

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF ECO-SITE AND T-MOBILE FOR  
A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR THE  
CONSTRUCTION, MAINTENANCE, AND  
OPERATION OF A TELECOMMUNICATIONS  
FACILITY LOCATED AT WOODLAND STREET IN  
GLASTONBURY, CONNECTICUT

DOCKET NO. 478

March 12, 2018

POST HEARING BRIEF

Respectfully Submitted,

Daniel M. Laub, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue  
14<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 761-1300

## PRELIMINARY STATEMENT

On behalf of the applicants in Docket 478 Cuddy & Feder LLP respectfully submits this post-hearing brief in support of the application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 478. The Application addresses the long standing public need for a new tower facility in this part of Connecticut so that wireless carriers may provide reliable services to residents, visitors and travelers in southern Glastonbury including the areas served by Woodland Street, Hopewell Road, Sunset Drive, Matson Hill Road, and other roadways. The public need for reliable service and new tower infrastructure in this part of the state is uncontroverted and as part of the Siting Council process, there were no unmitigated adverse environmental effects identified with the Application to construct a tower facility on a small portion of wooded area on the at 63-80 Woodland Street (the “Site”). It is respectfully submitted that the proposed location serves the public need and fully meets the criteria in Section 16-50p of the General Statutes for issuance of a Certificate. Principally, the question presented for the Council in this Docket is how to best accommodate the demonstrated need for a tower facility to meet T-Mobile and other carrier requirements in accordance with State policy.

## STATEMENT OF FACTS

### **I. Service Objectives & Site Search**

T-Mobile's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to obtain reliable service in its wireless network. T-Mobile experiences gaps in southern Glastonbury including the areas served by Woodland Street, Hopewell Road, Sunset Drive, Matson Hill Road, and other roadways and developed a search area to address the lack of reliable service in this area. Applicants' Ex. 1, pp. 4-9, Tabs 1 and 2. T-Mobile's gaps in reliable service have documented by models and performance of other sites in the network. T-Mobile Ex. 1, Tab 1.

### **II. Technical Consultation**

Prior to filing the Application with the Siting Council a Technical Report was filed with the Town of Glastonbury on November 15, 2016. Applicants' Ex. 1, p. 18 and Bulk Filing. Representatives of the Applicants met with Town Manager Richard Johnson to provide additional details regarding the proposed facility, locations for review of visual impact, and preliminary plans for a public information session. A balloon float was requested as part of the consultation and a noticed balloon float was conducted on January 10, 2017 however the Town of Glastonbury requested an additional balloon float as it as felt the notice provided was not adequately in advance of the float. Applicants' Ex. 1, p. 18. Before the balloon float could be rescheduled Eco-Site and T-Mobile required a pause in the consultation process to address certain leasing issues with the property owner including the route of the final access drive to the facility compound location.

Consultation activities were recommenced with the Town in June of 2017 and a second balloon float was scheduled for July 18, 2018 with a noticed public information presentation

scheduled before the Town Council on August 1, 2017. Applicants' Ex. 1, p. 18, Tab 7. The Town of Glastonbury requested that it mail notice of the meeting and balloon float to neighbors within a 500' radius which was sent on July 7, 2017 and the applicants noticed the meeting in the Hartford Courant. Applicants' Ex. 1, p. 18, Tab 7. The Applicants made a public presentation to the Town Council and members of the public on August 1, 2017. Applicants' Ex. 1, p. 18, Tab 7, Bulk Filing. No alternatives or preferences were provided by the Town of Glastonbury at that time and the Applicants proceeded to submit the Application to the Siting Council.

### **III. Certificate Application & Filings**

On September 16, 2017, the Applicants submitted their application to the Siting Council for a Certificate to construct, maintain and operate the proposed cellular telecommunications facility at the Site. The address is 63-80 Woodland Street and identified as tax parcel number 78000063 by the Glastonbury Tax Assessor. Applicants' Ex. 1, Tab 3. The proposed facility is in the southern portion of an approximately 177-acre parcel and is proposed as a 150' AGL tower with antenna arrays at approximately 146' AGL. Applicants' Ex. 1, Attachment 3. The tower, antennas and ground equipment will be located within a 50' x 50' fenced equipment compound area. Applicants' Ex. 1, Attachment 3. Vehicular access to the Facility would extend from Woodland Street an existing farm access drive for 3,750' and then over a new access drive approximately 650' to the facility compound. T-Mobile Ex. 1, Attachment 3.

