

**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 208 VALLEY ROAD IN THE TOWN
OF NEW CANAAN, CONNECTICUT

DOCKET NO. 401

Date: August 5, 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 ("T-Mobile") submits this post-hearing brief in support of the above-captioned application. This brief addresses (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 April 6, 2010, T-Mobile filed with the Connecticut Siting Council ("Council") an application for Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a 120 foot monopole wireless telecommunications facility ("Facility") at 208 Valley Road, New Canaan, Connecticut ("Property"), pursuant to General Statutes § 16-50aa and § 16-50j-34 of the Regulations of Connecticut State Agencies ("Application"). (*Hearing Exhibit 1, Application, p. 1.*)²

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

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., p. ___." All subsequent references to exhibits attached to the Application shall be made as "App. Ex. ___."

T-Mobile initially proposed a 120 foot telecommunications facility at 270 Valley Road, real property owned by the City of Norwalk's First District Water Company ("Water Company"). T-Mobile made this proposal because the Property was unavailable for lease. During the proceedings for Docket 243, T-Mobile indicated to the Council that the Property was a preferable site for a telecommunications facility. On February 18, 2004, the Council denied T-Mobile's Application for a Certificate as it related to the Water Company property.

Upon T-Mobile's motion, the Council re-opened the matter as T-Mobile had executed a lease for a facility on the Property. The Town of New Canaan ("Town") and those involved in the proceedings agreed that a facility on the Property would have less visual impact than a similar facility located on the Water Company property.

On October 26, 2004, the Council approved T-Mobile's Application for a Certificate to construct, operate and maintain a 120 foot facility on the Property. The Decision and Order provided that "[u]nless otherwise approved by the Council, this Decision and Order shall be void if the facility authorized herein is not operational within one year of the effective date of this Decision and Order" (*Docket 243.*)

T-Mobile did not construct a facility within the time allotted by the Council in the Decision and Order. T-Mobile, however, continues to experience a coverage gap in this area of the Town.

II. THE FACILITY

Since the Council's decision in Docket 243, T-Mobile has worked diligently with the owner of the Property, Silver Hill Hospital, INC, to situate the Facility in an area with

the least amount of visual impact and intrusion for the Hospital and the surrounding area. The Facility, as proposed, would alleviate the existent coverage gap with the least amount of impact to the environment and community.

A. The Facility As Proposed.

T-Mobile proposes to construct the Facility in the northern portion of a 42 acre parcel owned by Silver Hill Hospital, INC., commonly known as 208 Valley Road, New Canaan, Connecticut, and designated as Map 44, Block 108, Lot 120 in the Town's Tax Assessor's Records. The Property serves as a psychiatric hospital. (*App.*, pp. 1, 10, 17; *App. Ex. C; Pre-Filed Testimony of Carlo F. Centore* ["Centore,"] p. 2.)

The Facility would consist of a 1,250 square foot compound, comprising the entire area leased by T-Mobile. An 8 foot high brown cedar board stockade fence would enclose the equipment at the Facility. Access to the Facility would extend from Valley Road along an existing bituminous driveway. T-Mobile would construct a bituminous paved parking area off of the existing driveway, which would lead to a pressure treated wood stepped gravel foot path extending to the Facility compound. Utility service would extend underground from an existing utility pole on the Property scheduled for replacement through underground conduits to the proposed Facility. (*App.*, pp. 1, 10-11; *App. Ex. C; Centore*, p. 3.)

B. The Facility As Modified By Verizon.

Verizon intervened in the proceedings and indicated an interest to locate its antennas within the monopole at a height of 97 feet AGL. Verizon would install a total of 6 antennas (3 cellular and 3 LTE). (*Verizon Petition to Intervene* ["Petition"]; *Verizon Site Justification; July 13, 2010 3:00p.m. Transcript* ["3:00p.m. Tr.,"] p. 45.)

To accommodate Verizon's antennas, T-Mobile would have to increase the diameter of the monopole, which was initially proposed at 30 inches. The primary reason for the increased diameter is the space necessary to accommodate the coax cables that attach to the antennas. The diameter of the monopole from 80 feet AGL to the top of the monopole would be 54 inches. The diameter from 80 feet AGL to the base of the monopole would taper out to a maximum of 76 inches. (*Petition; Verizon Site Justification; 3:00p.m. Tr., pp. 18-19, 34-35, 74-75, 77-78; Verizon photographs.*)

The increased diameter would provide sufficient space for Verizon to address future capacity issues. Verizon would be able to add PCS antennas if necessary. There would also be sufficient space for T-Mobile's antennas and the antennas of a third wireless carrier. (*Verizon Site Justification; 3:00p.m. Tr., pp. 33, 50, 84.*)

