

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY PHOENIX
PARTNERSHIP, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR A TELECOMMUNICATIONS FACILITY
AT 50 DEVINE STREET IN THE TOWN
OF NORTH HAVEN, CONNECTICUT

DOCKET NO. 384

Date: December 30, 2009

**PROPOSED FINDINGS OF FACT
FROM APPLICANT PHOENIX PARTNERSHIP, LLC**

Pursuant to §16-50j-31 of the Regulations of Connecticut State Agencies, Phoenix Partnership, LLC (the "Applicant" or "Phoenix") submits these Proposed Findings of Fact.

Introduction

1. The Applicant, in accordance with provisions of Connecticut General Statutes ("C.G.S.") §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies ("R.C.S.A."), applied to the Connecticut Siting Council ("Council") on August 20, 2009 for a Certificate of Environmental Compatibility and Public Need ("Certificate") for the construction, operation and maintenance of a 120-foot monopole wireless telecommunications facility ("Facility") at 50 Devine Street, North Haven, Connecticut (the "Property"). (Applicant's Exhibit 1 ["App.,"] at 1).
2. The Facility would sit within a 10,000 square foot area leased by Phoenix, located in the south easterly portion of the Property, which is a 6.037 acre parcel (the "Site"). (App. at 1, Exhibit B; 3:00 p.m. Transcript ["Tr.,"] at 21).

3. The Facility would allow wireless carriers to provide personal wireless services in Connecticut. Youghioghenny Communications Northeast, LLC d/b/a Pocket Wireless ("Pocket") would be the anchor tenant. (App. at 2; Pocket Interrogatory Responses ["Pocket Responses"], Ex. 1; Pre-Filed Testimony of Anthony Wells ["Wells Testimony"] at 3-4).
4. Pursuant to General Statutes § 16-50m, the Council, after giving due notice thereof, held a public hearing on December 1, 2009, beginning at 3:00 p.m. and continued at 7:00 p.m., at the North Haven Public Library, 17 Elm Street, North Haven, Connecticut ("Hearing"). (Hearing Notice; 3:00 p.m. Tr. at 3).
5. The Council and its staff made an inspection of the Site on December 1, 2009 at 2:00 p.m. (Hearing Notice).
6. The Applicant flew a balloon, four feet in diameter, at a height of 120 feet at the Site from 7:30 am to 4:30 pm on December 1, 2009. (3:00 p.m. Tr. at 16-17; Applicant's Exhibit 6).

Need

7. In 1996, the United States Congress recognized a nationwide need for high quality wireless telecommunications services. Through the Federal Telecommunications Act of 1996 (the "Act"), Congress seeks to promote competition, reduce regulation to encourage technical innovation, and foster lower prices for wireless telecommunications services. The Act pre-empts any state or local determination of public need. (App. at 5; 3:00 p.m. Tr. at 4-5; Telecommunications Act of 1996).

8. Pocket is licensed by the Federal Communications Commission (“FCC”) to provide Advanced Wireless Services (“AWS”) in the Connecticut marketplace. (Wells Testimony at 2; 3:00 Tr. at 67).
9. Pocket currently experiences a coverage gap in this area, as well as along Interstate 91, State Highway 40, State Highway 5 and the Wilbur Cross Parkway (State Highway 15). A Facility at the Site at 117 feet above grade level (“AGL”) will remedy this gap. (App. at 5; Pocket Responses at 2; Wells Testimony at 3).
10. Clearwire Communications has indicated an interest in the Facility. (3:00p.m. Tr. at 20).
11. Phoenix has offered the Town of North Haven space to locate its emergency services on the tower at no charge, but has not yet received a reply from the Town. (App. at 8-9; Coppins Testimony at 6; Applicant’s Responses to Interrogatories [“Applicant Responses”] at 2; 3:00p.m. Tr. at 36).

Coverage

12. Pocket must / has to locate at a minimum height of 117 feet AGL on this Facility to minimize the number and height of future telecommunications towers in this area. (Wells Testimony at 3-4).
13. Pocket cannot co-locate on an existing tower located at Lindsay Street because a facility at that location would not provide adequate coverage. (3:00p.m. Tr. at 71).
14. Pocket cannot co-locate on an existing tower located at Sackett Point Rd because a facility at that location would not provide adequate coverage. (3:00p.m. Tr. at 79).

