: St. Nicholas Byzantine Catholic Church at 13 Pembroke Road or Northeast Baptist Church at 101 East Pembroke Road. (Applicants 8: Information Regarding a Two Site Design)
95. The two churches are located approximately 2.8 miles to the west of the proposed site. (Applicants 8: Information Regarding a Two Site Design)
96. Based upon their investigation, the applicants concluded that topography in the vicinity of the target area would prevent it from being adequately covered by two 97-foot towers, one at 52 Stadley Rough and one at either of the churches. (See Figures 11 and 12) (Applicants 8: Information Regarding a Two Site Design)

97. The City of Danbury proposed a multi-site solution that would consist of a monopole tower at the Police Athletic League (PAL) property at 35 Hayestown Road, antennas installed at the site of the water tower on the Kaufman property at 21 Hollandale Road, and approximately six to eight DAS nodes distributed in the northern area of Danbury. The City's solution assumes that T-Mobile antennas would be installed at a centerline height of 147 feet agl at the PAL property and at 87 feet agl at the Kaufman property. (City of Danbury's Submission of Supplemental Information, dated February 11, 2009)
98. According to the applicants, the multi-site solution proposed by the City would produce coverage redundant with T-Mobile's existing sites in the northwestern and southern parts of Danbury without providing sufficient coverage to the northern part of Danbury. Northeast Utilities and its subsidiary companies in Connecticut do not allow the attachment of antennas at the top of distribution utility poles, which would make it difficult to deploy the DAS nodes proposed by the City. (Applicants' Response to the City's Post Hearing Filing of the "Comi Solution," dated February 19, 2009)
99. Approximately 20 percent of the residential areas in that part of Danbury to which T-Mobile is seeking to extend coverage do not have an above ground utility distribution network. These areas would require the installation of new utility poles, at the rate of approximately 20 poles per mile, to support DAS nodes and their required fiber optic and power cables. (Applicants' Response to the City's Post Hearing Filing of the "Comi Solution," dated February 19, 2009)

#### Environmental Considerations

100. The proposed project would have no effect on Connecticut's archaeological heritage. (Applicants 1, Attachment 7, Letter from State Historic Preservation Officer)
101. There are no known extant populations of federal or state endangered, threatened, or special concern species at the site of the proposed facility. (Applicants 1, Attachment 7, Letter from Connecticut Department of Environmental Protection)
102. Existing vegetation in the vicinity of the proposed facility consists primarily of mature, mixed deciduous hardwood species. The average tree canopy is 65 feet in height. (Applicants 1, p. 11)
103. Eleven trees with diameters of six inches or greater at breast height would be removed for the proposed facility. (Applicants 1, p. 9)
104. There are two small pockets of inland wetlands located close to the site of the proposed facility. The closer of these two wetlands is approximately six feet from the eastern side of the proposed compound at its nearest point. The other wetland area is approximately 39 feet from the northeast corner of the proposed compound at its nearest point. (Applicants 1, p. 17; Attachment 4)



105. Two different inland wetlands delineations were depicted in the vicinity of the proposed location that were prepared by consultants hired by Optasite. One delineation was prepared by URS, and the other was prepared by Kleinfelder. The wetland areas delineated by URS comprise 564 square feet. The areas delineated by Kleinfelder comprise 936 square feet. The larger of the two Kleinfelder delineated areas is the one located approximately six feet from the proposed location of the equipment compound at its nearest point. (Applicants 14, p. 2 and Drawing C02)
106. A portion of the larger and closer wetland area (identified by Kleinfelder) is located within the 100-foot by 100-foot lease parcel. It would, however, be outside of the fenced enclosure of the 55-foot by 90-foot base compound. (Applicants 1, Exhibit 4, Drawing A02)
107. The location of the proposed facility was selected to avoid disturbing these wetland areas. (Applicants 1, p. 17)
108. Soil erosion control measures and other construction management practices, applied in accordance with the Connecticut Soil Erosion Control Guidelines established by the Council of Soil and Water Conservation, would be deployed before and during construction to protect the integrity of the nearby wetlands. (Applicants 1, p. 17)
109. The Federal Aviation Administration determined that the proposed facility would not be a hazard to air navigation and would not require marking or lighting. (Applicants 1, Attachment 4, FAA-Determination of No Hazard to Air Navigation, issued April 24, 2008)
110. The administrator of the Danbury Municipal Airport requested that an aeronautical light be installed at the top of the tower because of the amphibious aircraft and helicopters that use nearby Lake Candlewood. (Applicants 1, Attachment 8)
111. The maximum power density from the radio frequency emissions of T-Mobile's proposed antennas would be  $0.0272 \text{ mW/cm}^2$  or 2.72% of the standard for Maximum Permissible Exposure, as adopted by the FCC, at the base of the proposed tower. This calculation was based on methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997) that assumes all antennas would be pointed at the base of the tower and all channels would be operating simultaneously. (Applicants 1, Attachment 4)

### Visibility

#### Visibility of Tower Proposed at 52 Stadley Rough Road

112. The proposed tower would be visible year round above the tree canopy from approximately 25 acres. (Applicants 1, Attachment 5, p. 4)
113. The proposed tower would be seasonally visible from an additional 19 acres. Most of this acreage would be located within a 0.2 mile radius of the tower location. (Applicants 1, Attachment 5, p. 4)



- 114. Approximately 14 residences would have partial year round views of the proposed tower. (Applicants 1, Attachment 5, p. 4)
- 115. Approximately 10 additional residences would have seasonal views of the proposed tower. (Applicants 1, Attachment, pp. 4-5)
- 116. The proposed tower at this location would not be visible from Candlewood Lake. (Applicants 1, Attachment 5, Viewshed Map)
- 117. The proposed tower would not be visible from six historic properties, mentioned in a letter from Danbury's Deputy Director of Planning, which could be eligible for the National Register of Historic Places. (Tr. 3, p. 71)
- 118. The tower and the flush-mounted antennas would be painted brown to help reduce the tower's visual impact. (Applicants 1, p. 12)
- 119. The visibility of the proposed tower from different vantage points in the surrounding vicinity is summarized in the following table. (See Figure 13)

<u>Location</u>	<u>Visible</u>	<u>Approx. Portion of (140') Tower Visible (ft.)</u>	<u>Approx. Distance and Direction to Tower</u>
	<u>Site</u>		<u>Site</u>
1. – 52 Stadley Rough Road (host property)	Yes	90'	520 feet; W
2. – 71 Stadley Rough Road	Yes	90'	900 feet; NW
3. – 52 Stadley Rough Road (host property, from a different location)	Yes	60'	740 feet; SW
4. – 122 Great Plain Road	Yes	50'	3,000 feet; NE
5. – Great Plain Road at Hawley Road	Yes	50'	3,060 feet; NE
6. – Indian Spring Lane	No	n/a	690 feet; SE
7. – Corntassle Road	No	n/a	790 feet; NE
8. – Silcam Road	No	n/a	2,000 feet; N
9. – Monarch Road	No	n/a	1,320 feet; SE

