

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

SBA TOWERS III AND NEW CINGULAR
WIRELESS PCS, LLC (AT&T)
APPLICATION FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
TOWER FACILITY AT ONE OF THREE
LOCATIONS IN
NORTH STONINGTON, CONNECTICUT

DOCKET NO. 420

November 10, 2011

SBA TOWERS III ("SBA") & NEW CINGULAR WIRELESS PCS, LLC ("AT&T")
POST HEARING BRIEF

Respectfully Submitted,

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PRELIMINARY STATEMENT

SBA Towers III (“SBA”) and New Cingular Wireless PCS, LLC (“AT&T”) (together the “Applicants”), by their attorneys, Cuddy & Feder LLP, respectfully submit this post hearing brief in support of the Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for a tower facility in Docket No. 420. The Application addresses the public need for a new tower facility to provide service to North Stonington along Route 201 and to surrounding roads and homes. Throughout the proceedings in this Docket, the Applicants provided data, testimony and otherwise responded to interrogatories providing the Council comprehensive analysis of the public need for reliable service in this part of North Stonington, the review of possible siting alternatives, and the potential environmental effects associated with each candidate facility proposed in this Docket. The process has revealed that a tower facility is needed to provide service in this area of the State. Further, that the location and height of the candidate sites proposed by the Applicants do not present significant, aesthetic, or environmental impacts to this part of the State. As such, the Applicants request a Certificate for a new tower facility to meet the public need for wireless services be issued for one of the candidate facilities proposed in this Docket to serve this part of North Stonington.

STATEMENT OF FACTS

I. AT&T's Need

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to access its wireless network. In this case, coverage gaps for reliable service exist in the northern section of North Stonington. AT&T's RF engineers generated a search area in order to address this need. Applicants' Ex. 1, pg. 5; Ex. 1 Attachment 1.

To aid in the site search, AT&T's real estate consultants reviewed the existing AT&T and other telecommunications site locations in the area and as identified on the list of existing sites as included in the Application. Applicants' Ex. 1, Tab 1. There are no existing towers or structures within four (4) miles of the targeted search area that would sufficiently address AT&T's need for reliable in-building coverage in this area. Applicants' Ex. 1, Tab 1. Indeed the First Selectman also noted the need for service in this area of town. Tr. September 20, 2011 (3:20 PM), pp. 7-8. By letter submitted for the record and in the comments of the First Selectman at the September 20th, 2011 hearing, the Town indicated its desire to locate its equipment on a facility if approved. Tr. September 20, 2011 (3:20 PM), pp. 8-9. Verizon indicated its interest in utilizing a site at 49 Mountain Avenue at 160' AGL but indicated the B and C candidates would not work. Tr. September 20, 2011 (3:20 PM), p. 36; Tr. October 11, 2011 (1:05 PM) p. 19.

II. AT&T & SBA Site Searches, Technical Consultation with the Town of North Stonington and Identification of Candidate Sites

Once it was determined that a new tower facility was needed to provide coverage in this part of North Stonington, AT&T investigated a number of properties within the site search areas.

Applicants' Ex. 1, Tab 2. Independently, SBA commenced its own investigation for a tower site in this area. Applicants' Ex. 1, p. 5. Subsequently, AT&T and SBA agreed to work together to identify suitable locations for a telecommunications tower facility. Applicants' Ex. 1, p. 5. As a result of these efforts, SBA subsequently leased a facility site at 49 Mountain Avenue owned by Tucker Village, LLC.

By letter dated October 8, 2010, the Applicants filed a technical report with the Town of North Stonington which included specifics about the proposed site at 49 Mountain Road. Applicants' Ex. 1, Tab 7 (letter), Bulk File (technical report). The technical report included detailed information on the public need for a tower facility in this part of the State, explained the site selection process and the environmental effects of the proposed facilities including visual reports. AT&T Ex. 1, Tab 7; AT&T Bulk Filing, Technical Report.

Following a public meeting held in the Town of North Stonington the Town of North Stonington First Selectman Nicholas H. Mullane II requested the Applicants review additional candidate locations. Applicants' Ex. 1, Tab 7. SBA and AT&T pursued alternatives suggested by the Town and followed up on other leads which were the result of the consultation process. Applicants' Ex. 1, p. 6. SBA then obtained option/lease agreements with the owners of 23/25 Northwest Corner Road and 350B Cossaduck Hill Road. Applicants' Ex. 1, p. 6. These are the three candidate sites included in the Applicants application.

In total, the Applicants reviewed thirteen (13) properties for the location of a tower facility. Applicants' Ex. 7, Attachment F ("Site Search Summary – Revised"). The other sites investigated were either rejected by AT&T or not made available by the property owner. Applicants' Ex. 7, Attachment F.

