

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 THE FIRSTLIGHT
HYDRO GENERATING COMPANY PROPERTY AT
KENT ROAD IN THE TOWN OF NEW MILFORD,
CONNECTICUT

DOCKET NO. 444

April 30, 2014

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

Respectfully Submitted,

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

EXECUTIVE SUMMARY

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. 444. AT&T’s Application demonstrates a 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 northwestern part of New Milford along U.S. Route 7 (Kent Road) and other local roads, homes and businesses in the surrounding area. 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 New Milford. AT&T proposed a 150’ tall tower Facility on a 168.5 acre parcel that is the location of the FirstLight Hydro Generating Company Bulls Bridge Hydroelectric station facility (the “site”). The record in this proceeding reveals that no significant environmental impacts are associated with AT&T’s proposed unmanned Facility. The record also demonstrates that any environmental impacts are restricted to visibility and that potential views of AT&T’s proposed Facility are limited and concentrated to the immediate area of the existing public utility facility site. Moreover, the testimony and evidence show that any potential views of AT&T’s proposed Facility from the Appalachian Trail will be distant and obstructed by intervening terrain and mature vegetation. Thus, the Applicant respectfully submits that issuance of a Certificate of AT&T’s proposed Facility is warranted to serve the public in this area of the State.

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 reliable service in northwestern New Milford along U.S. Route 7 (Kent Road) and local roads and areas, including parts of the Gaylordsville area. AT&T Ex. 2, pp. 4-8, Tab 1. Thus, AT&T's RF engineers established a site search area (SR4067) based on this documented gap in coverage. AT&T Ex. 2, Tabs 1 & 2.

AT&T began its search for sites by identifying existing sites in New Milford and the surrounding towns of Kent and Sherman as shown in chart and map of neighboring sites included in AT&T's Application. AT&T Ex. 2, Tabs 1 & 2. AT&T currently maintains a facility on several of these existing sites and the other existing sites are not viable alternatives because they are located too far from the identified coverage gap. Id. Once it was determined that a new tower facility was needed to provide reliable service to this part of New Milford, AT&T investigated numerous properties within and outside of the site search area. AT&T Ex. 2, pp. 10-11, Tab 2. In total, AT&T investigated a total of nine (9) locations. Id. AT&T did not review the tower located at the Gaylordsville Volunteer Fire Department given its distance from the identified coverage gap and its location within a valley. AT&T Ex. 5, A.41.

Ultimately, AT&T identified the site located at the FirstLight Hydro Generating Company Bulls Bridge Hydroelectric station facility at Kent Road as the most appropriate site for hosting a tower facility to provide reliable service to this area. AT&T Ex. 2, pp. 10-11, Tab 2.

II. AT&T's Technical Consultation with the Towns of New Milford and Sherman

A technical consultation process regarding the proposed Facility with the Town of New Milford commenced in July 2013. At the Town's request, a public information meeting was held as part of the New Milford Zoning Commission on August 27, 2013 meeting. At this information meeting, 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. 2, p. 19, Tab 6. No alternative sites or preferences were provided to AT&T as a result of this consultation. While a monopine design was discussed at the August 27, 2013 information meeting, no formal request for this design was provided to AT&T. Id.

Consultation with the Town of Sherman was commenced in November 2013. AT&T Ex. 1. The Town of Sherman requested that AT&T analyze a site located at Evans Hill Road in Sherman. The Evans Hill Road location is a site that the Town had preliminarily assessed, unrelated to AT&T, for its own communications network. AT&T evaluated the Evans Hill Road location and determined that a new tower facility at this location would result in significant gaps in the area AT&T is seeking to serve, particularly along U.S. Route 7. These results, including a propagation map of the Evans Hill Road location, were provided to the Town of Sherman. AT&T Ex. 1.

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

AT&T leased a 100' x 100' area in the southwestern portion of the approximately 168.5 acre FirstLight Hydro Generating Company Bulls Bridge Hydroelectric station parcel. The proposed Facility would consist of a 150' tall 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 146' AGL along with additional equipment used in providing 4G LTE services. 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. Both the monopole and equipment compound are designed to accommodate the facilities of three other wireless carriers and equipment. AT&T Ex. 2, pp.11-12, Tab 3.

Vehicle access to the Facility would be provided from U.S. Route 7 (Kent Road) over an existing paved driveway then along a dirt road that will be upgraded to a 12' wide gravel access drive a distance of approximately 383' to the proposed equipment compound. Id.