The modified proposal would relocate Verizon's equipment shelter to the center of the Facility compound. The Facility compound would also accommodate T-Mobile's equipment shelter and the equipment of an additional wireless carrier. (*Verizon Site Justification; 3:00p.m. Tr., pp. 21, 59.*)

C. Improvements To the Facility Proposed In Docket 243.

Although the facility approved by the Council in Docket 243 would have alleviated an existing coverage gap without adversely impacting the environment, T-Mobile has made several improvements to the design of the Facility in this Docket. These improvements would further minimize the Facility's potential visual and environmental impacts. (*App. Ex. C; T-Mobile's Responses to the Council's First Set of Interrogatories ["T-Mobile First Interrog. Resp."]; Verizon Site Justification.*)

T-Mobile has shifted the Facility compound slightly. The centerline of the Facility monopole and compound is approximately 26.5 feet to the north of the centerline of the facility approved in Docket 243. The proposed grade for the Facility would be 261.5 feet above mean sea level ("AMSL"). The proposed grade approved in Docket 243 was 265 feet AMSL. (*App. Ex. C; T-Mobile First Interrog. Resp.; Verizon Site Justification.*)

The dimensions of the lease area are smaller at 25 x 50 feet as opposed to the previous dimensions of 75 x 75 feet as approved in Docket 243. The dimensions of the Facility compound area are smaller at 25 x 50 feet as opposed to the previous dimensions of 60 x 40 feet. (*App. Ex. C; T-Mobile First Interrog. Resp.; Verizon Site Justification; 3:00p.m. Tr., p. 28.*)

The location and routing for the proposed utilities are shorter than those originally proposed. This would result in less of an impact to the environment. Additionally, T-Mobile has improved the access. The access to the Facility would be over a proposed bituminous parking area extending from the existing bituminous driveway, with a pressure treated wood foot path extending to the Facility compound entrance. The access design for Docket 243 included a bituminous driveway extending from the existing bituminous driveway to the compound entrance. (*App. Ex. C; T-Mobile First Interrog. Resp.; Verizon Site Justification.*)

The Facility would also provide for more co-location than the facility approved in Docket 243. The Facility would accommodate four levels of antennas, whereas the facility approved in Docket 243 would support three levels of antennas. (*App. Ex. C; T-Mobile First Interrog. Resp.; Verizon Site Justification; 3:00p.m. Tr., p. 53.*)

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR THE FACILITY

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 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.

There is a coverage gap in T-Mobile’s network within the area surrounding the Facility. T-Mobile experiences an average dropped call percentage of 4.11 percent for the cells surrounding the coverage objective for the Facility. The Facility would alleviate the existing coverage gap, specifically along Valley Road and Silvermine Road, just east of Route 123, as well as the surrounding areas. Accordingly, the proposed Facility would be an integral component of T-Mobile’s wireless network in the Town. (*App.*, pp. 4-6; *App. Ex. H, J*; *Pre-Filed Testimony of Scott Heffernan*, pp. 3-5; *T-Mobile First Interrog. Resp.*; *3:00p.m. Tr.*, p. 66.)

Cellco Partnership d.b.a. Verizon Wireless (“Verizon”) also experiences a coverage gap in its network in the central area of the Town. Verizon experiences an average dropped call percentage of 2.59 percent for the cells surrounding the coverage objective for the Facility. The Facility would alleviate Verizon’s coverage gap, particularly along Route 106 and local roads in the area. (*Verizon’s Site Justification*; *3:00p.m. Tr. pp. 98, 101, 103.*)

The Town recognizes that it needs enhanced wireless coverage for its residents, businesses and emergency services, specifically in the areas that would be addressed by the Facility. In a letter dated March 25, 2010, the Town supported T-Mobile’s efforts to improve wireless coverage in the Town. Additionally, members of the public voiced

concerns over the lack of coverage in the area of the Town that would be covered by the Facility. (*T-Mobile First Interrog. Resp.*; 3:00p.m. Tr., pp. 4-5, 10, 104; July 13, 2010 7:00p.m. Transcript [“7:00p.m. Tr.”] pp. 14-19, 32-34, 46-49, 51.)

To provide effective coverage in this area, T-Mobile must mount its antennas within the monopole at 117 and 107 feet above grade level (“AGL”). These positions would allow T-Mobile to minimize the number and height of future telecommunications facilities in this area. Additionally, the antenna heights would enable T-Mobile to overcome the existing topography and mature vegetation and provide coverage in these areas of the Town. (*App.*, pp. 5-6, 8-9; *App. Ex. C, H; Heffernan*, pp. 3-5; *T-Mobile First Interrog. Resp.*)

Verizon would locate its antenna array within the monopole at 97 feet AGL. This position would enable Verizon to provide coverage in the central area of the Town, particularly along Route 106 and local roads in the area. At 87 feet AGL, Verizon’s coverage would start to deteriorate to the west of the proposed Facility. (*Verizon’s Site Justification*; 3:00p.m. Tr., pp. 97-98, 103.)