(Applicants 1, Attachment 5)

Visibility of Towers at Alternate Sites

- 120. A 140-foot tower at the alternate 1 location suggested by Danbury residents would be visible year-round from approximately 971 acres, of which approximately 97% would be on or immediately adjacent to Candlewood Lake. (Applicants 6, p. 1)
- 121. The year-round visibility of a 140-foot tower at the suggested alternate 2 location would be approximately 508 acres. A tower at this location would be visible from several residential areas, including areas within the Huckleberry School area, and from Candlewood Lake. (Applicants 6, p. 2)

122. Suggested alternate sites 3 and 4 are both located on or near the shore of Candlewood Lake. A tower at either location would be visible from Candlewood Lake. (Applicants 6, p. 2)
123. The visibility of a tower at suggested alternate site 5 or 6 would impact views from Candlewood Lake. (Applicants 6, p. 3)
124. A tower at suggested alternate site 7, which appears to be the Johnson property also suggested by the city, would be visible year-round from approximately 391 acres and from Candlewood Lake. (Applicants 6, p. 3)
125. The visible impact of the residents' suggested alternate site 8 at the Federal Correctional Institution would be comparable to a tower located on the Johnson property. (Applicants 6, p. 4)

#### **Existing and Proposed Wireless Coverage**

126. T-Mobile is now deploying antennas that can transmit both AWS (Advance Wireless Services) and PCS (Personal Communications Service) frequencies simultaneously. (Tr. 3, p. 75)
127. T-Mobile acquired the right to use the AWS frequencies in a recent auction. They will be used for UMTS (Universal Mobile Telecommunications System) applications. (Tr. 3, pp. 74-75)
128. T-Mobile is licensed to operate at the following frequencies in the Fairfield Basic Trading Area:  
  
PCS Transmit: 1940 to 1949.800 MHz  
PCS Receive: 1860 to 1869.5 MHz  
  
AWS Transmit 1: 2140 to 2145 MHz  
AWS Receive 1: 1740 to 1745 MHz  
  
AWS Transmit 2: 2110 to 2120 MHz  
AWS Receive 2: 1710 to 1720 MHz  
  
(Applicants 2, A14)
129. T-Mobile's minimum design receive signal level threshold is -84 dBm, which is the lower limit at which T-Mobile can provide in-vehicle coverage to its network users. For reliable in-building coverage, T-Mobile requires a receive signal level strength of -76 dBm. (Applicants 2, A15)
130. The existing signal strength in the area T-Mobile would serve from the proposed site ranges from -85 dBm to -110 dBm. (See Figure 4) (Applicants 2, A16)
131. T-Mobile has a higher than average dropped call presence in the area surrounding the proposed site. (Tr. 3, pp. 76-77)

132. The total area T-Mobile could cover from the proposed site would be 7.4 square miles. (Applicants 2, A17)
133. T-Mobile is seeking to cover two miles along Stadley Rough Road and surrounding side streets from the proposed site. (Applicants 2, A18)
134. T-Mobile's antennas would cover approximately two miles along Stadley Rough Road, enabling it to achieve its coverage objective for this street. (Tr. 3, pp. 75-76)
135. The sites with which T-Mobile's antennas at the proposed site would hand off signals are identified in the following table:

<b>Site Address</b>	<b>Structure Height (AGL)</b>	<b>T-Mobile Ant. Ht. (AGL)</b>	<b>Structure Type</b>
41 Padanaram Road, Danbury	80 feet	80 feet	Wood pole
457 Main Street, Danbury	42 feet	46 feet	Rooftop
94 Hospital Avenue, Danbury	134 feet	155 feet	Rooftop
78 Federal Road Danbury	78 feet	81 feet	Billboard
20 Vale Road (Tower #10247), Danbury	115 feet	130 feet	Utility Pole

(Applicants 2, A19)

136. The minimum height at which T-Mobile's antennas could achieve the coverage objectives is 127 feet agl. (Applicants 2, A20)
137. None of the sites suggested by the Danbury residents would provide coverage to T-Mobile's target areas that would equal the coverage possible from the proposed site. (Tr. 3, p. 86 ff.)



Figure 1: Location Map



(Applicants 1, Attachment 4)