15. Pocket cannot locate on the nearby transmission structure(s) because of maintenance issues and the height of the existing towers. Even if it was possible, adding more than ten feet to the existing 85 foot high transmission structure would require significant engineering and additional structural capacity (3:00p.m. Tr. at 80-82).

Site Search

16. Phoenix determined that there were no existing structures of a suitable height or location from which the existing lack of coverage experienced by Pocket in this area of North Haven could be remedied. (App. at 8, Exhibit I and J; Applicant Responses at 2; Coppins Testimony at 3).
17. Only after determining that any existing structures were of insufficient height or unavailable for co-location did Phoenix search for an appropriate location for a new telecommunications facility, focusing its search area between Exit 9 and Exit 12 of Interstate 91 in North Haven. (App. at 8, Exhibit J; Applicant Responses at 2; Coppins Testimony at 3).
18. Phoenix conducted a survey of property within the area to identify the best possible location to serve the needs of Pocket and other wireless carriers. These sites included 2 properties (41 and 33 Stiles Lane) for which no response was received during attempts to contact the landowner; 100 Kenna Drive (Marlin Firearms) which was the subject of a previous site plan application by AT&T that was denied by the Town citing, *inter alia*, visual impact to nearby residents; and a property owned by New York Central Lines LLC, which was rejected because of existing wetlands and salt marsh. (Coppins Testimony at 4-5).

19. As a result of this investigation, Phoenix concluded that the Property was superior to other properties in the immediate area which might be used to locate a new facility. The Property was uniquely suited for the development of a Facility due to its large size, industrial use, distance from residential receptors and presence of natural screening. (Coppins Testimony at 4).

The Site

20. Phoenix proposes to construct the Facility at the Site located in the southeasterly portion of a 6.037 acre parcel of land owned by 424 Chapel Street LLC known as 50 Devine Street, Assessor's Map as Parcel 51, Lot 21 of the North Haven Tax Assessor's Records. (App. at 9, Exhibit B; Pre-Filed Testimony of John Stevens [Stevens Testimony] at 2-3).
21. The Facility would sit within a 4,900 square foot compound within a 10,000 square foot area leased by Phoenix. An eight foot chain link fence would secure the equipment at the Facility. (App. at 9; Coppins Testimony at 4; Stevens Testimony at 3).
22. Vehicle access to the Facility would extend from Devine Street along an existing paved parking lot. This access would not require any land disturbance or tree removal. (Stevens Testimony at 3).
23. Utility service would extend underground from an existing pole to the Facility. Power is available from a transformer to a point on the Property near the Facility. (App. at 9, Exhibit B).
24. The Property is zoned for industrial use and is currently used for commercial and industrial purposes. (Id.)

25. The nearest residential areas are separated from the Property by transportation corridors such as Interstate 91, Route 40 and Route 5. (Id.)
26. The proposed Facility has been designed to accommodate Pocket, and the equipment of 5 (five) other telecommunications carriers as well as the Town of North Haven emergency services equipment, if requested. (App. at 9, Exhibit B; Stevens Testimony at 3).
27. The Applicants would design the Facility with an engineered yield point to keep the setback radius on the Property. (3:00p.m. Tr. at 21).
28. The total estimated cost of the proposed Facility is approximately \$168,000.00. The total duration of the construction would be approximately eight weeks. (App. at 20).

Municipal Consultation

29. On June 11, 2009, representatives of Phoenix met with Alan A. Fredericksen, the Town's Land Use Administrator, to discuss the Facility and answer any questions the Town might have regarding the Facility. (App. at 18-19; Coppins Testimony at 5).
30. On July 23, 2009, Phoenix submitted additional information, including revisions to the plans at the Town Planner's request, to the Town. (Id.)
31. The Town requested that Phoenix revise the site plans so that the Facility would be set back from the property lines a distance of at least three-quarters the height of the tower. Phoenix incorporated this request into its plans and provided the Town with a revised site plan prior to the meeting with the Planning and Zoning Commission on August 3, 2009. (Id.)

32. On August 3, 2009, the Planning and Zoning Commission held a public meeting to discuss the proposed Facility. (Id.)
33. The Town submitted a letter dated December 1, 2009 at the Hearing, in which the Town summarized its review of the application and concluded that the Property was a "suitable site for a cell tower". (3:00p.m. Tr. at 8).
34. The Town raised the issue of a zoning violation on the Property that the landowner had not yet been made aware of. Mr. Frederickson suggested that the plans be revised to eliminate the note regarding outdoor storage. Phoenix agreed to make the requested revisions on the plans it will submit at the Development and Management stage. (Id at 8-12).

