

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

PETITION OF NEW CINGULAR)
WIRELESS PCS, LLC ("AT&T") TO)
THE CONNECTICUT SITING COUNCIL)
FOR A DECLARATORY RULING THAT)
NO CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY)
AND PUBLIC NEED IS REQUIRED TO)
INSTALL A STEALTH ROOFTOP)
WIRELESS TELECOMMUNICATIONS)
TOWER ON THE EXISTING BUILDING)
LOCATED AT 79 PARK AVENUE,)
DANBURY, CONNECTICUT)

PETITION NO. 1101

SEPTEMBER, 11 2014

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

Respectfully submitted,

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

PRELIMINARY STATEMENT

Petitioner, New Cingular Wireless PCS, LLC ("AT&T"), by its attorneys, Cuddy & Feder, LLP, respectfully submits this post hearing brief in support of its request for a declaratory ruling in Petition 1101. AT&T seeks a ruling by the Council that a proposed cellular communications facility consisting of a disguised rooftop tower and related equipment (the "Rooftop Tower Facility") do not present potentially significant environmental effects which would otherwise require evaluation in an application for a certificate of environmental compatibility and public need. It is respectfully submitted that AT&T's regulatory filings and evidence adduced at a public hearing demonstrate that the proposed Rooftop Tower Facility will not have any substantial adverse environmental effects. Public opposition to the Rooftop Tower Facility has consistently been premised on a concern for public health associated with radio frequency energy, a concern which is not supported by the factual evidence in the record and AT&T's proof that the facility will comply with all applicable health and safety requirements. For the reasons more fully set forth herein, it is respectfully submitted that the Council should rule that: (1) the proposed Rooftop Tower Facility will not have a substantial adverse environmental effect; (2) that a contested case and application for a certificate is not required; and (3) authorize construction and operation of the facility.

STATEMENT OF FACTS

I. AT&T's Proposed Facility

The project site is an improved four-story residential apartment building with associated parking areas known as the Summit Park West. The building's name aptly includes the word "summit" as it sits at a relative high point in relation to its surroundings. Adjacent and nearby land uses in the City of Danbury are characterized by multi-family and high density single family residential development and a public elementary school.

AT&T proposes to install an approximately 14' tall tower on the rooftop of the existing apartment building. The top of the proposed tower would be at approximately 52.7' above grade level. AT&T will mount panel antennas and other transmission equipment on the tower which will be fully concealed inside a "stealth" tower enclosure which is designed and sided to match the existing penthouse structure.

Associated unmanned equipment will be located in an "equipment room" in the basement of the existing apartment building. Additionally AT&T proposes to install an emergency backup power diesel generator on a 4' by 10' concrete pad at grade, near the existing garbage dumpster. Existing site access from Park Avenue will be utilized for long term maintenance of the facility.

II. Procedural History

On April 28, 2014, AT&T's representatives sent notices of intent to file this petition to abutting property owners and various federal, state and local agencies. Thereafter, AT&T filed a petition dated April 30, 2014 with the Siting Council pursuant to Sections 16-50j-38 and 16-50j-39 of the Regulations of Connecticut State Agencies ("R.C.S.A."). Siting Council interrogatories were issued and responded to by AT&T in May of 2014. On June 10, 2014, a field review was conducted by the Siting Council's staff and one member of the Council. AT&T supplemented its petition with a filing dated June 19, 2014 in response to the field review.

As part of the Council's review of the petition, a member of the Danbury City Council requested that the Siting Council conduct a public hearing on the petition and it other limited appearance comments were filed in the form of a petition in opposition. At its June 26, 2014 meeting, the Council voted, in its discretion, to schedule a public hearing on AT&T's petition. Thereafter, AT&T supplemented Petition 1101 in an August 12, 2014 filing and on August 19, 2014, the Siting Council conducted a field review, evidentiary hearing and public hearing on the petition in the City of Danbury.

At the public hearing, two members of the Danbury City Council whose district the project is located in and a handful of residents in the community

spoke in opposition to AT&T's project. The hearing was thereafter closed on August 19, 2014. A further 30 day opportunity for public comment and any brief to be provided by AT&T was established by the Council. There are no parties or intervenors in the proceeding other than AT&T.