By petition dated September 27, 2018, the Town of Glastonbury sought party status to the proceeding which was granted by the Siting Council on October 26, 2018. No other persons or entities sought party or intervenor status in Docket 478. No state or municipal agency has submitted comments opposing the project.

The Applicants submitted responses to Siting Council pre-hearing interrogatories on December 11, 2017. Applicants Ex. 2. Representatives for the Applicants posted a sign at the entrance to the Site notifying the public of the application and hearing date with instructions on obtaining more information. Applicants Ex. 3, Affidavit of Sign Posting. A field visit, balloon float and public hearing were scheduled by the Council for January 11, 2018.

#### IV. **Public Hearing and Supplemental Submission**

On January 11, 2018, the Applicants raised a balloon at the site location and the Siting Council conducted a field inspection. Hearing Transcript (“Tr.”), p. 113. At the January 11, 2018 evidentiary hearing the Siting Council heard comprehensive testimony from the Applicants’ panel of witnesses regarding the need for the facility, lack of other alternative sites and that the environmental effects associated with construction of a tower at the Site would not be significant or adverse. See generally, Tr., pp 10-104. A presentation of the proposed facility was provided to the public at the 6:30 pm public hearing session where only two comments were made and thereafter which the public hearing was closed. Tr. pp 115-120.

On February 2, 2018 the Applicants provided a supplemental submission providing information regarding FAA compliance, NEPA evaluation, a photolog of the existing farm road access, the proposed access drive and the location of the planned compound, amended drawings depicting revised visual simulations of various alternatives to the proposed monopole proposed by the Applicants. On February 8, 2018, the Siting Council held a continued hearing (“Continued Hearing”) at its offices in New Britain beginning at 1:05 pm. Tr. p. 125. At the Continued Hearing the Siting Council cross-examined the Applicants’ panel of witnesses regarding the Applicants’ submissions. See generally, Tr. 125-198. Party Town of Glastonbury submitted by letter dated January 29, 2018 reiterating the Town’s preference for a stealth

monopine and making further request for installation of its emergency service communications equipment on the tower planned tower. Town of Glastonbury 1/29/18 letter. The Town of Glastonbury did not attend the Continued Hearing and as such was not available for cross examination by the Applicant or Siting Council. Tr. p. 198.

## **POINT I**

### **A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY AT THE ARMORY**

Pursuant to Section 16-50p(a)(2)(A) of the General Statutes, 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, the Applicants provided coverage analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable wireless services to homes, businesses and the traveling public in Southern Glastonbury. To reliably serve the public, T-Mobile has testified it requires a tower at 150’ AGL as proposed. Applicants Ex. 1, Tabs 1 and 2; Applicants Ex. 2 (Responses to Interrogatories). No evidence exists to rebut the testimony on the subject of a public need for a new tower in this part of the State, a matter that is not controverted.

## **POINT II**

### **THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Pursuant to Section 16-50p(a)(2)(B) of the General Statutes, the Council is required to find and determine as part of a Certificate application:

[T]he nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.

The Applicants respectfully submit the following as the identified environmental effects associated with this project in reference to Section 16-50p(a)(2)(B) of the General Statutes:

- Natural Environment - There are no impacts of significance as the tower site access utilizes an existing farm road together with approximately 650' of new access to the proposed compound area. The tower compound is not in or near wetlands and no impact to wetlands in the area is anticipated. Applicants' Ex. 5, Attachment 4 (wetlands analysis).
- Ecological Balance – There are no adverse impacts of note given the use of the existing established access drive and relatively small amount of clearing necessary to construct the site on an approximately 177-acre property.
- Public Health & Safety – There are no adverse effects from the proposed infrastructure on public health and safety and the facility will comply with FCC standards regarding radio frequency emissions. Indeed, the service to be provided by the Facility will have a positive impact on the public's health and safety by providing service that can be utilized in emergency situations.
- Scenic – There are no documented scenic resources in the area that would be impacted by the proposed Facility.
- Historic – The SHPO has determined that there will be no impact to listed or eligible for listing on the National Register of Historic Places. Applicants' Ex. 2, Attachment 10, SHPO letter dated January 31, 2017.
- Recreational Values – The Site is not publicly accessible and there are no known recreational resources that would be impacted by the proposed tower facility.
- Forests & Parks – There are no known visual impacts on any forests or parks.
- Air & Water Purity – The tower facility is unoccupied with no sanitary facilities with minimal impervious surfaces. Best practices for storm water and erosion controls will be implemented during construction. Applicants Ex. 1, p. 15. Air emissions and relatively limited fuel storage as part of emergency backup power generation on-site will comply with DEEP general permits and be contained in accordance with industry standards. As such there will be no adverse impacts to air or water purity as part of routine operation of the facility.
- Fish, Aquaculture & Wildlife – The setting in this area of Connecticut is predominantly suburban some larger rural/agricultural properties. Connecticut Department of Energy and Environmental Protection (“DEEP”) and other agencies did not identify any flora or fauna of concern as related to the project. United States Fish and Wildlife Service noted the potential for the presence of the Northern Long-

