

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 LOCATED
AT 522 COLEBROOK ROAD COLEBROOK, CONNECTICUT

DOCKET NO. 440

DECEMBER 9, 2014

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

Respectfully Submitted,

Lucia Chiochio, Esq.
Christopher B. Fisher, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, NY 10601
(914) 761-1300

PRELIMINARY STATEMENT

New Cingular Wireless PCS, LLC (“AT&T”), by its attorneys, Cuddy & Feder LLP, respectfully submits this post-hearing brief in support of its application for a Certificate of Environmental Compatibility and Public Need (“Application”) in Docket No. 440. AT&T’s Application addresses the public need for a new tower facility so that AT&T and other wireless carriers may provide reliable wireless services to the residents, visitors and travelers in the south-central part of Colebrook in the vicinity of Routes 183 (Colebrook Road), 182, 182A, Smith Hill Road and other local roads and areas. Throughout this proceeding, AT&T provided data, testimony and otherwise responded to matters raised by the Siting Council to provide a full and complete record of the public need for reliable service and a new tower facility in this part of Colebrook. AT&T proposed a tower Facility on a largely undeveloped 73 acre parcel (the “site”) and provided the environmental effects associated with the proposed tower Facility. While some impacts are associated with the proposed tower Facility, these impacts are not significant and can be appropriately mitigated such that they do not outweigh the demonstrated public need for a Facility in this area of Colebrook. As such, AT&T is requesting a Certificate for a new tower facility to meet the public need for reliable wireless services in this area of Colebrook.

STATEMENT OF FACTS

I. AT&T's Need & Comprehensive Site Search

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, AT&T experiences a gap in south-central Colebrook along Routes 183 (Colebrook Road), 182, 182A and Smith Hill Road and local roads and areas, including the Colebrook Consolidated School. AT&T Ex. 1, pp. 10-11, Tab 1. Thus, in 2010, AT&T's RF engineers established a site search area (SR1765) based on this documented gap in coverage. AT&T Ex. 1, p. 13, Tabs 1 & 2, AT&T Ex. 3, A.4. AT&T's coverage gap in this area of Colebrook was further documented by drive-test data. AT&T Ex. 3, Tab 2.

AT&T began its search for sites by identifying all existing sites in Colebrook and surrounding towns as shown in chart and map of neighboring sites included in AT&T's Application. AT&T also searched the Siting Council database to identify other existing or proposed wireless sites outside of its site search area. AT&T Ex. 1, Tabs 1 & 2. Of the four existing sites located within four miles of the search area, AT&T currently maintains an existing facility on two existing wireless sites and proposes to use the other two existing sites to provide service to areas located outside of the identified coverage gap. Id. Once it was determined that a new tower facility was needed to provide reliable service to this part of Colebrook, AT&T investigated numerous properties within and outside of the site search area, including several Town-owned parcels. AT&T Ex. 1, pp. 13-14, Tab 2. In total, AT&T investigated a total of twenty (20) locations. Id.

Ultimately, AT&T identified the site located at 522 Colebrook Road as one which could host a tower facility and provide reliable service to the targeted coverage area. AT&T Ex. 1, pp. 13-14, Tab 2.

II. AT&T's Technical Consultation with the Town of Colebrook

A technical consultation process regarding the proposed Facility with the Town of Colebrook was commenced in February 2011. As part of that consultation, a public information meeting was held on April 4, 2011, where representatives of AT&T presented the proposed Facility and answered questions from the members of the community and local officials in attendance. AT&T Ex. 1, pp. 21-22, Tab 7; Tr. I, 10/24/13, pp. 47-48. AT&T conducted a noticed balloon float subsequent to the information meeting. Id. Shortly thereafter, AT&T deferred filing of an application for the proposed Facility. AT&T Ex. 1, pp. 21-22.