III. AT&T's Certificate Application & Pre-Hearing Filings

On June 29, 2011 the Applicants submitted their application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility located at one of three locations, North Stonington, Connecticut. The application was subsequently identified by the Siting Council as Docket No. 420.

As set forth in the Application, the sites of the alternate candidates are located at 49 Mountain Avenue, 23/25 Northwest Corner Road and 350B Cossaduck Hill Road all in North Stonington, Connecticut. Applicants Ex. 1, Tabs 3, 4 and 5. Each facility would consist of a tower, equipment at grade, fenced compound, and access drive. Certain specific details of each candidate facility are as follows¹:

	A: 49 Mountain Ave	B: 23/25 Northwest Corner Road	C: 350B Cossaduck Hill Road
Size of parcel	2.24 acres ²	86 acres	11.66 acres
Location on Property	western portion	central	central
Compound Size	40' x 75'	75' x 75'	75' x 75'
Tower Height	190' AGL	190' AGL	190' AGL
Number of antennas	up to 12	up to 12	up to 12
Centerline of antennas	188' AGL	188' AGL	188' AGL

On September 15, 2011 the Applicants submitted responses to Siting Council pre-hearing interrogatories. A public hearing was scheduled by the Siting Council in the Town of North Stonington for September 20, 2011. Neighbors to the candidate C site Peter and Gisele Buehler

¹ See Applicants' Ex. 1, Tabs 3(A), 4(A) and 5(A).

² However this is one of several adjoining parcels owned by the underlying land owner Tucker Village LLC as per the Abutter's Map included in Applicant's Exhibit 1, Tab 3(A).

filed for intervenor status and were admitted as such on September 20, 2011. Tr. September 20, 2011 (3:20 PM) pp. 5-6. By their request to intervene and during the proceedings the intervenors noted their objection to the location of the tower and use of the access drive serving the candidate parcel which also courses through their property. Intervenors' Ex. 1 (Request for Party Status); Tr. October 11, 2011 (1:05 PM) pp. 33-46.

IV. Public Hearing, Supplemental Submission and Continued Hearing

On September 20, 2011 the Applicants raised a balloon at each of the candidate locations (Tr. 9/20/11 3:20 pm p. 17.) and the Siting Council conducted an official site visit touring the proposed candidate locations of the tower, proposed equipment compound area and viewed the surrounding properties. At that day's public evidentiary hearing, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the need for a proposed facility, the investigation of alternative sites and any environmental effects associated with construction of a tower at the proposed candidate locations.

The Siting Council issued a second set of interrogatories to the Applicants and responses dated October 5, 2011 were provided. A continued hearing for Docket 420 was held on October 11, 2011 and closed that same day. Tr. 10/11/11 1:05 PM p. 57. All interested persons including intervenors and interested members of the public have been given a full and fair opportunity to present their comments to the Council as part of the hearing and Application process.

POINT I

A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY IN NORTH STONINGTON

Pursuant to Connecticut General Statutes ("CGS") Section 16-50p, the Council is required to find and determine as part of any Certificate application, "a public need for the proposed facility and the basis for that need". CGS § 16-50p(a)(1). In this Docket, AT&T provided coverage

analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable wireless services to residents and the traveling public in the northern section of North Stonington. AT&T Ex. 1, page 1, Tab 1; Applicants' Ex. 2 (Responses to Siting Council Interrogatories, Set One) Tabs A, B and C. As noted in the discourse of the hearings on this matter, the candidate B facility at 23/25 Northwest Corner Road would require AT&T to also – co-locate on an existing tower to the north at 2172 Glasgo Road (“Glasgo Road Tower”) in order to provide additional infill coverage. Applicants' Ex. 1, p. 15; Tr. 10/11/11 1:05 PM pp 30-31. candidate A at Mountain Avenue would not require use of the existing Glasgo Road Tower. Applicants' Ex. 1, p. 14. The candidate C facility at Cossaduck Road was originally evaluated as a two site solution utilizing the Glasgo Road Tower. However, subsequent isolation coverage plots provided at the request of the Siting Council show that Site C's coverage footprint would be similar to that of Site A and may not require a second site to the north. Tr. 10/11/11 1:05 PM pp 30-31; Applicants Ex. 8 Attachment. Indeed, AT&T's expert witness Daniel Goulet testified that post installation evaluation of a facility at Site C, with full foliage, would inform as to the need of a site is needed to the north. Tr. 10/11/11 1:05 PM p. 55.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER MORE VIABLE ALTERNATIVE PROPERTIES FOR SITING THE PROPOSED TOWER FACILITY

The Applicants submitted considerable evidence demonstrating their comprehensive search for sites. Applicants Ex. 1, Tab 2, p. 1-3. The Applicants identified and investigated all existing tower structures within four miles of the search area. Applicants' Ex. 1, Tab 1. AT&T is currently using three of the existing tower sites identified to provide coverage to other areas of the State. Applicants' Ex.1, Tab 1. Additionally, there are no other "tall" structures in this area of the State which would be suitable to provide the needed service. AT&T Exhibit 1, Tabs 1 and

2 and Applicants' Ex. 7, Attachment F ("Site Search Summary – Revised"). The record in this proceeding demonstrates that there are no existing towers, structures or other more viable alternative properties other than the proposed candidates for the site of the proposed facility in this Docket.