Eared Bat in the area but noted that no known hibernaculum or maternity roost is known to occur in the area.

- Soils – The access drive and compound location are not located in an area of prime agricultural soils. Applicants’ Ex. 1, Tab 4.

The Applicant submits that the proposed facility presents no environmental effects that rise to the level of being adverse or significant alone or cumulatively for purposes of the state environmental resources listed in Section 16-50p(a)(2)(B) of the General Statutes. Additionally, this Application presents no matters for consideration pursuant to Section 16-50p(a)(2)(G) of the General Statutes (ie. it is not water supply or school property). As such, the Applicant submits that there are no environmental effects that would warrant a denial of the Application. See § 16-50p(C).

### **POINT III**

#### **THERE ARE NO EXISTING TOWERS TO SHARE**

Section 16-50p(b)(1)(A) (b) (1) states that “prior to granting an applicant’s certificate for a facility...the Council shall examine....the feasibility of requiring an applicant to share an existing facility, as defined in subsection (b) of section 16-50aa, within a technically derived search area of the site of the proposed facility, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns. In this proceeding, the Applicants submitted significant evidence that there are no existing towers or even structures or other viable alternative properties for tower construction to provide reliable service to this area of the state. Applicants’ Ex. Tab 2. The search for sites included an investigation multiple properties Applicants’ Ex. Tab 2, Applicants’ Ex. 2 (responses to Council interrogatories). The Town of Glastonbury has not indicated that provided any alternate site as a viable and preferred alternative. Based on its comprehensive investigation of alternatives T-Mobile submits that the record clearly demonstrates that the planned location best meets the criteria set forth in Section



16-50p of the General Statutes for a tower site and that there are no existing tower sharing alternatives.

#### POINT IV

### **THERE ARE NO SUBSTANTIAL VISUAL IMPACTS RELATED TO THE PROPOSED TOWER FACILITY AND NO ALTERNATIVE DESIGNS WOULD MITIGATE THE VIEWS OF THE FACILITY THAT WILL BE GENERATED**

Section 16-50p(b)(1)(C) of the General Statutes requires the Council to examine any whether or not a tower facility has been proposed in an area identified by DEEP or a municipality “to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance.” There are no such designations in the areas of the tower facility proposed in Docket 478. Indeed, the record in this Docket demonstrates that the proposed tower facility will have no significant or substantial visual impact on any land uses in the area including any adjacent property owners.

The proposed 150’ monopole will be visible year-round from just 317 acres which is less than 3.9% of the 8,053 acre Study Area. Applicants’ Ex. 1, Tab 5 (“Visual Report”). As demonstrated in the Visual Report, the majority of year-round visibility would occur distant to the facility noting that tree canopy occupies approximately 41%of the Study Area. Applicants’ Ex.1, Tab 5. The Visibility Report notes that approximately 44-55 residential properties may have partial year-round views of the very top of the towers. Applicants’ Ex.1, Tab 5. Simply put, the proposed tower facility will have little visual effects and certainly no appreciable visual impact on any neighborhoods to the area of southern Glastonbury. See § 16-50p(b)(1)(i).

At the day of the first evidentiary hearing on January 11, 2018, the Town of Glastonbury made known its preference for use of a stealth pine tree tower (also known as a monopine with RF transparent branching) or flagpole style design (i.e. unipole design with antennas enclosed within an RF transparent shroud resembling a flagpole). Tr. pp. 14-15. The Applicant panel noted that

the flagpole design required certain operational sacrifices that would limit the functionality of the site and that in order to effectively use such a facility higher height, approximately 170', would be required and would limit collocation. Heffernan, Tr. pp 15-17. Regarding the monopine option, the Applicants' visual consultant Matthew Allen of Saratoga Associates testified as follows regarding the view from Matson Hill Road which was identified by the Town:

[T]he tower does protrude noticeably above the tree line. From this location, whether it be a monopole or a monopine, the tower will show its silhouette against the sky. If it were a monopine, which by its nature of design has a wider profile, that silhouette would simply appear greater. So it really is a matter of preference on behalf of the parties as to whether that constitutes a greater visual impact, or whether in fact it meets its intended goal of minimizing the visual impact by decreasing visual contrast. From this particular location it could be argued that it would increase visual contrast simply because it's a wider profile.