Earlier this year, AT&T funded continuation of the application for the proposed Facility and representatives contacted the First Selectman to advise him that the proposed Facility was being pursued. Based on comments from the neighbors and the Town during the 2011 municipal consultation, AT&T relocated the proposed access drive for the proposed Facility from Colebrook Road to Smith Hill Road. Neighbors expressed concern regarding the access drive from Colebrook Road and its proximity to an existing pipe on the western side of the site that conveys water to abutting properties. AT&T Ex. 1, p. 22, AT&T Ex. 3 A.38, Tr. I, 10/24/13, p. 26, Tr. III, 11/7/13, p. 215. Given that the proposed Facility was essentially the same and no new tall structures were constructed in the area since 2011, copies of the 2011 Technical Report with the access drive from Smith Hill Road were resubmitted to the First Selectman and various local agencies on April 12, 2013. AT&T Ex. 1, pp. 21-22, Tab 7. A noticed balloon float was conducted on May 10, 2013. Id.

Upon review and consultation with the Board of Selectman, the First Selectman advised that further consultation was not necessary given that the Town was familiar with the proposed Facility from the 2011 consultation. AT&T Ex. 1, p. 22. Writing on behalf of the Board of Selectman, the First Selectman requested that the proposed Facility be designed as a tree as visual mitigation. AT&T Ex. 1, p. 22, Tab 7.

In separate correspondence, the Colebrook Historical Society and Conservation Commission expressed concerns regarding visibility on the Historic District. AT&T Ex. 1, p. 22, Tab 7.

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

On August 9, 2013, AT&T submitted its application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility at 522 Colebrook Road. AT&T Ex. 1. AT&T leased a 100' x 100' area in the south easterly portion of the mostly undeveloped approximately 73.1 acre parcel owned by Wheeler Limited Liability Partnership. AT&T Ex. 1 pp.14-15, Tab 3. The proposed Facility would consist of a 120' above ground level ("AGL") self-supporting monopole within a 75' x 75' fenced equipment compound. AT&T will install up to twelve (12) panel antennas at a centerline height of approximately 117' AGL. Unmanned equipment will be installed within a 12' x 20' equipment shelter within the equipment compound along with provisions for a fixed back-up generator. Id. The equipment compound will be enclosed by an 8' tall wood fence with a sound blanket lining the fence facing the closest property line to the south. AT&T Ex. 4, A.45. Both the monopole and equipment compound are designed to accommodate the facilities of three other wireless carriers and equipment. AT&T Ex.1, pp. 14-15, Tab 3. Vehicle access to the Facility, as shown in AT&T's Application, would be provided southwesterly from Smith Hill Road along a new 12' wide

gravel access drive a distance of approximately 1,337' (the "Application access drive"). Id. An alternate access drive from Smith Hill Road approximately 1,087' in length that avoids direct impacts to wetlands, was also proposed during this proceeding (the "Alternate access drive"). AT&T Ex.9. Utility connections would be routed underground from an existing pole on Smith Hill Road. AT&T Ex. 1, pp. 14-15, Tab 3.

The Town of Colebrook was admitted as a party in this proceeding. AT&T submitted responses to Siting Council Interrogatories on October 3, 2013 and October 17, 2013. AT&T Ex. 3 & Ex. 4. A field visit, balloon float and public hearing were scheduled by the Council for October 24, 2013.

IV. Public Hearings and AT&T's Supplemental Submissions

On October 24, 2013 AT&T's consultants raised a balloon at the proposed site and the Siting Council conducted a viewing of the site. Throughout the day, balloons were raised slightly above the maximum proposed height of 120' AGL. Given the windy conditions, there were short periods of time when the balloon was maintained at its full height. Tr. I, 10/24/13, pp. 11-12. As the balloons came down in the windy conditions, they were replaced and approximately eight (8) balloons were floated throughout the day. Id. The public hearing was held at the Colebrook Town Hall at 562 Colebrook Road, Colebrook, Connecticut. After the public hearing evening session, AT&T provided additional information in response to questions from the Siting Council on October 31, 2013 and November 1, 2013. AT&T Ex. 8 & Ex. 9. The hearing was continued and subsequently closed on November 7, 2013. At the hearings, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the public need for the Facility, lack of other alternative sites and any environmental effects associated with construction of a tower facility at the site. The Town of Colebrook Party was provided an

opportunity to cross-examine AT&T's witnesses at the November 7, 2013 continued hearing. The Applicant and Party were given a full and fair opportunity to present their direct cases and the public was provided a full and fair opportunity to provide comments on the proposed Facility. The hearing was closed on November 7, 2013. Tr. III, 11/7/13, p. 239.