Environmental Considerations

35. The Property contains no known existing populations of Federal or State Endangered, Threatened or Special Concern Species, according to the Connecticut Department of Environmental Protection Diversity Database. (App. at 13, Exhibit Q; Steven Testimony at 8).
36. The proposed development will not directly or indirectly affect any wetlands or watercourses. (App. at 13, Exhibit K; Steven Testimony at 9).
37. Although the proposed Facility would be located within the Coastal Boundary zone as defined by C.G.S. 22a-94 (b), the Facility would not have an adverse impact on any coastal resources. (Infinigy Coastal Consistency Analysis).

38. The State Historic Preservation Officer (“SHPO”) has determined that the construction of the Facility would have no adverse effect on historic, architectural, or archaeological resources listed on or eligible for the National Register of Historic Places. (App. at 12, Exhibit O).
39. According to an aeronautical study conducted by the Federal Aviation Administration (FAA), the proposed Facility would not require marking or lighting. (App. at 19, Exhibit Q).
40. There would be no impact on any known scenic, historic or recreational areas. (App. at 13, Exhibit Q; Stevens Testimony at 8).
41. A study prepared by Pocket indicates that maximum emissions levels from the proposed Facility would be approximately 5.53% of the safety criteria adopted by the FCC. (App. at 12, Exhibit P).
42. Although the Facility would be located within a 100 year flood plain, the proposed Facility would not impact stormwater absorption and groundwater recharge and would have a negligible effect, if any, on hydraulic flows. To minimize any impacts, the carriers that co-locate on the Facility should install their equipment on platforms. (Infinigy Hydraulic Effect Analysis, December 2, 2009).

Visibility

43. Existing topography and mature vegetation would reduce the potential visual impacts of the proposed Facility from the surrounding areas. Additionally, there are several transportation corridors in the immediate area (Interstate 91, Route 40 and Route 5), which limit the amount of residential receptors within the vicinity of the Facility. (App. at 11, Exhibit N; Stevens Testimony at 7).

44. The Facility would be located as low as it can be while still providing Pocket necessary coverage to the area. (App. at 10).
45. The proposed Facility at the Site would be at least partially visible from only 78 acres within a two-mile radius of the tower, which is less than one percent of the study area. (App. at 12, Exhibit J)
46. The majority of the visibility would occur on the Property itself. Six of those acres are situated on the Property itself, which consists of commercial and industrial uses. Most of the areas with views of the tower would be within a mile radius of the Facility. This area is confined to the transportation corridors of Interstate 91, Route 40 and Route 5, with the exception of smaller areas of visibility to the north and southeast. A limited number of residences along Route 5 may have year round views of the proposed tower. (Id.)
47. There is no anticipated visibility from the Pines Bridge Historic District approximately .7 miles away or from Sleeping Giant, Quinnipiac or Wharton Brook State Parks located between 2 and 5 miles away to the north of the Facility. (App. at 11-12; Exhibit N; Stevens Testimony at 7).

Towersharing

48. This Facility would provide co-location opportunities for public safety communications systems and five (5) wireless carriers, thus avoiding the proliferation of towers. (App. at 8 – 9, Exhibit B).

49. The Town of North Haven has not yet expressed interest in locating its emergency service equipment on the proposed Facility, but Phoenix will make space available at no charge to the Town. (App. at 8-9; Coppins Testimony at 6; Applicant Responses at 2; 3:00p.m. Tr. at 36).

PHOENIX PARTNERSHIP, LLC

By: 

Attorneys for the Applicant

Julie D. Kohler, Esq.

jkohler@cohenandwolf.com

Jesse A. Langer, Esq.

jlanger@cohenandwolf.com

Cohen and Wolf, P.C.

1115 Broad Street

Bridgeport, CT 06604

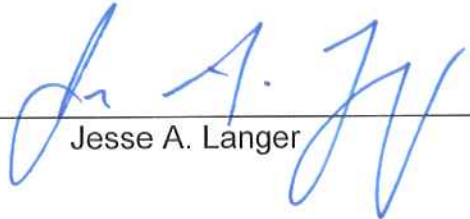
Tel. (203) 368-0211

Fax (203) 394-9901

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

Carrie L. Larson, Esq.
Pullman and Comley, LLC
90 State House Square
Hartford, CT 06103-3702



Jesse A. Langer