The record establishes that the Facility would alleviate discrepancies in coverage for T-Mobile’s network and Verizon’s network. The Town and its residents have voiced strong support for improved wireless coverage in the area of the Facility. The Facility, therefore, would meet a significant public need for improved wireless telecommunications in the Town.

III. THE FACILITY WOULD HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating a 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.

A. The Facility Would Not Have A Significant Impact On The Environment.

T-Mobile conducted a comprehensive environmental analysis of the Facility, which is attached to the Application as Exhibit K (Wetlands Report), Exhibit N (Visual Resource Evaluation Report), Exhibit O (Coastal Consistency Analysis) and Exhibit Q (NEPA Compliance Documentation). State and Federal authorities provided substantive responses (Exhibit O). The environmental analysis concluded that the Facility would not impact adversely the natural resources of the State.

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. Nor would the Facility affect threatened or endangered species or designated critical habitats. Additionally, the proposed Facility would not impact any National Parks, National Forests, National Parkways or Scenic Rivers, State Forest,

State Designated Scenic Rivers or State Game lands. (*App.*, pp. 15-16; *App. Ex. Q*; *Pre-Filed Testimony of Ashley Bonavenia* [*"Bonavenia,"*] p. 3.)

The Facility would be designed to minimize any impact on migratory bird species. The Facility would comply with the United States Fish and Wildlife Service interim guidelines because the Facility would be well under 200 feet, without guy wires and would not be lit. (*App.*, p. 15; *App. Ex. C, Q*; *Bonavenia*, p. 3; *Verizon Site Justification*.)

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. On November 4, 2009, the State Historic Preservation Officer ("SHPO") determined that the Facility would not have an adverse impact on any such resources. (*App.*, p. 16; *App. Ex. O, Q*; *Bonavenia*, p. 4.)

The Facility would not affect any Native American religious sites. T-Mobile consulted with four Native American Indian tribes – the Delaware Nation, the Delaware Tribe of Indians of Oklahoma, the Mashantucket Pequot Tribe, and the Narragansett Indian Tribe – because they might have interests impacted by the construction, operation and maintenance of the Facility. The Delaware Tribe of Indians of Oklahoma and the Mashantucket Pequot Tribe confirmed that they do not have any interests that would be impacted by the Facility. (*App.*, p. 16; *App. Ex. Q*; *Bonavenia*, p. 4; *3:00p.m. Tr.*, p. 18.)

The Narragansett Indian Tribe and the Delaware Nation were unresponsive to T-Mobile's attempts to contact them about the proposed Facility. T-Mobile contacted the Federal Communications Commission ("FCC") after receiving no response from these

Tribes. The FCC attempted to communicate with the Tribes. On December 1, 2009, the Delaware Nation responded to the FCC and indicated that the Facility would not impact any of the Tribe's interests. The Narragansett Indian Tribe did not respond to the FCC's requests for comment. The FCC therefore concluded that the Narragansett Indian Tribe had no interest in the proposed Facility and that T-Mobile had met its obligations for tribal consultation. (*App.*, p. 16; *App. Ex. Q; Bonavenia*, p. 4; 3:00p.m. *Tr.*, p. 18; *T-Mobile Late Filing*.)

T-Mobile also conducted a wetland analysis. The construction, maintenance and operation of the Facility would not have an adverse impact on any wetland. There are no wetland systems located on the Property or nearby the proposed Facility. The nearest wetland system is approximately 400 feet from the proposed Facility. This wetland system is associated with Silvermine Brook and is located on the opposite side of Valley Road.³ (*App.*, p. 15; *App. Ex. C, K; Pre-filed Testimony of Dean E. Gustafson* [*"Gustafson,"*] pp. 2-3.)

Lastly, T-Mobile conducted an aeronautical study in accordance with the regulations promulgated by the Federal Aviation Administration. Based upon that study, the proposed Facility would not require marking or lighting. (*App.*, p. 19; *App. Ex. S*.)

The Facility would not have an adverse impact on the environment. The Facility is categorically excluded from any requirement for further environmental review by the FCC pursuant to the NEPA and no permit is required by the FCC prior to construction of the Facility. These determinations comport with the Council's previous determinations

³ The Facility would have no impact on water flow, water quality, or air quality and would comply with relevant noise regulations. Additionally, the Facility would not be located in a floodplain. (*App.*, p. 15-16; *App. Ex. Q; Gustafson*, pp. 2-3; *Bonavenia*, p. 4.)

of no adverse environmental impact, in Docket 243, regarding a proposed facility with similar specifications. (*App.*, p. 16; *App. Ex. K, Q; Bonavenia*, pp. 3-4; *Gustafson*, pp. 2-3; *Docket 243*.)