POINT I

A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY IN COLEBROOK

Pursuant to Connecticut General Statutes ("CGS") Section 16-50p, when evaluating the public need for a cellular tower facility, "there shall be a presumption of public need for personal wireless services and the council shall be limited to consideration of a specific need for any proposed facility to be used to provide such services to the public". CGS § 16-50p(b)(1). In this docket, AT&T provided coverage analyses, empirical data 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 Colebrook along Routes 183 (Colebrook Road), 182, 182A, Smith Hill Road and other roads as well as the homes and the Colebrook Consolidated School in the area. Indeed, the application materials provided by AT&T fully establish that a tower is needed in this area at a minimum height of 120' AGL. AT&T Ex. 1, Tab 1; AT&T Ex. 3, A.9-A.16.

The public need for reliable wireless services in this area of Colebrook was also identified by the Party Town of Colebrook. Colebrook Ex. 2. In fact, no evidence or testimony was provided by any others to rebut AT&T's testimony on the subject of public need for a new tower in this part of Colebrook.

Based on AT&T's evidence, knowledge of the existing wireless network infrastructure in this part of the State for all the carriers, confirmation of public need by the Town of Colebrook

and the lack of any evidence to the contrary, AT&T submits that the public need for a new tower facility in this area of Colebrook to provide adequate and reliable coverage is simply not an issue in this Docket.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVES FOR SITING THE PROPOSED WIRELESS FACILITY

AT&T submitted significant evidence demonstrating that there are no existing structures or viable alternative properties for providing reliable service to this area of Colebrook. AT&T's search for sites included investigation of twenty (20) locations, including several Town-owned parcels. AT&T Ex. 1, Tab 2. As demonstrated by AT&T's evidence and testimony, due to the terrain in this area of Colebrook, many locations were not viable alternatives for radio frequency reasons. AT&T Ex. 1, Tab 2; Tr. I, 10/24/13, p.47. No other viable alternative sites were offered in this Docket. Similarly, there is no evidence in this Docket rebutting AT&T's evidence that there are no viable alternative sites. Based on its comprehensive investigation of alternative sites and locations, AT&T submits that there is simply no other viable alternative location for the siting of its needed tower Facility.

POINT III

AT&T'S PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS

Pursuant to Section 16-60p, 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, forests and parks, air and water purity and fish and wildlife. AT&T respectfully submits

that while some impacts are associated with its proposed Facility, such impacts will have no significant environmental effects on the resources listed in Section 16-50p of the General Statutes and clearly do not outweigh the public need for the Facility as proposed in this Docket.

1. Potential Visual Effects

AT&T respectfully submits that the evidence and testimony in this proceeding, as summarized below, demonstrated that visibility of the proposed Facility will not result in a significant adverse visual impact.

It is anticipated that the proposed 120' tall monopole will be visible year-round from approximately 45 acres, or less than 1%, of the 8,053 acre study area. AT&T Ex. 1, pp.15-16; Tab 5 ("Visibility Analysis"). As demonstrated in the Visibility Analysis, the majority of year-round visibility would occur on the site with some visibility limited to a short section along the crest of Tillman Road approximately 0.8 mile southwest of the proposed Facility over agricultural fields. Id. During leaf-off conditions, there may be spotty views of the proposed facility through the trees from the Town Center, approximately 0.75 mile from the proposed facility. The potential views from the Town Center are not significant or prominent. AT&T Ex. 1, Tab 5, Tr. I, 10/24/13, pp. 35-36; 45-46. The minimal predicted overall visibility is due to the location of the Facility on a broad, heavily forested hill and the rugged topography and dense mature tree canopy within the study area. AT&T Ex. 1, Tab 5, Tr. I, 10/24/12, pp. 41-42. While a monopine design may blend with existing vegetation from some distant views, from other anticipated views, the monopine will extend above the tree line. Tr. I, 10/24/13, pp. 39-40, Tr. III, 11/7/13, p. 226.

