

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY T-MOBILE
NORTHEAST, LLC, FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
FOR A TELECOMMUNICATIONS FACILITY
AT 23 STONYBROOK ROAD IN THE TOWN
OF STRATFORD, CONNECTICUT

DOCKET NO. 385

Date: January 7, 2010

**POST-HEARING BRIEF OF
APPLICANT T-MOBILE NORTHEAST, LLC**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, T-Mobile Northeast, LLC, a subsidiary of T-Mobile USA, Inc. d.b.a. T-Mobile ("T-Mobile") submits this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) the facility's consistency with the legislative mandate to avoid the unnecessary proliferation of towers in the State of Connecticut ("State").¹

I. BACKGROUND

On September 1, 2009, T-Mobile filed with the Connecticut Siting Council ("Council") an application for Certificate of Environmental Compatibility and Public Need ("Certificate") for the construction, operation and maintenance of a 100 foot monopole wireless telecommunications facility ("Facility") at 23 Stonybrook Road, Stratford,

¹ T-Mobile submits its Proposed Findings of Fact contemporaneously with this Post-Hearing Brief.

Connecticut ("Property"), pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies.

T-Mobile proposes to construct a Facility in the southwesterly portion of a 0.73 acre parcel owned by Stonybrook Management, LLC, known as 23 Stonybrook Road and designated as Map 30.11, Block 10, Lots 12, 13 and 16 on the Stratford Tax Assessor's Records ("Property"). The Property is zoned for commercial use and is used primarily for commercial purposes. (*Hearing Exhibit at pp. 1, 8, and Exhibit B; Scott Chasse Pre-Filed Testimony ["Chasse"] at p. 2.*)²

The Facility would consist of a 1,300 square foot compound, which would sit within a 2,000 square foot area leased by T-Mobile. An eight foot high stockade fence would secure the equipment at the Facility.³ Vehicle access to the Facility would extend from Stonybrook Road along an existing bituminous drive and parking lot. This access would not require any land disturbance or tree removal. Utility service would extend from Stonybrook Road. (*App. at pp. 1, 8-9, 13; App. Ex. B; Chasse at pp. 2-3.*)

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

General Statutes § 16-50p (a) (3) (A) mandates that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and

² For the Council's convenience, all subsequent page references to Hearing Exhibit 1, which is T-Mobile's application, shall be made as "App. at p. ___." All subsequent references to exhibits attached to the Application shall be made as "App. Ex. ___."

³ The site plans contemplate a chain link fence; however, T-Mobile is willing to construct a stockade fence, which would further limit the visual impact of the Facility. (*7:00p.m. Tr. at p. 39.*)

determine . . . [that] a public need for the facility and the basis of the need” The record amply demonstrates that there is a significant public need for the Facility.

The existing coverage in the area of the proposed Facility does not provide adequate service for T-Mobile customers, particularly for those customers who require in-building use. The existing weakness in coverage is particularly acute along Broadbridge Avenue, Henry Avenue, Franklin Avenue and Route 108 just north of Route 1. The Facility would also provide coverage along Nichols Avenue in the Town of Stratford. (*App. at pp. 4-5; App. Ex. H; Pre-Filed Testimony of Scott Heffernan [“Heffernan”] at pp.3-4; 3:00p.m. Tr. at pp. 20, 49.*)

To alleviate the coverage discrepancies in this area of Stratford, T-Mobile must mount antenna arrays at two locations on the proposed tower at 87 and 97 feet above grade level (“AGL”). (*Heffernan at pp. 4-5; 3:00p.m. Tr. at pp. 18, 20; T-Mobile’s Responses to the Council’s Interrogatories.*) The Facility, in conjunction with other existing and future facilities in Stratford and surrounding towns, is necessary for T-Mobile to provide wireless services to people living, working in and traveling through this area of the State. The Facility would also provide capacity relief for the current sites that presently cover this area from outer lying areas. (*App. at pp. 4-5; App. Ex. H; Heffernan at pp.3-4; 3:00p.m. Tr. at p.20.*)

