

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR
WIRELESS PCS, LLC (AT&T) FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
TOWER FACILITY AT 8 BARNES ROAD IN
THE TOWN OF CANAAN (FALLS VILLAGE)

DOCKET NO. 409

February 15, 2013

AT&T'S MOTION TO THE SITING COUNCIL TO REVERSE ITS FINAL DECISION IN
DOCKET NO. 409 AND ISSUE A CERTIFICATE FOR A MODIFIED TOWER FACILITY

AT&T hereby moves the Siting Council pursuant to Section 4-181a(b) of the Connecticut General Statutes to reverse and modify its decision and order denying AT&T's application for a Certificate of Public Need and Environmental Compatibility ("Certificate") in Docket 409.¹

Section 4-181a(b) provides in relevant part that any state agency may:

"On a showing of changed conditions ... reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion."

AT&T respectfully submits to the Siting Council that changed conditions warrant the Council's consideration of a revised tower site location and modified facility on the property at 8 Barnes Road in the Town of Canaan ("Falls Village"), Connecticut.

I. Changed Conditions

On October 19, 2010, AT&T applied for a Certificate to construct a 150' tall tower and related wireless communications equipment, driveway, utilities and other facility site components ("Facility") at 8 Barnes Road in Falls Village (the "Site") to provide needed wireless service in this area of Falls Village. AT&T's Application was assigned Docket No. 409. On

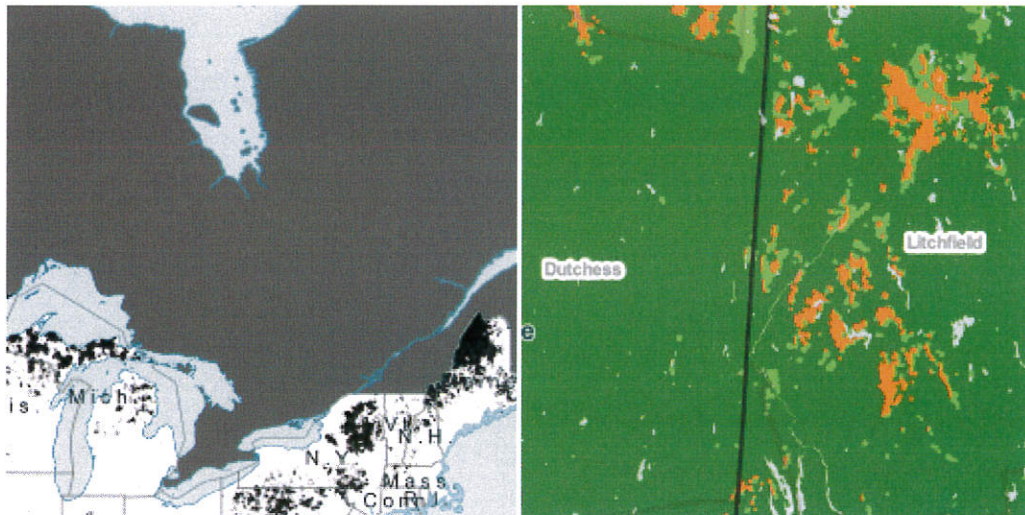
¹AT&T's 4-181a(b) motion is submitted without prejudice to its pending appeal in *New Cingular Wireless PCS, LLC v. Connecticut Siting Council, et. al.*, 12-4709 (2d Cir.)

August 25, 2011, the Siting Council issued a Decision & Order (“D&O”) denying AT&T’s application for a Certificate in Docket 409. A copy of the D&O, Opinion and Findings of Fact are annexed hereto as Exhibit 1. AT&T timely filed suit in the United States District Court for the District of Connecticut (“District Court”) challenging the Siting Council’s denial of AT&T’s application on the basis that the denial has the effect of prohibiting AT&T’s provision of wireless services to the public, in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II). On October 25, 2012, the District Court granted summary judgment in favor of the Siting Council, a decision which AT&T has appealed to the United States Court of Appeals for the Second Circuit (“Pending Appeal”).

In its decision, the Connecticut District Court, while granting summary judgment to the Siting Council, confirmed the existence of significant gaps in service in this area of Falls Village. This confirmation is consistent with the Siting Council’s October 2010 Findings of Fact and Opinion in Docket No. 409, in which the Siting Council similarly determined there is a public need for a new tower facility somewhere in this general area of Falls Village as a matter of state law.

Included in Exhibit 2 are copies of Connecticut Department of Transportation (“DOT”) traffic statistics for Canaan which identify that the highest traffic in the entire area including downtown Falls Village is north of the Site on Route 7 and south of the Site on Route 63 with 2800 to 2900 daily vehicle trips. Moreover, as confirmed in September 2012 by AT&T’s radiofrequency engineering consultant, and submitted in affidavits with the Court, there is still a need for a new tower facility in this area of Falls Village to provide wireless services to the public.