**Figure 2: Aerial Photograph of Proposed Site**

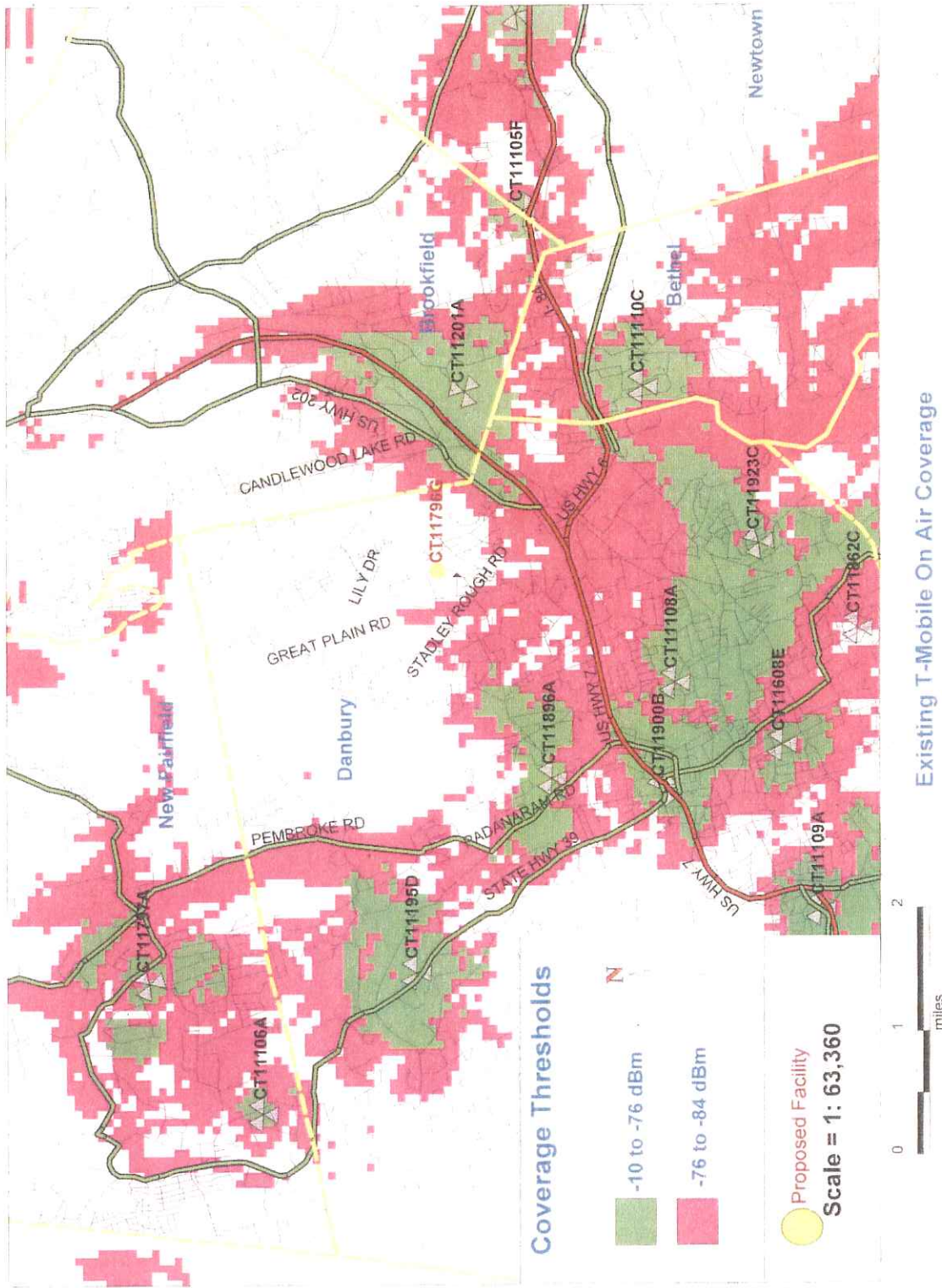


Base Map Source: 2004 High Resolution Aerial Photograph  
(Applicants 12, Attachment 2)





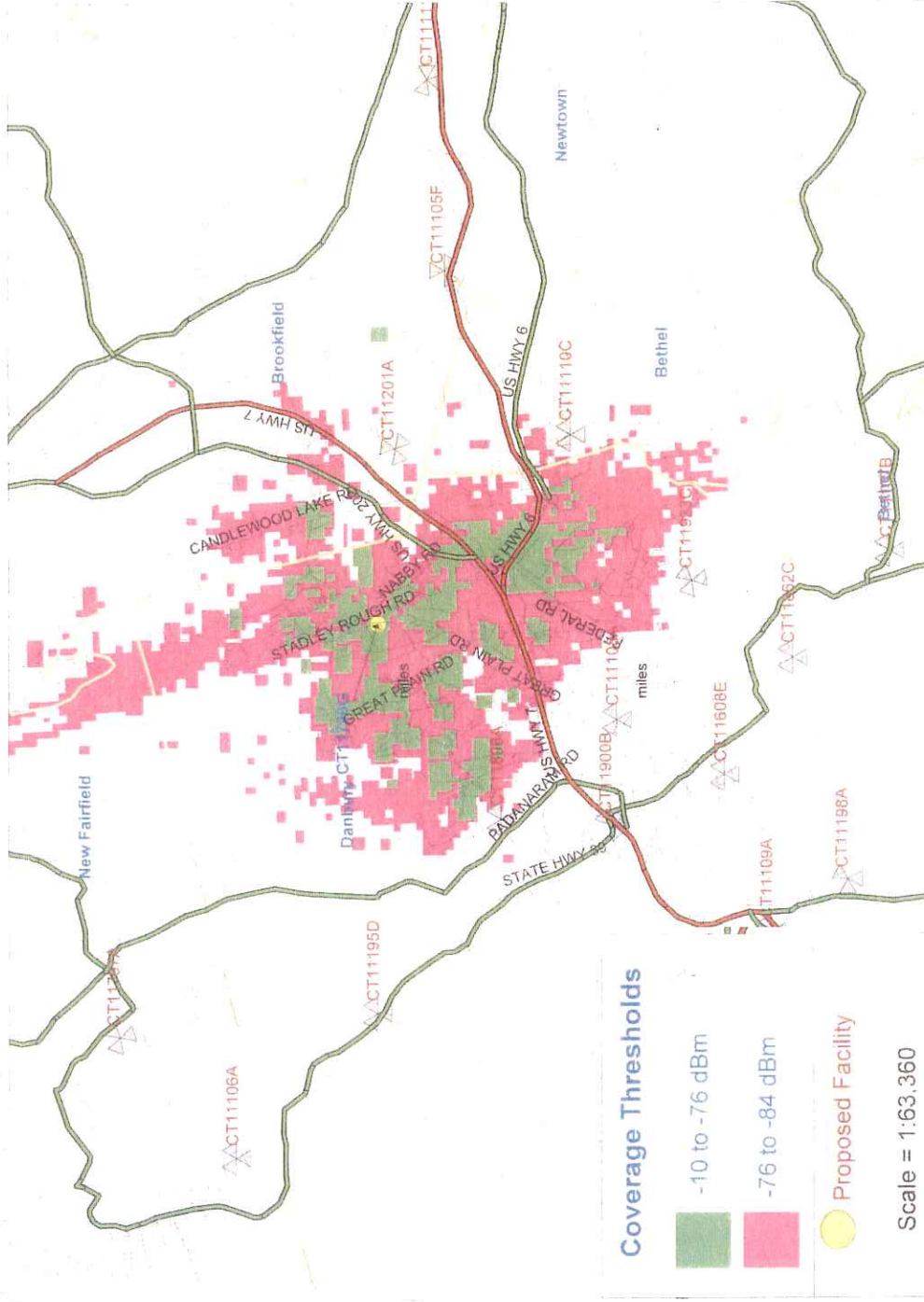
Figure 4: T-Mobile Existing Coverage in Vicinity of Proposed Facility



(Applicants 1, Attachment 2)



