

CONNECTICUT SITING COUNCIL

APPLICATION OF CELLCO PARTNERSHIP)
d/b/a VERIZON WIRELESS TO THE) **DOCKET NO. 448**
CONNECTICUT SITTING COUNCIL FOR A)
CERTIFICATE OF ENVIRONMENTAL)
COMPATIBILITY AND PUBLIC NEED)
FOR THE CONSTRUCTION MAINTENANCE)
AND OPERATION OF A TELE-)
COMMUNICATIONS FACILITY LOCATED)
AT ORANGE TAX ASSESSOR MAP 77,) **DECEMBER 22, 2014**
BLOCK 3, LOT 1, 831 DERBY MILFORD)
ROAD, ORANGE, CT)

INTERVENORS' COMMENTS TO "DRAFT" FINDINGS OF FACT

The intervenors, Albert Subbloie, Jacqueline Barbara, Glenn MacInnes and Jill MacInnes (hereinafter the "Intervenors"), respectfully object to the Council's DRAFT Findings of Fact, dated December 4, 2014, *in total*, to the extent that the DRAFT Findings of Fact do not accept, do not incorporate, and/or conflict with the proposed findings of fact made by the Intervenors, dated November 24, 2014. The Intervenors submit the following comments to the Council's DRAFT Findings of Fact:

1: The Intervenors note that the proposed "100-foot wireless telecommunications facility" is designed to facilitate an additional 20-foot tower extension.

4: Although this Draft Finding of Fact indicates "the purpose of the facility is to provide wireless services to the west-central portion of Orange, eastern Shelton and southeast Derby", the proposed finding is incomplete and misleading as it fails to note that services are already being provided in these areas.

9: While the Council may have deemed Cellco's application (the "Application") complete at the public meeting on June 12, 2014, the Intervenors have and continue to submit that the Application remains incomplete as a result of the following:

A. As indicated in the record of hearings, Cellco has withheld significant information from the application, the public, the Siting Council and the Intervenors.

B. The application has been continuously revised and modified in support of the applicants evolving justification for the site. The revisions are also noted in the hearing transcript.

21-32: The Intervenors respectfully defer to the referenced statutes, orders, etc... of which the Council takes administrative notice, which speak for themselves for a complete and accurate recitation of their respective terms, and question the relevancy of the Council's proposed findings in paragraphs "31" and "32," since the Application has nothing to do with co-location.

33(f): Should say "71 Pleasant View Road" and not "Pleasant Valley."

34: The Intervenors reject this finding in total. As documented, testified and reported, including, without limitation, in the Intervenors' post-hearing brief, the proposed facility does not address Cellco's system requirements. Further, as conclusively demonstrated by the Intervenors' expert's testimony and reports, the "existing service gaps," if any, are insignificant.

37: This Draft Finding of Fact fails to account for overlapping sectors from existing cell sites that provide coverage to the area covered by the proposed facility. In addition, the proposed facility would not provide service to the entire area indicated on the Draft Findings maps depicted in Figures 2 & 3, because of the principles of the "dominant server" testified to and documented by the expert for the Intervenors. Comment 37 is incorrect and should be stricken.

To be factually correct the comment would need to be revised as follows "*If the site were the only one operating* it would provide 700 MHz service to a 12.7 sq. mile service area...." The proposed facility does not address the alleged gap area. As an example, compare the draft findings Figures 2 and 3, which show supposed coverage area, with the next two Figures 4 and 5, which outline Cellco's claimed existing gaps. The gaps and the proposed new coverage are not conterminous, with segments of the alleged gaps not being reached by the proposed coverage. The draft Finding of Fact refers to and relies on the draft findings Figures 2 and 3, which are the purple overlays provided by Cellco. Draft Figures 2 and 3 accept that the applicant's LTE coverage maps represent "120 dB RLOPL," which is untrue and incorrect. The original maps from which the draft Figures 2 and 3 maps were obtained were labeled differently by Cellco. The original labeling was consistent with 5 years of LTE maps submitted to the Council. The Council should not accept this preposterous post hoc change in the labeling of the LTE maps by Cellco. The Council should find that the applicant has inappropriately relied upon CDMA modeling to represent LTE coverage on its maps.

38: This Draft Finding of Fact refers to small gaps visible in the same mislabeled, misleading, and incorrect draft Figures 2 & 3 maps, and then compounds the problem by improperly conflating the supposed small gaps with Routes 34, 110 and 121. Only Route 110 has a small segment supposedly in gap. Routes 34 and 121 have no acknowledged gaps.

39: The three cited references in support of this Draft Finding of Fact are not supportive. There is no evidence to support a finding that CDMA will in fact be added to the proposed site.

40: This Draft Finding of Fact is irrelevant and moot, and should be struck. Cellco has not indicated that it has any concrete plans to add 850 MHz and 1900 MHz services to the proposed facility at any certain time. Moreover, Cellco's "service gaps" in these frequency

bands are indicated for the record as CDMA service gaps and not LTE service gaps. Cellco has no plans to migrate CDMA functionality to the proposed site, and only has indicated that its 1900 MHz and later its 850 MHz services will be added at some time in the future to increase LTE capacity from the site.