Since the time of the Siting Council's D&O, new federal policies and facts have been developed that specifically relate to the area of Falls Village intended to be served by the Facility proposed by AT&T in Docket 409. Specifically, the Federal Communications Commission ("FCC") itself utilized 2011 third party drive testing of all wireless carrier networks and in 2012 developed a program to subsidize infrastructure development in underserved and rural areas lacking mobile broadband coverage. *USF/ICC Transformation Order*, FCC 11-161 at ¶¶ 8, 28; 47 C.F.R. § 54.1002; Mobility Fund Phase I Eligible Areas ("USF Areas"). Copies of relevant portions of FCC coverage maps are reprinted here.



The FCC's maps specifically identify this exact area of Falls Village as having gaps in wireless broadband service and requiring infrastructure for service to be provided to the public.

Indeed, specific census blocks were identified by the FCC in this area of Falls Village and used as a basis for the FCC's finding that the use of universal service funds ("USF") was warranted to assist the private sector in development of infrastructure to serve this area of Falls Village. See Exhibit 3 which is a map prepared by AT&T and which identifies FCC Census Blocks listed by the FCC as part of eligible USF Areas. Nevertheless, no party bid on the FCC's

Falls Village area for receipt of USF funds and as such, there are no known plans for any party other than AT&T to build infrastructure in this specific area of the State.

These developments since the Siting Council's 2011 denial in Docket No. 409 present credible evidence of public safety concerns in this area of Falls Village, evidence sought by the Council as articulated in its 2011 Opinion, and constitute changed conditions which warrant the Siting Council's consideration of a modified tower location and facility at the Site to meet the public need for service.

II. Modified Site Location and Tower Facility

Without prejudice to AT&T's pending appeal asserting that the Siting Council's 2011 decision is contrary to 47 U.S.C. § 332, and in the spirit of potential compromise, AT&T is prepared to propose a modified tower facility at another location at the 8 Barnes Road property in Falls Village, which proposal is designed to reduce visibility from the Falls Village area. This proposal would allow AT&T to provide service to a significant segment of the public, though not to the same extent as its original proposal.

In order to meet the Siting Council's stated goal of reducing visibility of the proposed tower structure and in furtherance of the Siting Council's 2011 Opinion, AT&T identified a location on the underlying parcel that is east of the denied tower site location which was originally proposed on the western shoulder of Cobble Hill. The modified location is approximately 1600' northeast of the existing hunting cabin on the property and would require the extension and improvement of the existing access/logging road for a greater length and cost to AT&T. AT&T would further compromise on the height of the tower structure reducing it from 150' above grade level (AGL), as proposed, to 120' AGL.

Enclosed in Exhibit 4 for consideration by the Siting Council as part of this motion and in furtherance of a potential settlement of the pending litigation are copies of:

- 1) A revised exhibit prepared by CHA, dated January 13, 2013, which roughly identifies the modified facility location, tower elevation and additional driveway length, which features would be field surveyed as part of any substantive 4-181a(b) review (“Modified Tower Site”).
- 2) Coverage plots prepared by C Squared of AT&T’s existing and planned network along with potential service from the denied tower site at 150’ AGL and from the Modified Tower Site at a height of 120’ AGL (“Modified Tower”). These plots show a reduced coverage footprint from the Modified Tower which would, nevertheless, largely address the FCC’s goal of filling gaps in broadband wireless services in this area of Falls Village and in particular the census blocks as identified in Exhibit 3.
- 3) Draft comparative viewshed maps that identify the significantly reduced visibility of the Modified Tower from areas north and west of Cobble Hill and the direction of downtown Falls Village, which would be field verified as part of any substantive 4-181a(b) review.

The enclosed materials incorporate AT&T’s settlement proposal and coupled with the existing record in Docket 409 frame the scope of AT&T’s request for the Siting Council to consider reversing and modifying its Decision & Order dated August 25, 2011.

III. Conclusion

To facilitate the Siting Council’s review of this 4-181a(b) motion, AT&T has stipulated to adjourn the Pending Appeal from active consideration until June 14, 2013, subject to it being reactivated at any time for any reason. In the event the Siting Council finds as a threshold matter

changed conditions and grants this motion by scheduling a public hearing to further consider whether to reverse and modify its Decision & Order in Docket No. 409, AT&T will conduct further survey work related to the environmental effects of the Modified Tower Site and present witnesses at a public hearing as procedurally required by Section 4-181a(b) of the Connecticut General Statutes. As required by Section 4-181a(b), copies of this motion have been served on parties and intervenors to Docket No. 409 who may seek to participate in the proceeding on AT&T's motion. For the reasons set forth herein, and as an offer of compromise, AT&T moves the Siting Council to find changed conditions warrant consideration of the Modified Tower Site, to schedule a public hearing and ultimately reverse and modify its Decision & Order in Docket No. 409 to grant a Certificate to AT&T for the Modified Tower at the Modified Tower Site location.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

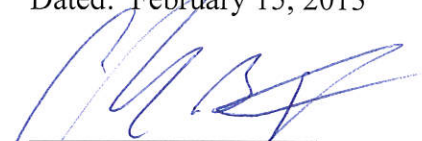
I hereby certify that on this day, a copy of the foregoing was sent electronically and by overnight delivery to the Connecticut Siting Council with copy by overnight mail to:

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Dated: February 15, 2013



Christopher B. Fisher

cc: Michele Briggs, AT&T