No schools or licensed child day care centers are located within 250 feet of the proposed Facility. AT&T Ex. 1, Tab 5. No views of the proposed Facility are expected from the

Colebrook Consolidated School located approximately 0.25 mile to the north of the site on Smith Hill Road. AT&T Ex. 1, Tab 5, Tr. I, 10/24/13, p. 41.

2. Potential Impacts to the Natural Environment

As clearly established in this Docket, impacts to the natural environment from AT&T's proposed Facility are not significant.

a. Wetland, Watercourse and Floodplains

AT&T's Wetlands Analysis indicates that five wetlands are delineated within the project area and within 200' of the project area. AT&T Ex. 1, Tab 4, AT&T's Ex. 3, Tab 5. The Application access drive from Smith Hill Road detailed in AT&T's application includes a narrow wetland crossing of delineated wetland 3 near Smith Hill Road. The area of the proposed wetland crossing is located within a historic disturbed portion of the wetland. Id. AT&T will implement a comprehensive mitigation plan that incorporates both a wetland protection plan to be implemented during construction as well as enhancements to wetland buffer areas. Id. Thus, AT&T respectfully submits that the permanent and secondary wetland impacts of the Application access drive will not result in adverse impacts to the wetlands. Id.

Based on suggestion by the Council at the October 23rd evidentiary hearing, AT&T investigated an alternate access drive from Smith Hill Road to the west of the Application access drive. AT&T Ex. 9. Additional field review indicates that the Alternate access drive avoids direct impacts to wetlands and provides a large buffer to wetland 3. Id. The Alternate access drive is approximately 250' shorter than the Application access drive and includes similar grades as the Application access drive. Id. AT&T will implement its comprehensive mitigation plan for the Alternate access drive. Id.

For either access drive, AT&T will install and maintain erosion and sediment controls in accordance with 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, as established by the Council of Soil and Water Conservation. AT&T Ex.1, p.20, Tab 4.

AT&T respectfully submits that while either access drive will not result in adverse impacts to wetland resources, the Alternate access drive provides more protection to wetland resources.

b. Habitat Assessment and Wildlife

Consultation with the Department of Energy and Environmental Protection (“DEEP”) indicates that the proposed Facility will not impact any known extant populations of Federal or State Endangered, Threatened or Special Concern Species. AT&T Ex. 1, p. 16, Tab 6. AT&T’s Avian Resources Evaluation indicates that no migratory bird species are anticipated to be impacted by AT&T’s proposed Facility and that AT&T’s Facility complies with the United States Fish and Wildlife Service guidelines for minimizing potential impacts to birds. AT&T Ex. 1, Tab 4. Moreover, AT&T will incorporate comprehensive protection measures to avoid impacts to vernal pool herptofauna during construction. AT&T Ex. 1, Tab 4.

Given these evaluations, AT&T respectfully submits that the proposed Facility will have no significant impacts to wildlife or any ecological balance in this area of Colebrook.

c. Clearing, Grading and Drainage Assessment

During the 2011 municipal consultation process, AT&T relocated access to the proposed Facility from Colebrook Road to Smith Hill Road in response to concerns raised by neighbors regarding a pipe on the western side of the property, near the Colebrook Road access drive, that conveys spring water to their properties. AT&T Ex. 1, p. 22, AT&T Ex.3, A.38, Tr. I, 10/24/13, p.26, Tr. III, 11/7/13, p. 215.