POINT I

**THE SITING COUNCIL SHOULD FIND THAT THE ROOFTOP TOWER
FACILITY DOES NOT PRESENT ANY
SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Section 16-50k of PUESA only requires a certificate for facilities or modifications of facilities that "may, as determined by the council, have a substantial adverse environmental effect." Section 16-50k and other statutory and regulatory provisions under UAPA constitute a grant of jurisdiction to the Siting Council to rule that certain tower facilities or modifications of existing tower facilities will not have a substantial adverse environmental effect and do not require a certificate or an amendment. See e.g., R.C.S.A. § 16-50j-38, 39, 40. In ruling on such petitions, the focus is not so much on the public need for the facility or modification thereto, but rather the proposal's potential environmental effects and whether they might be substantial and adverse. Only where the Council determines that there is the potential for a substantial adverse environmental effect associated with a specific facility, should it consider procedurally requiring a certificate for the proposed tower or

modification thereto.

AT&T's project as presented in Petition 1101 will not impact federal, state or local environmental resources, none of which are reasonably implicated by the proposed facility, its location and design. The record identifies a substantial public need for the facility to reliably serve a dense, highly traveled and visited residential community, including a school. AT&T 6/19 Supplemental Submission, Attachment D. Further, that any alternative would require construction of a conventional at grade tower, something AT&T explored prior to this proposal. 8/19 Evid. Hr. Tr., Pg. 14-15. As such, in evaluating the Rooftop Tower Facility in relation to the state's environmental considerations as identified in PUESA, we submit that all of the evidence in the record demonstrates there are no potentially significant adverse environmental effects associated with the project and the petition should be approved.

POINT II

SECTION 16-50p(a)(3)(G) AND PROXIMITY OF THE ROOFTOP TOWER FACILITY TO A SCHOOL ARE NOT A LEGAL CONSIDERATION IN THIS PROCEEDING AND, IN ANY EVENT, THE FACILITY DOES NOT VISUALLY IMPACT THE NEIGHBORHOOD AROUND A SCHOOL

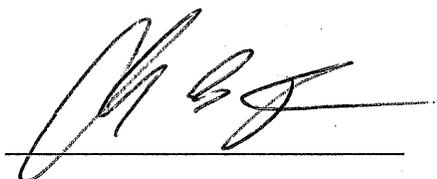
Contrary to public opinion, Section 16-50p(a)(3)(G) of PUESA does not prohibit the siting of towers or wireless facilities on or near schools and cannot

be interpreted as a 250' zone of exclusion for "health and safety" reasons. Moreover, as a procedural matter, Section 16-50p(a)(3)(G) of PUESA is not applicable to ruling on a petition and, as such, the Council need not specifically consider the project's visual proximity to the Park Avenue Elementary School as a matter of law. Thus, regardless of the distance of the facility to the school or the land upon which it is located, the Council's interpretation of Section 16-50p(a)(3)(G) in this proceeding is simply not required.

Nevertheless, since the issue was raised by limited appearance statements, we note that even if Section 16-50p(a)(3)(G) of PUESA were applicable, the evidence provided by AT&T demonstrates that the facility presents no threat to the public's health and safety on or in the Park Avenue Elementary School. See AT&T 8/12/14 Supplemental Filing. Further, that the physical elements of the tower facility would be barely visible from the school grounds and obscured by trees. See AT&T Petition, Exhibit D, Viewshed Map and 8/19 Hr. Tr. Pg. 43. Indeed, given the design of the project to mimic an architectural extension of the building itself, its relatively low height and that other alternatives would require a conventional tower, we submit the Siting Council would have the absolute discretion to approve the Rooftop Tower Facility as is authorized by 16-50(p)(a)(3)(G) even where it applicable.

CONCLUSION

Wireless networks are in transition and infrastructure densification is required to reliably provide 4G LTE services to the public. AT&T respectfully submits that projects like this one, with concealed communications tower infrastructure where possible, are ideal in meeting state policies and avoiding or mitigating environmental impacts. For all the foregoing reasons, it is respectfully requested that the Siting Council find that the proposed Rooftop Tower Facility presents no significant adverse environmental effects for purposes of PUESA and approve the Petition.



Christopher B. Fisher, Esq.
Attorney for Petitioner AT&T

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2014 an original and twenty copies of AT&T's Post-Hearing Brief were sent by first class and electronic mail to the Connecticut Siting Council.

A handwritten signature in black ink, appearing to read 'CB Fisher', is written over a horizontal line.

Christopher B. Fisher, Esq.