Tr. pp. 19-20. While the monopine or flagpole may be the stated town preference there is zero evidence on the record to indicate how a taller flagpole or wider, darker colored monopine would in any way mitigate or lessen the visual impact compared to the proposed monopole. Indeed, the concern was raised in reference to the old Slocumb Mill site located off of Matson Hill Road which was noted by the Town as historic but obviously not for aesthetic purposes as SHPO issued a no effect determination. The prominent feature of the mill site is in fact a shorter old smokestack that is already introduced into the viewshed.

## **POINT V**

### **THE PROPOSED FACILITY IS OPTIMALLY DESIGNED TO ACCOMMODATE SHARED USE IN ACCORDANCE WITH STATE STATUTES AND LIMIT VISUAL IMPACT**

Section 16-50p(b)(1)(B) of the General Statutes requires the Council to examine in a tower application whether:

[A]ny such facility, if constructed, may be shared with any public or private entity that provides telecommunications or community antenna television service to the public.

As such, the Council in deciding tower applications has a current and future planning function as it relates to tower facilities and shared use and is not fundamentally limited to considering the Applicant's specific need in making public need considerations. The Council's planning function is particularly important given that there are multiple FCC licensed wireless carriers in the Connecticut marketplace who will seek to share use of tower infrastructure in the state when capital is available and based on each carrier's plans. These plans often do not coincide with another carrier's build plan and generally tower sharing decisions are made well after a tower site is approved by the Council. Of note, any correspondence a carrier may send to the Council regarding "need" related to a pending Docket is simply a snapshot in time and long term it is likely all carriers will share use of each other's towers to provide competitive services to the public as envisioned by Congress and the FCC.

The Applicants' were keenly aware of the state policy favoring tower sharing as articulated in Section 16-50aa the planning function set forth in Section 16-50p(b)(1)(B) of the General Statutes. The proposed Facility is designed to accommodate shared use by multiple carriers. As noted above, T-Mobile generally opposes the "flagpole" tower design given the operational limitations such structures impose in providing reliable services to the public. Ultimately, the Council has the discretion to determine how to plan for and address future shared use of tower facilities like the one proposed in Docket 478. In fact, Section 16-50p(b)(2) specifically states that: "when issuing a certificate for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state." In this Docket, the Applicant

respectfully submits that for the circumstances and setting here, the “flagpole” tower design or the “firetower” design (which also limits collocation - Ruzzo, Tr. p. 132), are unnecessary limitations on, and inappropriate ways to plan for, shared use and avoid the proliferation of towers that might occur on other sites in this area the state. In this regard, the Applicants’ visual experts provided important simulations demonstrating how the increased height and mass of these various “stealth” options increased visibility.

### **CONCLUSION**

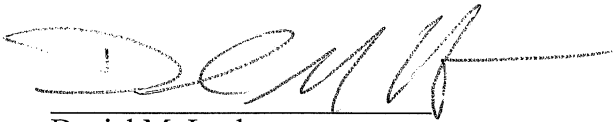
The Applicants have demonstrated a public need for and lack of any significant adverse environmental effects associated with the proposed Facility presented in this Docket. The Applicants’ evidence and testimony established a public need for the proposed facility and no party or intervenor presented competent evidence challenging the need for the Facility to provide reliable wireless services. There are no tower sharing opportunities and the site search, technical consultation and public information indicate the proposed site is the only practical location for the siting of the needed tower facility. Moreover, there are limited environmental effects associated with the proposed facility, none of which individually or cumulatively is adverse such that the balancing test is decidedly tilted in favor of issuing a Certificate for the site as proposed.

**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:

Richard Johnson, Town Manager  
Town of Glastonbury  
2155 Main Street  
Glastonbury, CT 06033  
Richard.johnson@glastonbury-ct.gov

Dated: March 12, 2018

A handwritten signature in black ink, appearing to read "DML", with a horizontal line extending to the right from the end of the signature.

Daniel M. Laub