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April 12, 2010

VIA FEDERAL EXPRESS and ELECTRONIC MAIL

Mr. S. Derek Phelps
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 392 – Application of T-Mobile Northeast LLC, For a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Telecommunications Facility at 387 Shore Road in the Town of Old Lyme, Connecticut

Dear Mr. Phelps:

The supplemental pre-filed testimony of Scott Heffernan is responsive to the Connecticut Siting Council's ("Council") request for general information on Outdoor Distributed Antenna Systems ("DAS") and their suitability for rural areas, such as the Town of Old Lyme. Although T-Mobile endeavors to provide as much information as possible in response to the Council's requests in each and every docket, T-Mobile objects to the request for this information, which exceeds the scope of the Council's authority over wireless carriers and services under federal law. T-Mobile provides the responses below without any waiver of any federal rights, such as T-Mobile's freedom to determine its system design and technology without unlawful local interference, as well as its entitlement to the fair, timely, and lawful exercise of the Council's preserved local zoning authority. Specifically, and without limitation, the Council cannot require or impose a preference for a particular wireless technology, including DAS, nor can the Council delay or refuse to grant T-Mobile's application because a DAS has not been evaluated or considered to the Council's satisfaction.

Any requirement or preference by the Council for a DAS would be preempted by federal law. The federal government has occupied the field of technical standards for wireless transmissions for decades, and any action by a state or local government entity to dictate or encourage the adoption of alternative technologies such as DAS interferes with the federal regulatory scheme and is preempted. *See, e.g., New York SMSA Ltd. Partnership v. Town of Clarkstown*, 603 F. Supp. 2d 715 (S.D.N.Y. 2009), *appeal docketed*, No. 09-1546 (2d Cir. Apr. 14, 2009). In addition, selecting or encouraging particular technologies conflicts directly with the FCC's goal of encouraging maximum flexibility on the part of personal wireless service

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providers in selecting the technology that they wish to use to deploy their federally-licensed services. Further, any DAS requirement or preference would establish an unlawful barrier to entry under 47 U.S.C. § 253, insofar as it would "materially inhibit[] or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (quotation and citation omitted). Finally, any DAS preference or requirement likely constitutes preempted entry regulation under 47 U.S.C. § 332(c)(3)(A), and could run afoul of particular restrictions on local zoning in Section 332(c)(7)(B).

Because the information sought appears to have no relevance or purpose other than for the consideration, preference, or requirement of a DAS, which would clearly exceed the Council's authority, the Council's request for information about DAS itself impermissibly trenches on these federal interests. Without waiver of its rights under federal law, T-Mobile trusts the Council will abide the limited confines of its preserved zoning authority, and T-Mobile voluntarily provides the following general information to resolve the pending application expeditiously.

Please let me know if you have any questions or require additional information.

Very truly yours,

Jesse A. Langer

JAL:dlm
Enclosures

cc: Service List (*Via Regular Mail and Electronic Mail*)