Additionally, Clearwire Communications has indicated an interest in the Facility. (*App. at p. 6; 3:00p.m. Tr. at pp. 24-25; 7:00p.m. Hearing Transcript [7:00p.m. Tr.] at pp. 27-28.*) T-Mobile has offered the Town of Stratford space to locate its emergency services on the proposed monopole tower at no charge, but has not yet received a reply

from the Town. (*App. at p. 8; Raymond Vergati Pre-Filed Testimony [“Vergati”] at p. 5; 3:00p.m. Tr. at pp. 20-22; Exhibit 5.*)

The evidence shows that the Facility would alleviate existing discrepancies in coverage. Accordingly, the Facility would meet a significant public need for improved wireless telecommunications in this area of Stratford.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, T-Mobile must identify “the nature of the probable environmental impact . . . including a specification of every significant adverse effect . . . whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife” General Statutes § 16-50p (a) (3) (B). The record is replete with evidence demonstrating that the Facility would have a minimal environmental impact on the surrounding areas, and would not conflict with any environmental policies of the State.

T-Mobile conducted a comprehensive environmental analysis of the proposed Facility, which is attached to the Application as Exhibit K (Wetlands Report), Exhibit M (Visual Resource Evaluation Report), Exhibit N (Coastal Consistency Analysis) and Exhibit P (NEPA Compliance documentation). State and Federal authorities also provided substantive responses and conclusions (Exhibit N). The environmental analysis concludes that:

- The Property is not designated as a wilderness area and it is not located in any areas identified as a wildlife preserve or in a U.S. Fish and Wildlife Service National Wildlife Refuge. (*App. at pp. 13-14; App. Ex. P.*)
- The Facility would not affect threatened or endangered species or designated critical habitats. (*App. at pp. 13-14; App. Ex. P.*)
- The proposed Facility would not affect any National Parks, National Forests, National Parkways or Scenic Rivers, State Forest, State Designated Scenic Rivers or State Game lands. (*App. at pp. 13-14; App. Ex. P.*)
- The proposed Facility would not impact any recognized districts, sites, buildings, structures or objects of significance in American history, architecture, archeology, engineering or culture as listed on the National Register of Historic Places. In a letter dated June 10, 2009, the State Historic Preservation Officer concluded that the Facility would have no such impact. (*App. at pp. 13-14, 17; App. Ex. N, P.*)
- The proposed Facility would not affect any Native American religious sites. (*App. at pp. 13-14; App. Ex. P.*)
- The nearest wetland system is Bruce Brook, which is located near the Property. Bruce Brook flows north to south along the southern boundary line of the Property. (*App. at p. 16; App. Ex. K; Pre-Filed Testimony of Dean E. Gustafson ["Gustafson"] at pp. 2-4.*)
- Although development activities would occur within fifty feet of a wetland system, no direct impact would occur. The proposed development activities would occur within an existing developed area which is currently paved. T-Mobile would implement measures

to protect the wetland system. (*App. at p. 16; App. Ex. K; Gustafson at pp. 2-4; 3:00p.m. Tr. at pp. 99, 101.*)

- The Facility would not impact any coastal resources. There are no coastal resources located on or near the Property. The nearest coastal resource is the Yellow Mill Channel located 1.5 miles to the southwest. (*App. at p. 14; App. Ex. N.*)
- Although the Facility would be located within a 100 year flood plain, the Facility would not adversely impact the flood storage capacity of the flood plain. The existing ground elevation is approximately three feet above the flood elevation. (*7:00p.m. Tr. at p. 25.*)
- According to an aeronautical study conducted by a representative of T-Mobile, in accordance with the regulations promulgated by the Federal Aviation Administration, the proposed Facility would not require marking or lighting. (*App. at pp. 17-18; App. Ex. R.*)

Additionally, T-Mobile has designed the Facility to minimize any impact to sensitive visual receptors. The proposed stealth design, which includes the installation of antennae inside the tower, would limit the visual impact of the Facility. Existing topography and mature vegetation would reduce some of the potential visual impact of the proposed Facility on the surrounding area. (*App at pp. 1, 10; App. Ex. B; Michael Libertine Pre-filed Testimony ["Libertine"] at pp. 5-6.*) The compound area would also have a *de minimis* visual impact as it would be screened by stockade fencing, which would also shelter existing dumpsters on the Property. (*7:00p.m. Tr. at p. 39.*)