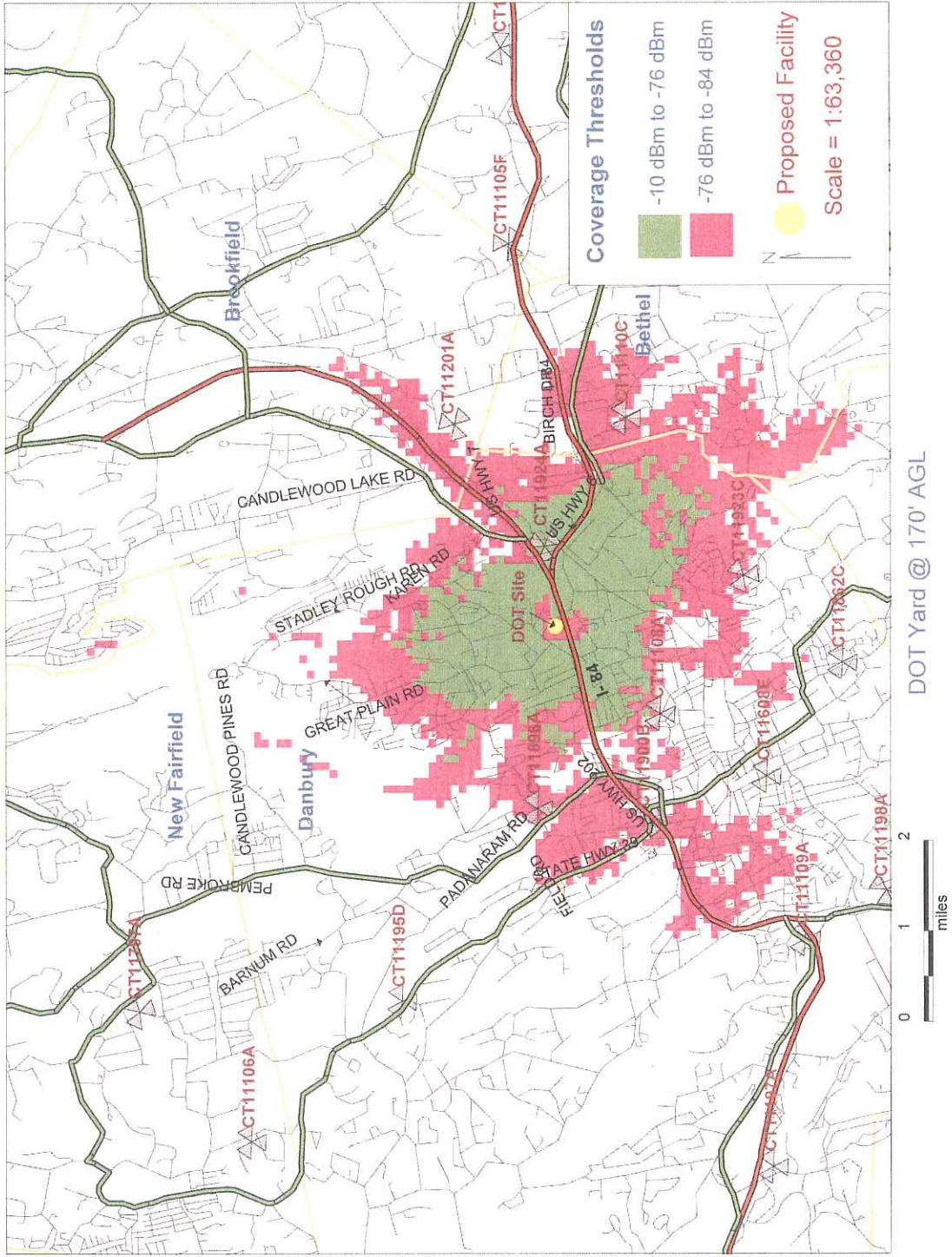
Figure 5: T-Mobile Coverage from Proposed Site @ 137' AGL



T-Mobile Proposed CT11796G @ 137' AGL

(Applicants 1, Attachment 2)

Figure 6: T-Mobile Coverage from DOT Property @ 170' AGL

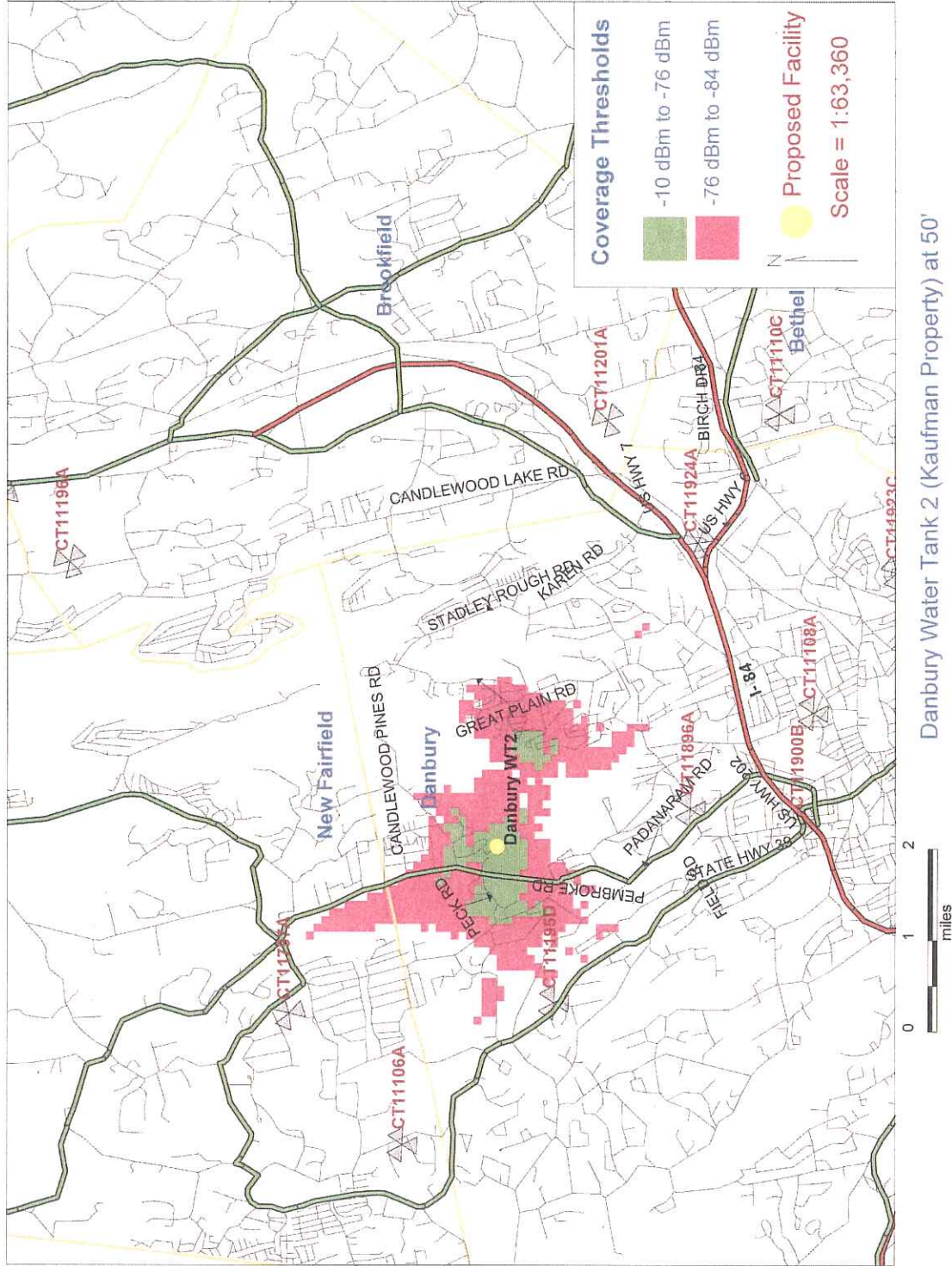


(Applicants 13, Attachment 1)