POINT III

THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to CGS Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. The Applicants' respectfully submit that a facility at one of the candidate locations presented in this Docket will have no significant adverse environmental effects on the resources listed in Section 16-50p of the General Statutes. Further, that any localized impacts are not significant and can be managed through appropriate engineering controls and site modifications.

1. Potential Visual Effects

Potential visibility was assessed within an approximate (2) two mile radius of each candidate location using a complex computer – based, predictive view shed model coupled with in-field analysis and photographic simulations of a tower at each location. In no case for any of the candidate facility sites are views anticipated from the Narragansett Trail contained in the study area.

a. 49 Mountain Avenue (Candidate A)

The record in this Docket demonstrates that a facility at the candidate site at 49 Mountain Avenue will have no significant adverse visual impact on any scenic or historic resources that are

specifically listed or identified as of significant State, regional or local importance. Applicants' Ex. 1, Tab 3(C). The year round visual impact is limited to approximately 104 acres of the total 8,042-acre study area. Applicants' Ex. 1, Tab 3(C). The majority of year-round visibility associated with the facility does occur over open water portions of Billings Lake, Anderson Pond and Wyassup Lake and along their immediate shorelines Applicants' Ex. 1, Tab 3(C). Overall visibility is limited by intervening topography and vegetation. Applicants' Ex. 1, Tab 3(C). The Portions of a facility at 49 Mountain Avenue will be seasonally visible in the immediate vicinity surrounding the site.

The State Historic Preservation Officer ("SHPO") determined that the proposed facility will not have any visual impact on historic resources. Applicants' Ex. 1, Tab 3(D). The parcel on which this candidate facility is proposed and immediate surrounding areas exhibit no scenic, natural, historic, or recreational characteristics which are unique. AT&T Ex. 1, Tab 3(A)-(D).

b. 23/25 Northwest Corner Road

The record in this Docket also demonstrates that a facility at the candidate site at 23/25 Northwest Corner Road will not have a significant adverse visual impact on any scenic, historic or recreational resources that are specifically listed or identified as of significant State, regional or local importance. Applicants' Ex. 1, Tab 4(C). The year round visual impact is limited to approximately 30 acres of the total 8,042-acre study area. Applicants' Ex. 1, Tab 4(C). The majority of year-round visibility associated with the facility occurs over undeveloped property in the immediate vicinity of the candidate with a significant portion of that visibility occurring on the host parcels. Applicants' Ex. 1, Tab 4(C). Overall visibility is limited by intervening topography and vegetation. Applicants' Ex. 1, Tab 4(C).

The State Historic Preservation Officer (“SHPO”) determined that the proposed facility will not have any visual impact on historic resources. Applicants’ Ex. 7 (Responses to Pre-hearing Interrogatories dated October 5, 2011). The parcel on which the facility is located and immediate surrounding areas exhibit no scenic, natural, historic, or recreational characteristics which are unique. AT&T Ex. 1, Tab 4(A)-(D).

c. 350B Cossaduck Hill Road

The record in this Docket also demonstrates that a facility at the candidate site at 350B Cossaduck Hill Road will not have a significant adverse visual impact on any scenic, historic or recreational resources that are specifically listed or identified as of significant State, regional or local importance. Applicants’ Ex. 1, Tab 5(C). The year round visual impact is extremely limited to just 9 acres of the total 8,042-acre study area. Applicants’ Ex. 1, Tab 5(C). A portion of the facility would be visible above the tree canopy from a small portion of the northern shoreline and open water of Anderson Pond. The majority of year-round visibility associated with the facility occurs over undeveloped property in the immediate vicinity of the candidate with a portion of that visibility occurring at a large wetland tract /swamp located within the Pachaug State Forest. Applicants’ Ex. 1, Tab 5(C). Overall it was deemed by the Applicants’ visual consultant that this candidate had the least visual impact of the candidate sites presented. Overall visibility is limited by intervening topography and vegetation. Applicants’ Ex. 1, Tab 5(C).