There were no parties or intervenors in this proceeding. AT&T submitted responses to Siting Council pre-hearing interrogatories on March 7, 2014 and March 25, 2014. AT&T Ex. 3 & Ex. 5. A representative of AT&T posted a sign at the site noticing the public of the application and hearing date with instructions for obtaining more information. AT&T Ex. 4. A field visit, balloon float and public hearing were scheduled by the Council and held in the Town of New Milford on April 1, 2014.

IV. Public Hearings

On April 1, 2014, AT&T's consultants raised a balloon at the proposed site and the Siting Council conducted a viewing of the site. Weather conditions for the balloon float were mostly favorable and the balloon stayed afloat to its full height from about noon to 7 p.m. Tr. I, 4/1/13, p. 11. The public hearing was held at the New Milford Town Hall, E. Paul Martin Room at 10 Main Street, New Milford, Connecticut. At the hearing, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the public need for the facility, lack of reasonable alternative sites and lack of significant environmental impacts. After the public hearing evening

session on April 1, 2014, the Siting Council closed the public hearing and the evidentiary hearing. Tr. II, 4/1/14, p. 147.

POINT I

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

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, 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 New Milford along U.S. Route 7 (Kent Road) and other roads and areas in the northwestern portion of New Milford, including part of the Gaylordsville area. Indeed, the application materials provided by AT&T fully establish that a tower is needed in this area at a minimum height of 150’ AGL to meet the demand for reliable wireless service. AT&T Ex. 2, Tab 1; AT&T Ex. 3, A.15-A.23. The evidence shows that the proposed Facility is needed to fulfill a gap in wireless service for any technology that AT&T deploys –UMTS and eventually LTE – using all of its available frequencies. AT&T Ex. 2, Tab 1; AT&T Ex. 3, A.13-A.15. Reductions in the height of the proposed Facility would result in gaps along U.S. Route 7, secondary roads and other areas. AT&T Ex. 3, A.15-A.23.

It is important to note that there is no evidence or testimony in the record that rebuts AT&T’s testimony on the subject of public need for a new tower in this part of New Milford.

Based on AT&T's evidence, knowledge of the existing wireless network infrastructure in this part of the State 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 New Milford 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 New Milford. AT&T's search for sites included investigation of nine (9) locations. AT&T Ex. 2, Tab 2. As demonstrated by AT&T's evidence, many locations were not viable alternatives for radio frequency reasons. AT&T Ex. 2, Tab 2; AT&T Ex. 3, A.24-A.26, A.41. AT&T also demonstrated that the location suggested by the Town of Sherman on Evans Hill Road is not a viable alternative to the proposed site. AT&T Ex. 1; AT&T Ex. 3, A.27; Tr. I 4/1/14, pp. 51-53. AT&T also established that the existing electric transmission structures in the area are not viable alternatives given their location within a valley. The record shows that the facility at the Gaylordsville Volunteer Fire Department is not an alternative due to its distance from the area where service is needed and its location within a valley. AT&T Ex. 3, A.26; AT&T Ex. 5, A.41.

There is no evidence in this Docket rebutting AT&T's evidence that there are no viable alternative sites. It is respectfully submitted that there is no better site for a tower needed to serve the northwestern portion of New Milford.

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, demonstrates that visibility of the proposed Facility will not result in a significant adverse visual impact. Moreover, the evidence and testimony establish that any potential views of the proposed Facility from the Appalachian Trail (AT) will be limited, distant and through intervening terrain and mature vegetation.

It is anticipated that the year-round visibility associated with the proposed 150' tall monopole will be limited to a small footprint of approximately 62 acres in the immediate area of the site and extend northwest along the U.S. Route 7 corridor a distance of approximately 0.75 mile. AT&T Ex. 2, Tab 5 ("Visibility Analysis"). As demonstrated in the Visibility Analysis, some seasonal visibility is expected to the south. However, from this area, the hillside behind the proposed Facility will serve as a backdrop such that the proposed Facility will not extend above the hillside. AT&T Ex. 2, Tab 5, photosimulation no. 6. It is estimated that approximately 5

homes may have year-round visibility of the proposed tower and approximately 14 homes may have seasonal views of the proposed tower. AT&T Ex. 5, A.50. Shifting the location of the tower approximately 100 feet to the northeast would reduce visibility from the very few areas in the immediate area of the site where views are anticipated. This shift in tower location is feasible. Tr. 1, 4/1/14, pp. 114-118. No schools or licensed child day care centers are located within 250 feet of the proposed Facility. AT&T Ex. 2, Tab 5.