Figure 8: T-Mobile Coverage from Kaufman Property

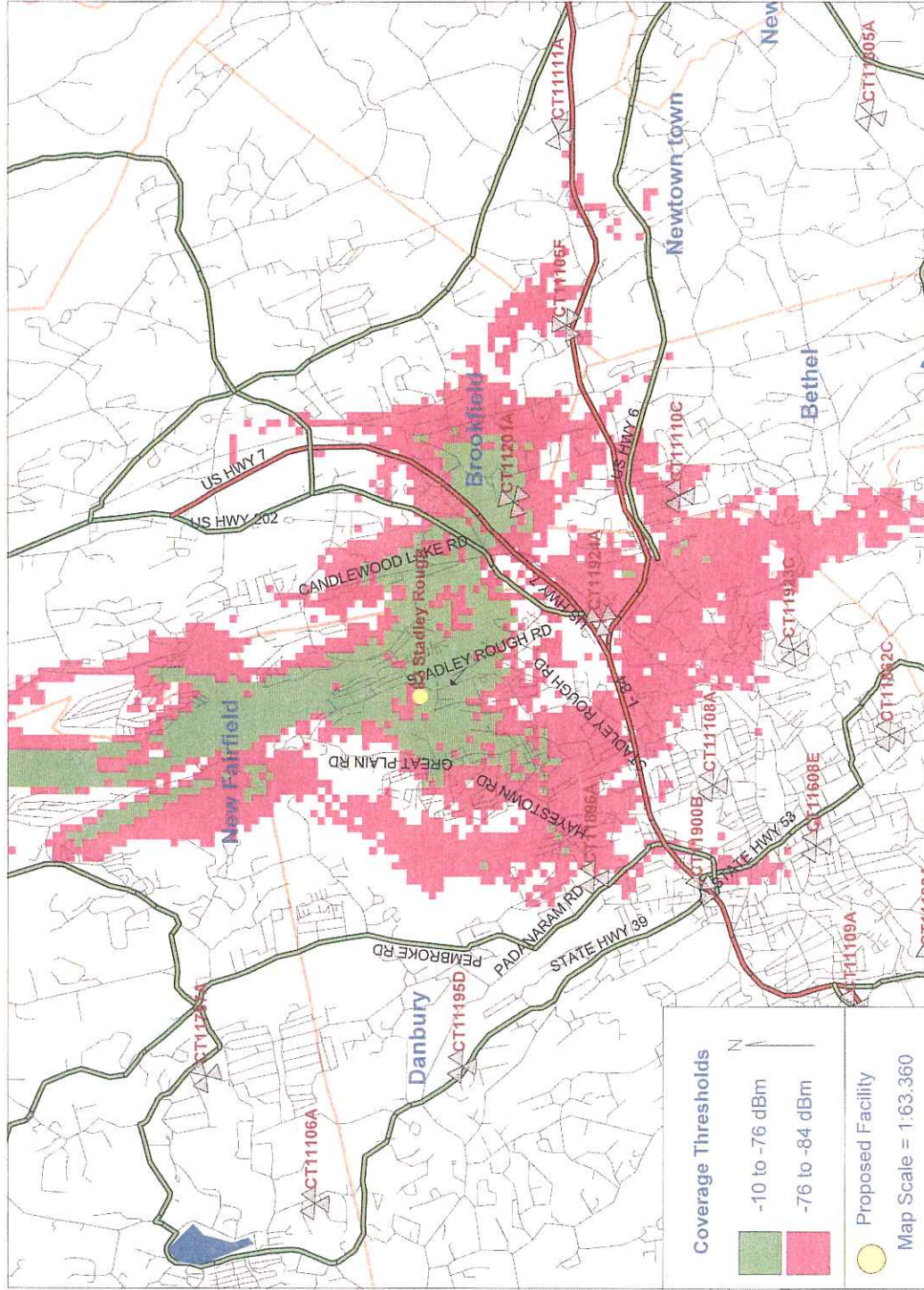


(Applicants 13, Attachment 1)





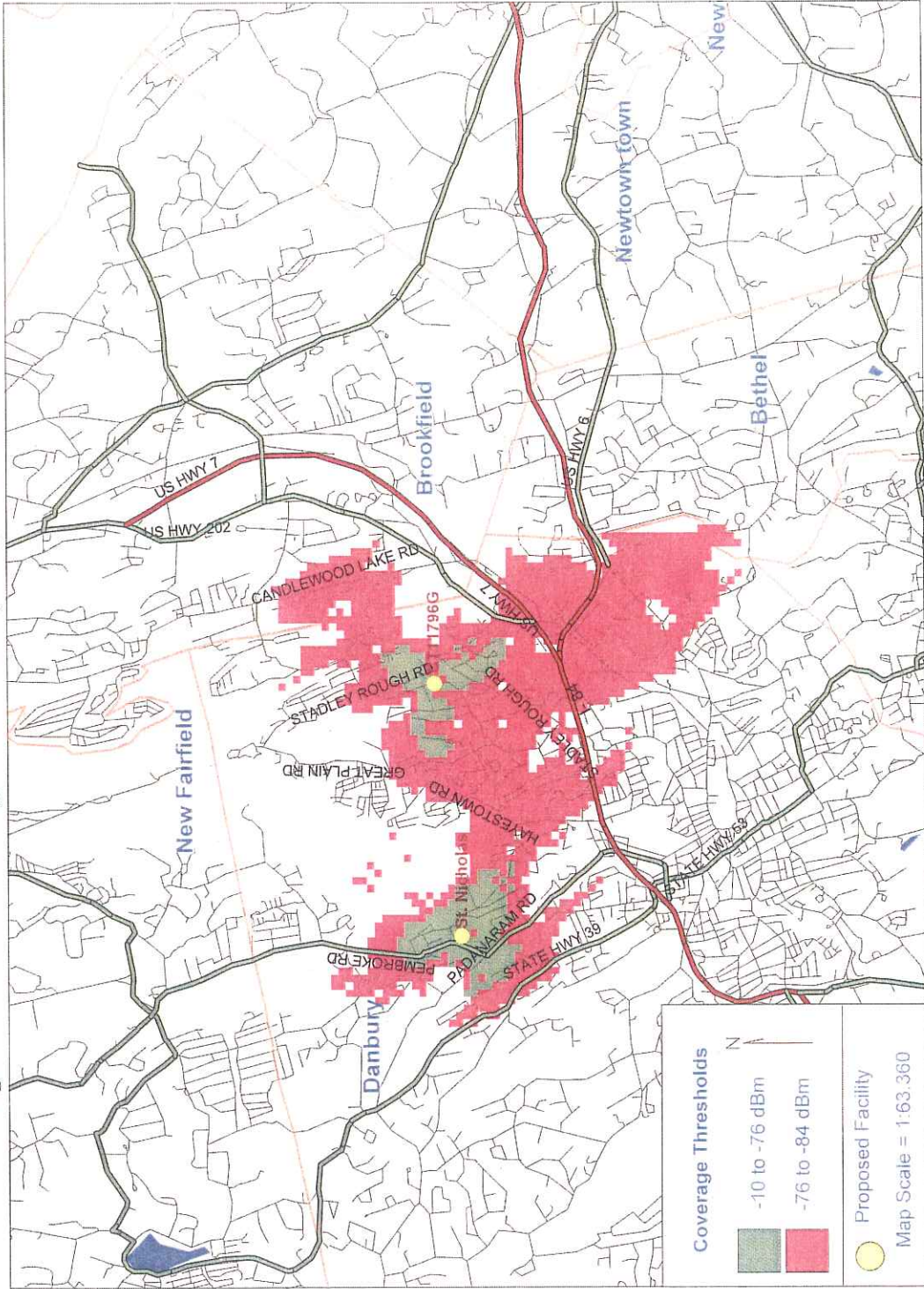
Figure 10: T-Mobile Coverage from 82 Stadley Rough Road