The State Historic Preservation Officer (“SHPO”) provided a preliminary analysis found that there would be no visual impact on historic resources. Applicants’ Ex. 7 (Responses to Pre-hearing Interrogatories dated October 5, 2011). The parcel on which the facility is located and

immediate surrounding areas exhibit no scenic, natural, historic, or recreational characteristics which are unique. AT&T Ex. 1, Tab 5(A)-(D).

2. Potential Impacts to the Natural Environment

As clearly demonstrated in this Docket, potential impacts to the natural environment from a facility at one of the proposed candidate sites are not significant and can be addressed through proper construction techniques and facility modifications overseen by the Siting Council.

i. Wetlands and Watercourses

Wetland/watercourse resources were identified and reviewed in the vicinity of each candidate proposed Facility. The candidate A facility site at 49 Mountain Avenue is more than 300 feet from the nearest wetland resource. Applicants' Ex. 7 (Responses to Pre-hearing Interrogatories dated October 5, 2011). The candidate B facility site at 23/25 Northwest Corner Road is approximately 300 feet from the nearest wetland resource. However, the access road to the proposed tower location would pass between a farm pond and a narrow forested wetland. An existing culvert will not be disturbed during the course of construction. Applicants' Ex. 7 (Responses to Pre-hearing Interrogatories dated October 5, 2011). The proposed facility at 350B Cossaduck Hill Road (candidate C) is more than 700 feet from the nearest wetland resource. Applicants' Ex. 7 (Responses to Pre-hearing Interrogatories dated October 5, 2011).

The development of any of the proposed candidates is not anticipated to cause an adverse impact on identified wetland resources. Utilization of appropriate soil erosion and sedimentation controls as well as suitable construction techniques will reduce, if not eliminate, any risk of impact to the wetlands during construction. Applicants' Ex. 1, pp. 14-17; Ex. 1, Tabs 3(B), 4(B), 5(B).

ii. Wildlife

DEP Natural Diversity Database maps were reviewed for the proposed site and none of the candidate locations are located within or near areas identified as Listed Species or Natural Communities. Applicants' Ex. 1, Tabs 3(D) and (6); Attachment (Exhibit D) to Applicants' September 15, 2011 responses to Interrogatories (Applicants' Ex. 8). A Migratory Bird Impact Evaluation was included as Attachment /Exhibit D to Applicants' September 15, 2011 responses to Interrogatories (Applicants' Ex. 2). As noted therein, the proposed site complies with the United States Fish and Wildlife Service guidelines for minimizing potential impacts to birds and further that no seasonal restrictions would be recommended in association with the construction or operation of a facility at any of the candidate sites. Applicants' Ex. 2, Attachment/Exhibit D.

No other wildlife issues have been identified in the course of AT&T investigations and as such, AT&T respectfully submits that the proposed facility will not significantly impact wildlife or any ecological balance in this area of North Stonington. AT&T Ex. 1, Tab 6, pages 1-3.

iii. Clearing and Grading

For all three candidates in this Docket, location of the tower compound utilizes to the maximum extent practicable existing access roads. Applicants' Ex. 1, Tabs 3(A), 4(A) and 5(A). At 49 Mountain Avenue (candidate A) a facility would require the removal of 36 trees above 6" DBH and some clearing of brush. Some fill will be required to properly grade the proposed access drive and compound construction area. Applicants' Ex. 1, Tab 3(A). A facility at the candidate B site at 23/25 Northwest Corner Road would require the removal of 15-25 trees above 6" DBH and some clearing of brush. Some rock removal could be required. Applicants' Ex. 1, Tab 4(A). The candidate C facility site (350B Cossaduck Road) would require the removal of 7-12 trees above 6" DBH and some clearing of brush. Some fill would also be required to properly grade the new access drive and compound construction area.

CONCLUSION

The Applicants have demonstrated a public need for and lack of any significant adverse environmental effects associated with a tower facility at any of the proposed candidate sites. The evidentiary record contains no evidence challenging the public need for the tower to provide reliable wireless services in and around this part of the State. Moreover, the record demonstrates that the proposed facility will not have any significant adverse environmental effects on documented resources in this part of the State. Indeed, any environmental effects have been minimized through careful siting and on-site engineering controls to further reduce any potential impacts. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for a facility at one of the proposed candidate locations.

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and fifteen copies of the foregoing was served on the Connecticut Siting Council electronically and by overnight delivery with copy to:

Peter & Gisele Buheler at:

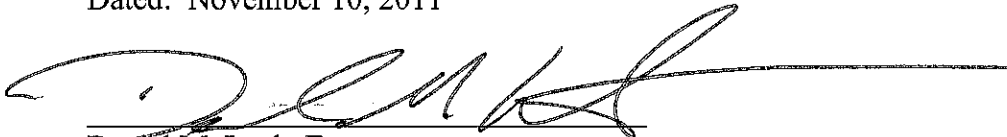
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Dated: November 10, 2011



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