As Mr. Michael Libertine testified at the evidentiary hearing, while the viewshed model predicted potential isolated views of the proposed tower from the AT, these indications of visibility are likely over-predictions given the low average tree height used in the viewshed model, the distance of the AT from the proposed facility and the much higher elevation of the AT than the proposed site. Tr. I, 4/1/14, pp. 31-33, 35-36. Mr. Libertine further testified that he was unable to view the balloon afloat at the location of the proposed tower when he hiked portions of the AT. Tr. I, 4/1/14, p. 32. This testimony was corroborated by a member of the public who spoke at the public hearing portion and noted that she hiked portions of the AT on the day of the hearing and could not see the balloon. Tr. 2, 4/2/14, p.143.

Through cross-examination, Mr. Libertine's testimony also revealed that AT&T's proposed Facility is located at a much lower elevation than the AT. Thus, any potential isolated views from the AT would include views down into a valley. As such, the terrain and existing vegetation would serve as a backdrop to any potential distant view of the proposed tower from the AT. Tr. I, 4/1/14, pp. 36-41. Accordingly, it is respectfully submitted that the evidence and testimony demonstrate that any views of the proposed tower from the AT are not significant.

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 two man-made or created wetland areas are located on the site. One wetland consists of a well-developed western bank of the Cedar Hill Pond created by Cedar Hill Dam and the other wetland consists of a small isolated back-water wetland area adjacent to Kent Road. AT&T Ex.2, Tab 4; AT&T Ex. 3, A.40. At its closest point, the fence boundary of the proposed Facility is approximately 96' from the wetland associated with Cedar Hill Pond and the closest point of the access drive is approximately 18' from this wetland. Id. Review of the functions and values assessment of the on-site wetlands indicates that the created wetlands have limited ecological function. AT&T Ex. 3, A. 40; Tr. 1, 4/1/14, pp. 76-81. AT&T's proposed Facility will not result in direct or indirect adverse impacts to wetland resources. AT&T Ex. 2, Tab 4; AT&T Ex. 3, A. 40; Tr. 1, 4/1/14, pp. 76-81.

b. Habitat Assessment and Wildlife

Consultation with the Department of Energy and Environmental Protection ("DEEP") indicates that the proposed Facility will not result in negative impacts to any known extant populations of Federal or State Endangered, Threatened or Special Concern Species. AT&T Ex. 3, pp. 13-14, Tab 4. 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. 2, Tab 4. In addition, the site does not support significant nesting bird habitats. Tr. I, 4/1/14, pp. 66-67.

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 New Milford.

c. Clearing, Grading and Drainage Assessment

Access to AT&T's proposed Facility will be provided over the existing paved driveway a distance of approximately 56', then over an existing dirt road that will be upgraded with a 12' wide gravel surface a distance of approximately 383' to the equipment compound. AT&T Ex.2, Tab 3; AT&T Ex. 5, A.44. Approximately 11 trees are proposed for removal. The proposed Facility will require moderate grading of the access drive and compound area. AT&T Ex.2, Tab 3. The proposed access drive includes stormwater design features. 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 will be implemented. Id. In addition, the existing dirt access drive that extends along the canal to the northeast can be used for access to the tower if the tower location was shifted approximately 100' feet to the northeast. Tr. I, 4/1/14, p.115.

AT&T respectfully submits that it the proposed Facility 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 the FirstLight Hydro Generating Company Bulls Bridge Hydroelectric station facility parcel 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, overall visibility of AT&T's proposed Facility is very limited due to the existing topography and dense mature vegetation. Further, any potential views

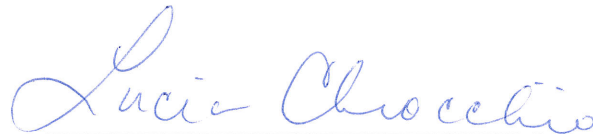
from the AT, over a mile from the proposed Facility, will not be significant. As such, the Council should find and determine that the Facility proposed by AT&T will not have any significant environmental effects that outweigh the demonstrated public need for the proposed Facility.

CONCLUSION

AT&T 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 New Milford. 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. 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.

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 444.

Respectfully Submitted

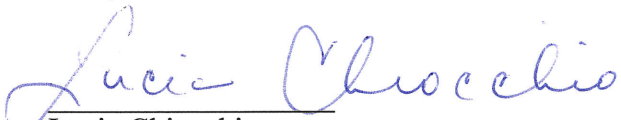


Lucia Chiochio, Esq.
Christopher B. Fisher, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue
14th Floor
White Plains, NY 10601
(914) 761-1300

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.

Dated: April 30, 2014


Lucia Chiochio
Lucia Chiochio