(Applicants 13, Attachment 3)



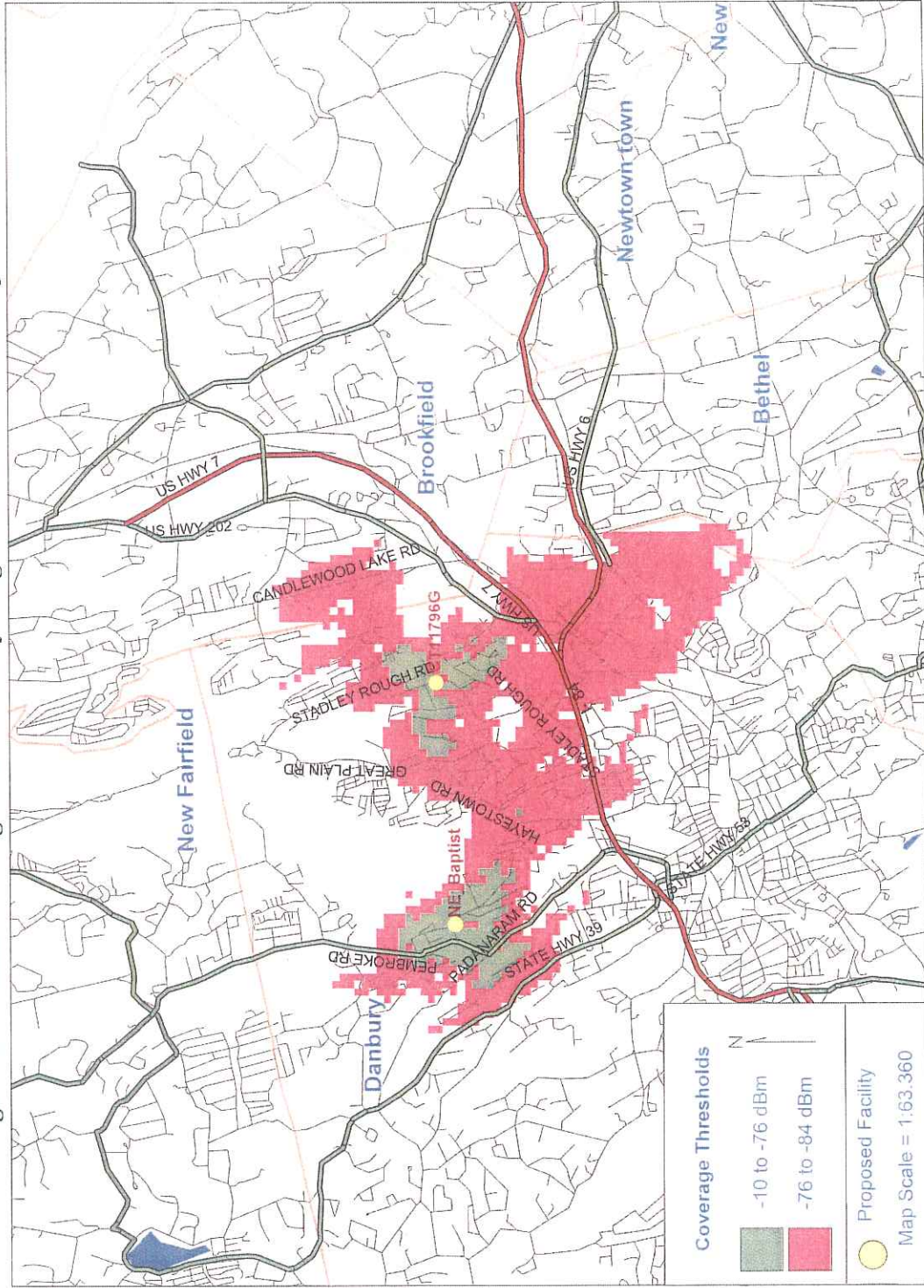
Figure 11: T-Mobile Coverage from 52 Stadley Rough Road and St. Nicholas Church



Danbury - St. Nicholas Church @ 97' AGL with CT11796G @ 97'feet AGL

(Applicants 8, Exhibit A)