The Application access drive includes access from Smith Hill Road southwesterly along a 12' wide gravel access drive with storm water design features, a distance of approximately 1,337'. The Application access drive would require grading and the removal of approximately 170 trees with a diameter of 6" or greater. AT&T Ex. 1, pp. 14-15, Tab 3. The development of the proposed Facility compound and Application access drive will require approximately 450 cubic yards of fill and 340 cubic yards of cut. AT&T's Ex. 3, A.31.

As a result of this proceeding, an alternate access drive with access from Smith Hill Road was investigated. The Alternate access drive avoids direct impacts to wetland 3 and is approximately 250' shorter than the Application access drive. The grades of the Alternate access drive are similar to the grades of the Application access drive. AT&T Ex. 9. Given that the Alternate access drive is approximately 250' shorter in length than the Application access drive, the amounts of cut and fill required for the Alternate access drive are expected to be proportionally less than the amounts required for the Application access drive. Tr. III, 11/7/13, pp. 233-234.

As noted, AT&T's Facility design will incorporate all appropriate sediment and erosion control measures in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Council of Soil and Water Conservation. AT&T Ex. 1, Tab 3. AT&T respectfully submits that it demonstrated that both the Application access drive and the Alternate access drive will have no significant impact on the surrounding area and will allow for safe access to the Facility.

3. Other Environmental and Neighborhood Considerations

There are no other relevant or disputed environmental factors for consideration by the Council in this Docket. A tower facility at 522 Colebrook Road will comply with all health and

safety requirements. Additionally, since the Facility will be unmanned, there will be no impacts to traffic, air or water. As demonstrated in this proceeding, AT&T's Facility will comply with applicable noise regulations and overall visibility of the proposed tower is very limited due to the existing topography and dense mature vegetation. AT&T Ex. 4, A.41, A.43, Tabs 1 & 2; AT&T Ex.1, Tab 5; Tr I, 10/24/13, pp.35-36; 45-46. Further, the Alternate access drive, which avoids direct wetland impacts, provides additional protection to wetland resources than the Application access drive. AT&T Ex. 9. As such, the Council should find and determine that the Facility proposed by AT&T will not have any significant environmental effects that outweigh the demonstrated public need for the proposed Facility.

CONCLUSION

AT&T has demonstrated a public need for and lack of any significant adverse environmental effects associated with a tower facility at the site presented in this Docket in Colebrook. AT&T's evidence and testimony established a public need for a proposed tower facility and the record in this proceeding does not include any evidence challenging the public's need for a tower to provide reliable wireless service. Indeed, the Town of Colebrook Party in this proceeding acknowledged the need for reliable wireless service in this part of the Town. AT&T's evidence demonstrated that it conducted an exhaustive review of alternatives and the results of its analysis shows that the proposed location is the only viable location for the siting of the needed Facility. The record contains no evidence that rebuts the demonstrated lack of siting options.

While there are some environmental effects associated with the proposed Facility, AT&T established that the effects will not have a significant adverse environmental impact. More importantly, any environmental effects associated with the proposed Facility do not outweigh the

established public need for the Facility. The submissions in this proceeding did not include any competent empirical data or analyses that rebutted AT&T's evidence.

For the reasons set forth in this brief and as fully evidenced by the record in this Docket, a Certificate should be issued for the Facility proposed in Docket 440.

Respectfully Submitted

A handwritten signature in cursive script that reads "Lucia Chiochio". The signature is written in black ink and is positioned above the typed name and address.

Lucia Chiochio, Esq.
Christopher B. Fisher, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, NY 10601
(914) 761-1300

CERTIFICATE OF SERVICE

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

Thomas D. McKeon
First Selectman
Town of Colebrook
P.O. Box 5
Colebrook, CT 06021
860-379-3359
tmckeon@colebrooktownhall.org

Dated: December 9, 2013

A handwritten signature in cursive script that reads "Lucia Chiochio". The signature is written in black ink and is positioned above a horizontal line.

Lucia Chiochio