47: This Draft Finding of Fact should be stricken as it erroneously accepts the false claims made by the applicant that there will be capacity relief to 8 sectors and wholly ignores the best server modeling presentation and reports made by the Intervenor's expert. Further, this Draft Finding of Fact wholly relies upon the applicant's unsubstantiated assertions based on withheld information. It is incorrect to accept the applicant's claim that capacity relief is obtained by non-stressed sectors because there must be stress in order for the stress to be relieved (Meriam Webster: Relief – "removal or lightening of something oppressive..."). Moreover, Cellco admits that its planning horizon is up to two years and the non-stressed sectors are showing no trend of being capacity exhausted for more than three years. It is incorrect and improper to accept the idea that capacity relief is obtained by non stressed sectors.

48: This Draft Finding of Fact should be stricken as it is inaccurate. Cellco's own evidence confirms "...the only purpose of 2100 MHz is to offload... from the 700 [MHz system]." (Oct 23, 2014 transcript, at p. 689, 1.8-13.) The current status of Cellco's offloading of traffic does not indicate a failure of 2100 MHz to relieve 700 MHz capacity in the future. This finding ignores the uncontested fact that 2100 MHz does and will increasingly offload 700 MHz capacity loading. Although the finding states that "Cellco deployed 2100 MHz equipment at three of the exhausting sectors (Derby beta, Derby North gamma, Shelton 2 beta) to relieve capacity demands," it fails to account for the fact that Cellco has not completed deploying its 2100 MHz capacity overlay in this region, rendering the finding incomplete, misleading and

inaccurate. The finding that, “LTE users would be diverted from the 700 MHz network to the 2100 MHz network during busy periods,” is also incorrect. Operation works the opposite way: when 2100 MHz is available, users will be assigned to that band first, preserving the 700 MHz capacity for those users who do not have strong enough 2100 MHz coverage. *See*, the Sept., 16, 2014 transcript, at p.459 (Latorre--“...as a very general rule when the device is within the footprint of 2100 megahertz and the channel conditions are sufficient for that device to use it effectively, we do, to the best of our ability, design the network so that the device makes the decision to use the 2100 megahertz ... frequency.”). Further, the finding that, “Even with this deployment, the associated 700 MHz sectors are still trending towards exhaustion because the 2100 MHz network has a much smaller service area than the 700 MHz network,” is unsubstantiated by the record. Cellco relied on a mere generalization about “typically smaller footprints” at 2100 MHz, which does not constitute substantial evidence in support of this Draft Finding of Fact. There is no basis in the record to support Cellco’s assertion. There is no factual basis in the record to assume that the present use of 2100 MHz in the reported sectors is constrained by being of a “much smaller service area” than 700 MHz coverage from the same sectors. In addition, the Draft Finding of Fact that, “Other factors include the type of device a customer is using as some devices do not have the capability of using the 2100 MHz system,” is misleading, as it ignores the uncontroverted evidence submitted by the Intervenors’ expert showing the rapid replacement rates for smartphones. Within 21 months, at least half of cell phones will be upgraded. Cellco has been offering 2100 MHz capable phones for at least a year, if not longer. The 2100 MHz system will continue to increase its offload of 700 MHz traffic. At most, evidence regarding 2100 MHz indicates that Cellco has begun to deploy 2100 MHz service to offload 700 MHz traffic. Early data shows the offloading has begun to take hold. With the

turnover in smartphones and the use of 2100 MHz as the first band of choice for a phone in any sector, the offloading of 700 MHz to 2100 MHz will increase. In addition, 2100 MHz has twice the spectrum capacity (i.e. bandwidth) of the 700 MHz spectrum, further increasing the utility of the 2100 MHz band as a capacity overlay to 700 MHz.

49: This draft finding should be stricken as it accepts the false claims made by the applicant that there will be capacity relief to 8 sectors and wholly ignores the best server modeling presentation and reports made by the Intervenor's expert. In addition, the draft finding refers to the possibility that power users could have significant demands in an overlapping area, which ignores the applicant's own admission during the CSC proceedings that there are no power users affecting the analysis (i.e., high demand "customers or uses").

50: The part of this proposed finding accepting Cellco's claim of capacity relief relies on information withheld from the application, Intervenor and Council by the applicant.

AFTER 57: It should be recognized that the applicant is in the process of filing for a facility at 111 New Haven Avenue, which the Intervenor demonstrated would be more effective in addressing the applicant's documented and stated issues than would the proposed facility.

93: The currently applicable standard is TIA 222-G, which supersedes the referenced TIA 222-F. The applicant has not proposed compliance with 222-G.

Lastly, the Intervenor respectfully request that the Council consider and adopt the proposed Findings of Fact made by the Intervenor in their Post-Hearing Brief, dated November 24, 2014, at pages 1 to 26.

Respectfully submitted,

THE INTERVENORS

BY: 

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CERTIFICATE OF SERVICE

This is to certify that on the above date a true copy of the foregoing has been sent by U.S.

Mail, first-class, postage pre-paid, to the following parties of record:

Melanie Bachman, Esq., Executive Director, Connecticut Siting Council, 10 Franklin Sq., New Britain, CT 06051 (1 original, 15 copies, plus 1 electronic)

Cellco Partnership d/b/a Verizon Wireless, Kenneth Baldwin, Esq.; Robinson & Cole, 280 Trumbull Street, Hartford, CT 06103

State Senator Gayle Slossberg, Legislative Office Building Room 2000, Hartford, CT 06106

State Representative Paul Davis, Legislative Office Building, Room 4045, Hartford, CT 06106

State Representative Themis Klarides, Legislative Office Building, Room 4200, Hartford, CT 06106

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