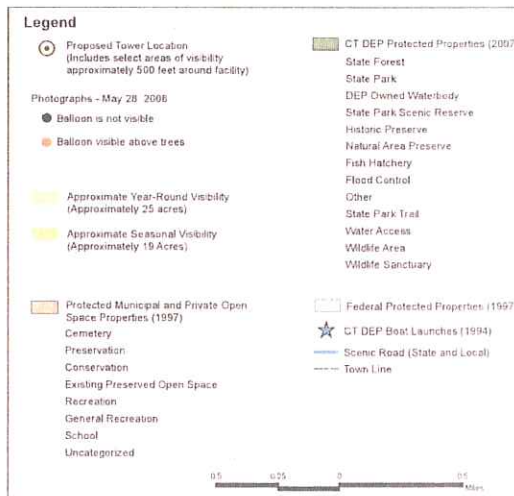
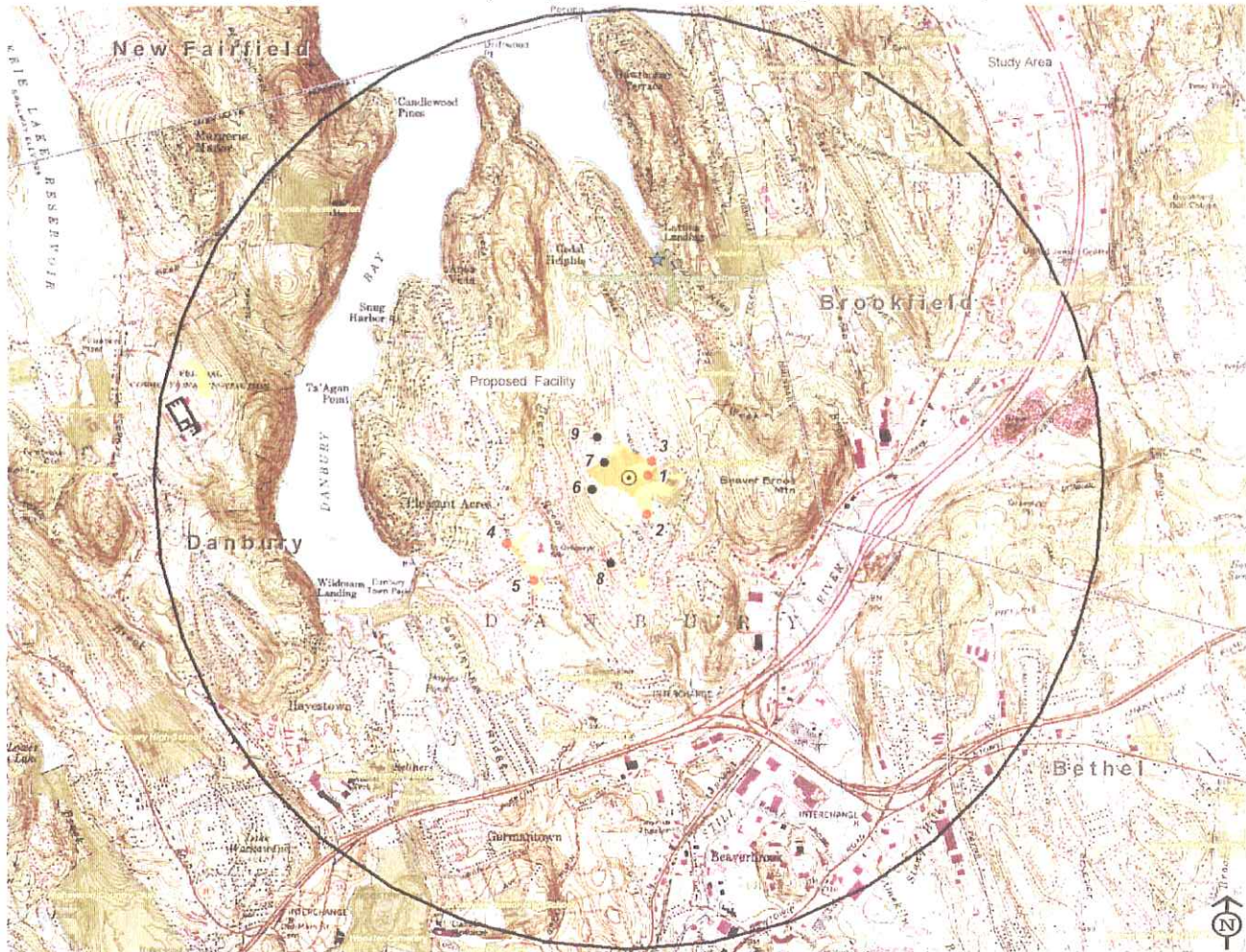
Figure 12: T-Mobile Coverage from 52 Stadley Rough Road and Northeast Baptist Church



(Applicants 8, Exhibit A)



**Figure 13: Visibility Map for 52 Stadley Rough Road Facility**



(Applicants 1, Attachment 5)



**DOCKET NO. 366** - Optasite Towers LLC and Omnipoint } Connecticut  
Communications, Inc. application for a Certificate of }  
Environmental Compatibility and Public Need for the } Siting  
construction, maintenance and operation of a telecommunications }  
facility located at 52 Stadley Rough Road in Danbury, } Council  
Connecticut.

March 27, 2009

### **Conclusions of Law Re Motion for Protective Order to Not Disclose the Exact Monthly Rent in Lease Agreement**

#### **1. The plain language of C.G.S. §16-50o(c) requires disclosure of the rent amount contained in telecommunication tower lease agreements.**

C.G.S. §16-50o(c) states: “The applicant shall submit into the record the *full text of the terms* of any agreement, and a *statement of any consideration* therefor, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility. This provision shall not require the public disclosure of proprietary information or trade secrets.” (Emphasis added).

In its motion for protective order and at a public hearing on October 28, 2008, Optasite Towers, LLC (Optasite) argued that C.G.S. §16-50o(c) requires a general statement as to the rent paid rather than the exact amount. However, in a 2004 application for the construction and operation of a proposed telecommunications tower in Litchfield, Sprint Spectrum, L.P. (Sprint), in accordance with C.G.S. §16-50o(c), “produced an unredacted copy of its lease agreement with the property owner and records relating to the compensation between the property owner and various carriers.”<sup>1</sup> In its objection, the City of Danbury (Danbury) argued that the statute clearly means disclosure of the exact rent amount without limitations. In support of its position, Danbury cites to a redevelopment statute pertaining to the taking of property at fair market value which requires “a statement of compensation... setting forth the amount ...”<sup>2</sup> However, C.G.S. §16-50o(c) pertains to the record of a Siting Council (Council) hearing rather than a compensation mandate.

When interpreting a statute, the starting point is the statute’s plain meaning. C.G.S. §1-2z provides in relevant part, “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.”<sup>3</sup> For interpretive guidance, courts will also look to the legislative history. In

<sup>1</sup> *Rosa v. Conn. Siting Council*, 2007 Conn. Super. LEXIS 590, \*20 (Conn. Super. 2007).

<sup>2</sup> CONN. GEN. STAT. §8-129(a)(3) (2009) (“The redevelopment agency shall file a statement of compensation... setting forth the *amount* of such compensation...” (Emphasis added).

<sup>3</sup> CONN. GEN. STAT. §1-2z (2009).



determining common usage, courts often look to the dictionary definition of a term. The American Heritage Dictionary defines “text” as “the wording or words of something written or printed.”<sup>4</sup> Optasite has a written lease with Christ the Shepherd Church (Church). Black’s Law Dictionary defines “consideration” as “something of value (such as an act, a forbearance or a return promise) received by a promisor from a promisee”<sup>5</sup> and “statement” as “a formal and exact presentation of facts.”<sup>6</sup> Taken together, the phrase “statement of consideration” may be interpreted as an exact presentation of the value to be received by Optasite from the Church. According to the plain language of C.G.S. §16-50o(c), the applicant is required to submit the entire lease agreement including the exact rent amount.