The areas from which the Facility would be at least partially visible year round comprise approximately ten acres, or less than one half of one percent (>.05 percent) of the Study Area. (*App at pp. 10-11; App. Ex. B, M; Libertine at p. 5.*) The view of the

Facility from these areas, which are generally within 0.25 miles of the Facility, would be limited to the upper half of the tower.⁴ These views would not include residences along Swanson Road. (*App at pp. 10-11; App. Ex. B, M; Libertine at p. 5; 7:00p.m. Tr. at p. 40.*) Areas of seasonal visibility would comprise approximately thirty-seven additional acres, which overlaps the areas where year-round visibility is anticipated. (*App at pp. 10-11; App. Ex. B, M; Libertine at p. 5.*)

Ultimately, the design and location of the Facility minimizes the Facility's environmental impact while addressing the coverage discrepancies in the area.⁵ The existing case law supports the approval of T-Mobile's application for a Certificate as several Court decisions have affirmed the issuance of certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present application. *See generally Westport v. Connecticut Siting Council*, 47 Conn. Sup. 382, 797 A.2d 655 (2001), *Aff'd*, *Westport v. Connecticut Siting Council*, 260 Conn. 266, 796 A.2d 510 (2002); *Nobs v. Connecticut Siting Council*, No. CV 980492714S, 2000 WL 675643 (Conn. Super. Ct. April 28, 2000).

Accordingly, any environmental impacts associated with the Facility would be limited. The Facility would also eliminate the need for additional facilities in this area of Stratford, thereby reducing the cumulative environmental impact on the Town to the greatest extent possible.

⁴ The adjoining property, which would have a view of most of the Facility, did not appear at the hearing and oppose the proposed Facility.

⁵ The landlord and T-Mobile are amenable to rotating the Facility ninety degrees clockwise, which would further reduce the Facility's visual impact without any environmental impacts. (7:00p.m. Tr. at pp. 23, 26, 35, 37-38.)

IV. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has determined that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. General Statutes § 16-50aa. General Statutes §16-50p (b) (1) (A) requires the Council to consider the feasibility of tower sharing to avoid the unnecessary proliferation of telecommunications facilities. "The sharing of facilities is encouraged, if not required by General Statutes §16-50p (b) (1) (A)." *Nobs*, 2000 WL 675643, at *2 n.1.

Certification of the proposed Facility would be in the public interest. There are no other existing facilities or structures in this area from which wireless carriers could co-locate to provide coverage. The Facility is therefore necessary to provide effective wireless service in this area of Stratford, including reliable emergency services. The Facility would also accommodate one additional wireless carrier. Accordingly, the issuance of a Certificate would help avoid the construction of new telecommunications facilities in this area of Connecticut. Therefore approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

The record amply supports the approval of a Certificate for the Facility. The Facility is necessary to provide adequate wireless coverage in this area of Stratford. T-Mobile has demonstrated that the Property is the best location for the Facility in this area of Stratford. This Facility is the optimal solution for the coverage issues in this area with the least amount of environmental impact. T-Mobile respectfully requests that the Council issue a certificate for the proposed Facility, reflecting in its Decision and

Order, consistent with General Statutes § 16-50x, that such approval satisfies and is in lieu of all local and state approvals and certifications.

**THE APPLICANT,
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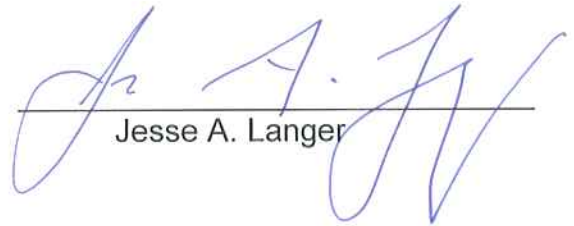
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CERTIFICATE OF SERVICE

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.

N/A



Jesse A. Langer