B. The Facility Would Not Have A Significant Visual Impact On The Surrounding Area.

Existing topography and mature vegetation would reduce some of the potential visual impacts of the proposed Facility on the surrounding areas. The average height of the tree canopy within a 2 mile radius of the Facility ("Study Area") is approximately 65 feet. The tree canopy covers nearly 5,298 acres of the 8,042 acre Study Area. The Study Area also includes approximately 100 linear miles of roadways and 221 acres of surface water, including portions of Silvermine River, South Norwalk Reservoir, Rock Lake and Thayers Pond. (*App.*, p. 12; *App. Ex. N; Libertine*, p. 6.)

Aside from the mitigating qualities inherent in the surrounding area, the monopole would be painted brown to match the existing vegetation and would include interior mounts. These stealth features would further minimize the visual impact of the proposed Facility. (*App.*, pp. 10-11, 14; *App. Ex. C, N; Libertine*, p. 6; *Verizon Site Justification; 3:00p.m. Tr.*, pp. 92-93.)

The Site is the optimal location for the Facility as most of the Property is developed. The Site would be located in an area of the Property with existing mature vegetation to screen the monopole. The existing vegetation would shield most of the Facility, including the lower portion of the monopole that tapers out to the base. (*App.*, pp. 12-13; *App. Ex. C, N; Libertine*, p. 6; *3:00p.m. Tr.*, pp. 46-48, 87.)

As a result of the existing vegetation and the stealth features of the Facility, the areas from which the Facility would be at least partially visible year round comprise

approximately 8 acres of the 8,042 acre Study Area – less than one half of one percent of the total Study Area. A majority of these views would be on the Property and along a limited segment of Valley Road within the immediate vicinity of the proposed Facility. Year-round views are also anticipated from the adjoining municipal water treatment property. There are several smaller areas of potential year-round visibility located to the north, northeast, and southeast of the Facility. (*App.*, p. 13; *App. Ex. N*; *Libertine*, p. 5.)

Areas of seasonal visibility would comprise approximately 16 additional acres. These views would be within the immediate vicinity of the proposed Facility (0.25 miles). This would include an approximate one-tenth mile segment on Valley Road that abuts the Property; an area to the northwest of the proposed Facility that extends to select portions of Wardwell Drive; an area of intermittent seasonal views located near the end of Turning Mill Lane; and an isolated area of seasonal visibility located along Huckleberry Hill Road. (*App.*, pp. 11-12; *App. Ex. N*; *Libertine*, p. 5.)

The Facility would not have an adverse visual effect on historic, architectural, or archeological resources listed on or eligible for the National Register of Historic Places. This determination is consistent with SHPO's conclusion. Additionally, the Facility would not be visible from any hiking trails. (*App. Ex. N*; *Libertine* p. 6.)

C. Approval of T-Mobile's Application Would Comport With Existing Case Law.

Ultimately, the design and location of the Facility would minimize the Facility's environmental impact while addressing the coverage discrepancies in the area. 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).

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

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. The Facility would provide co-location opportunities for public safety communications systems and 2 other wireless carriers, which would limit the proliferation of telecommunications facilities. (*App.*, pp. 8-10; *App. Ex. C, J; Centore*, p. 3; *Pre-Filed Testimony of Raymond Vergati* ["Vergati,"] pp. 3-4; *Verizon Site Justification*; 3:00p.m. *Tr.*, pp. 33, 50.)


Verizon has intervened in this matter and confirmed an interest in locating its antennas within the Facility at a height of 97 feet AGL. Therefore approval by the Council would be consistent with the legislative mandate to avoid the unnecessary proliferation of towers. (*Verizon Site Justification; 3:00p.m. Tr., pp. 33, 50.*)

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 the Town. T-Mobile has demonstrated that the Property is the best location for a facility which would address the coverage issues in this area with the least amount of environmental impact. T-Mobile requests that the Council issue a certificate for the 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,
T-MOBILE NORTHEAST LLC**

By:

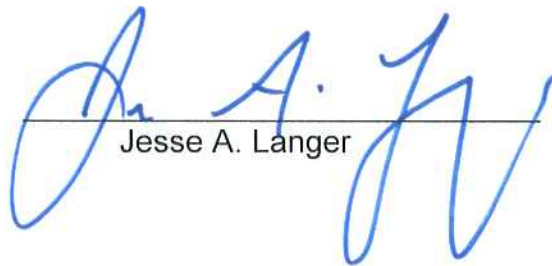


Attorneys for the Applicant
Julie D. Kohler, Esq.
jkohler@cohenandwolf.com
Jesse A. Langer, Esq.
jlanger@cohenandwolf.com
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel. (203) 368-0211
Fax (203) 394-9901

CERTIFICATE OF SERVICE

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

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
(Via Email: kbaldwin@rc.com)


Jesse A. Langer