C.G.S. §16-50o(c) is directly related to C.G.S. §16-50p. The applicant argues that the rent amount in the lease agreement is not relevant to the Council’s statutory criteria under C.G.S. §16-50p. However, under C.G.S. §16-50p(b)(1), the Council must examine the economic feasibility at fair market rates of the shared use of the facility.<sup>7</sup> The applicant also argues that C.G.S. §16-50p(g) prohibits the Council from considering an applicant’s interest in property proposed for a telecommunications tower.<sup>8</sup> However, as Danbury points out in its objection, the Council is permitted to consider the likelihood of an applicant securing a proposed site.<sup>9</sup> Therefore, according to the statutory criteria, the exact rent amount paid for an applicant’s interest in property proposed for a tower is a factor for consideration at the Council’s discretion.

In its motion for a protective order, Optasite states that C.G.S. §16-50o(c) was adopted by the legislature in an effort to address Cross Sound Cable’s private agreements with oystermen related to their opposition to the proposed project in Docket 208 and that C.G.S. §16-50o(c) was amended on the floor to exclude the disclosure of confidential, proprietary information in those agreements.<sup>10</sup> According to Optasite, the legislation requires disclosure of how the landowner will be paid rather than the precise rent amount. According to Danbury, the legislation requires public disclosure of the precise rent amount. Public Act 04-246 moved the language of present C.G.S. §16-50o(c) from C.G.S. §16-50p(a) to facilitate its application to proposed telecommunications towers, as well as transmission lines. Therefore, the legislature clearly intended the language of C.G.S. §16-50o(c) to apply to the public disclosure of “the full text of the terms” contained in lease agreements between an applicant and a third party, and a “statement of consideration therefor... in connection with the construction and operation of the

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<sup>4</sup> THE AMERICAN HERITAGE DICTIONARY 1332 (Houghton Mifflin Co. 1976).

<sup>5</sup> BLACK’S LAW DICTIONARY 300 (7<sup>th</sup> ed. 1999).

<sup>6</sup> *Id.* at 1416.

<sup>7</sup> CONN. GEN. STAT. §16-50p(b)(1) (2009).

<sup>8</sup> CONN. GEN. STAT. §16-50p(g) (2009) (“In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein for the purpose of constructing the facility which is the subject of its application.”)

<sup>9</sup> *Corcoran v. Conn. Siting Council*, 50 Conn. Supp. 443, 452 (Conn. Super. 2006), *affirmed by* 284 Conn. 455 (2007) (“the language of 16-50p(g) is that of an enlargement of the council’s discretion, not a limitation...”)

<sup>10</sup> H.B. 6954, 2001 Sen. Reg. Sess. (2001).

facility.” However, the statute specifically exempts proprietary information or trade secrets from public disclosure.

## **2. The rent amount contained in telecommunication tower lease agreements meets the definition of “proprietary information” and “trade secret.”**

In its motion for a protective order, Optasite states that the rent amount is proprietary information. Danbury suggests that rent amounts may be “low hanging fruit” that create a disincentive for applicants to explore alternative sites. The city also argues that proprietary information is narrowly defined and typically includes scientific and technical data. However, at a public hearing on December 8, 2008, Danbury agreed to the release of the rent amount under a protective order.

“Proprietary information” is defined in Black’s Law Dictionary as “information in which the owner has a protectable interest.”<sup>11</sup> DPUC defines “proprietary information” as information that may be exempt from public disclosure pursuant to C.G.S. §1-210(b). The Connecticut Freedom of Information Act (FOIA) defines “trade secret” as:

“information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by, other persons who can obtain economic value from their disclosure or use, *and* (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy...” (Emphasis added).<sup>12</sup>

The Connecticut Supreme Court defined “trade secret” as consisting of any “... compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”<sup>13</sup> The Court set out several factors to be considered in determining whether given information qualifies as a trade secret, which are: 1) the extent to which the information is known outside of the business; 2) the extent to which it is known by others involved in the business; 3) the extent of measures taken to guard the secrecy of the information; 4) the value of the information to the business and competitors; 5) the amount of effort expended in developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.”<sup>14</sup>

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<sup>11</sup> BLACK’S LAW DICTIONARY 1235 (7<sup>th</sup> ed. 1999).

<sup>12</sup> CONN. GEN. STAT. §1-210(b)(5)(A) (2009).

<sup>13</sup> *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission*, 55 Conn. App. 527, 530 (Conn. App. 1999), citing *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318-19 (1963).

<sup>14</sup> *Id.*



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<sup>11</sup> BLACK’S LAW DICTIONARY 1235 (7<sup>th</sup> ed. 1999).

<sup>12</sup> CONN. GEN. STAT. §1-210(b)(5)(A) (2009).

<sup>13</sup> *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission*, 55 Conn. App. 527, 530 (Conn. App. 1999), citing *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318-19 (1963).

<sup>14</sup> *Id.*

Applying the criteria to this docket, it is found that: 1) the applicant, as well as telecommunications industry representatives responding to the Council's request for comment, view the information as confidential; 2) persons in the business with knowledge of the exact rent amount in the lease agreement are Charles Regulbuto, Optasite's Director of Northeast Development, who negotiated the lease, James H. Ross, III, Optasite's President and COO, who executed the lease and Christopher Fisher, Optasite's counsel, who submitted a redacted version of the lease to the Council; 3) Optasite's counsel filed a Notice of Lease on the City of Danbury Land Records that complied with the recording requirements under C.G.S. §47-19 and submitted a redacted version of the lease to the Council as part of Optasite's application;<sup>15</sup> 4) the rent amount in the lease agreement has independent economic value that, if generally known, would be a disadvantage to the applicant and would be an advantage to market competitors and future site hosts; 5) Optasite incurred transaction costs in Charles Regulbuto's negotiations and execution of the lease agreement; and 6) the exact rent amount is not contained or required in the Notice of Lease that is recorded on the City of Danbury Land Records.

Based on the criteria, the exact rent amount in the lease agreement between Optasite and the Church qualifies as a trade secret. As such, pursuant to C.G.S. §16-50o(c), the exact rent amount in the subject lease agreement shall be disclosed to the Council under a protective order.

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<sup>15</sup> CONN. GEN. STAT. §47-19 (2009) ("No lease of any... land... for a term exceeding one year... shall be effectual against any persons other than the lessor and the lessee and their respective heirs, successors, administrators and executors, unless it is in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land, provided a notice of lease in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land and containing (1) the names and addresses, if any are set forth in the lease, of the parties to the lease, (2) a reference to the lease, with its date of execution, (3) the term of the lease with the date of commencement and the date of termination of such term, (4) a description of the property contained in the lease, (5) a notation if a right of extension or renewal is exercisable, (6) if there is an option to purchase, a notation of the date by which such option must be exercised, and (7) a reference to a place where the lease is to be on file shall be sufficient").