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**VIA E-MAIL & OVERNIGHT DELIVERY**

April 5, 2007

S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

**RE: Docket No. 324 Sprint/Hamden – Sprint’s Post-Hearing Brief**

Dear Mr. Phelps:

Enclosed for filing in this matter are an original and 15 copies of Sprint Nextel Corporation’s Post-Hearing Brief. An electronic copy of this filing has been e-mailed to Ms. Fontaine, Ms. Mulcahy and Mr. Perrone. Please do not hesitate to contact me with any questions.

Very truly yours,

**BROWN RUDNICK BERLACK ISRAELS LLP**

By: Thomas J. Regan /s/  
Thomas J. Regan

Enclosure

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## CONNECTICUT SITING COUNCIL

In re:

Sprint Nextel Corporation's Application for a : **Docket No. 324**  
Certificate of Environmental Compatibility and :  
Public Need for the Construction, Maintenance and :  
Operation of a Wireless Telecommunications :  
Facility at 150 Willow Street, Hamden, Connecticut. : April 5, 2007

### SPRINT'S POST-HEARING BRIEF

#### I. INTRODUCTION

The record in this matter unequivocally demonstrates that Sprint Nextel Corporation's ("Sprint") proposal to construct a telecommunications facility in Hamden, Connecticut is necessary and will have minimal environmental impact. This brief summarizes Sprint's position concerning the evidence presented in its application to the Connecticut Siting Council ("Council") for a certificate of environmental compatibility and public need ("Certificate") authorizing the construction, maintenance and operation of a wireless telecommunications facility ("Facility") at 150 Willow Street in Hamden (the "Application") and during the Application process.

The Council has jurisdiction over the construction, operation and maintenance of certain facilities that may have a substantial adverse environmental effect. Conn. Gen. Stat. § 16-50k.

Pursuant to that section:

[N]o person shall exercise any right of eminent domain in contemplation of, commence the preparation of the site for, or commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect, in the state without having first obtained a certificate of environmental compatibility and public need . . . issued with respect to such facility or modification by the council....

Id.

Under Conn. Gen. Stat. § 16-50i(a)(6), a “facility” includes a telecommunications tower and its associated equipment owned or operated by a “public service company” (as defined in Conn. Gen. Stat. § 16-1) or used in a wireless system. Sprint’s proposed wireless telecommunications tower is therefore a “facility,” as defined in Conn. Gen. Stat. § 16-50i(a)(6). Thus, the Council has jurisdiction over this Application.

The criteria guiding the Council’s decision to grant Sprint’s Application is set forth in Conn. Gen. Stat. § 16-50p(a), which provides that the Council must determine:

(1) A public need for the facility and the basis of the need; (2) the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, 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; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application . . . .

Sprint has established, by a preponderance of the evidence, its need for a wireless telecommunications facility in Hamden as well as the lack of any significant adverse environmental impact.

## **II. BACKGROUND**

In early 2006 Sprint began its search for a site to fill its significant coverage gap in Hamden. Sprint used computer modeling to identify the area where a telecommunications facility must be located to provide the requisite coverage. Once the area was designated, Sprint searched for existing structures in the area suitable for its purposes. In fact, Sprint researched 15 existing sites in the area, including many NU poles, but was unable to find an existing structure that met its coverage needs.<sup>1</sup>

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<sup>1</sup> Sprint’s Exhibit (“SP”)-1 at 10.

Sprint then turned its site search away from existing structures and toward raw land. Sprint selected an 87-acre parcel located at 150 Willow Street in Hamden owned by the Hamden Fish and Game Protective Association, Inc. This site spans Willow Street and consists mainly of undeveloped, forested land with a firing range. Land use in the general area is comprised of medium-density, residential development; undeveloped forested lands; and overhead electrical utility infrastructures and associated rights-of-way.<sup>2</sup>

The State of Connecticut Nature Preserve owns the large parcel to the east and the South Central Connecticut Regional Water Authority owns the large parcel to the south. To the north and west of the subject parcel are smaller, residential tracts. Topography in the area is generally characterized by rolling hills that range in elevation from approximately 150 feet above mean sea level (“AMSL”) to just over 700 feet AMSL at the base of the Sleeping Giant State Park lookout tower.<sup>3</sup>

On July 27, 2006, Sprint provided notice of the filing of the Application to the Towns of Hamden and Cheshire. Sprint contacted the Town of Hamden by telephone on several occasions to discuss the notice and to inquire as to whether the Town wanted to set up a meeting or provide comments on the notice. The Town of Hamden did not respond to Sprint’s offer and did not provide Sprint with any comments on the notice. The Cheshire Town Planner contacted Sprint to indicate that the Town of Cheshire did not have any comments on Sprint’s notice.<sup>4</sup>

Approximately two weeks prior to filing the Application, in mid-October 2006, Sprint published notice of its intent to file the Application in the New Haven Register.<sup>5</sup> Concurrently, Sprint sent registered letters to the abutting property owners notifying them of Sprint’s intent to

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<sup>2</sup> SP-1 at 11.

<sup>3</sup> Id.

<sup>4</sup> SP-1 at 10.

<sup>5</sup> SP-1 at 10.

file the Application.<sup>6</sup> Any property owners that did not sign their return receipts were sent another copy of the notice via first class mail, no return receipt requested.<sup>7</sup> On October 27, 2006, Sprint proceeded to file its Application with the Council.<sup>8</sup>

The Council, after giving due notice thereof, held a public hearing on this Application on March 8, 2007, pursuant to Conn. Gen. Stat. § 16-50m, at the Miller Library Complex in Hamden (the “Public Hearing”).<sup>9</sup> Sprint made multiple attempts to fly a red balloon at 160 feet on the day of the Public Hearing in order for the public to ascertain the visibility of the Facility.<sup>10</sup> Due to 15-20 mile per hour winds and the proximity to the power lines, Sprint was unable to maintain the balloon in the air for any length of time.<sup>11</sup> The Public Hearing began at 3:00 p.m. and reconvened at 7:00 p.m.<sup>12</sup> Prior to the Public Hearing, the Applicant, the Council and the Council’s staff completed a field inspection of the site beginning at 2:00 p.m.<sup>13</sup>

### III. NEED

The first prong of the Council’s decision making process as to whether or not a Certificate should be granted is to determine the requisite need for the Facility. The United States Congress, in the Telecommunications Act of 1996, determined that there exists a national need for wireless services such as those provided by Sprint. In making such a determination, the federal government preempted the states’ need to make that determination. The Telecommunications Act of 1996 also sought to foster competition in the marketplace and prohibit states from discriminating against functionally equivalent wireless carriers. Therefore,

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<sup>6</sup> SP-1 at 5.

<sup>7</sup> Transcript of Public Hearing dated 3/8/07 (“Tr.”) 3:00 p.m. at 14.

<sup>8</sup> SP-1.

<sup>9</sup> Record.

<sup>10</sup> Tr. 3:00 p.m. at 12.

<sup>11</sup> Tr. 3:00 p.m. at 12-13.

<sup>12</sup> Record.

<sup>13</sup> Record.

although a particular area may already have wireless coverage provided by a different carrier, Sprint has the right to also offer its services in that same area.<sup>14</sup>

Specifically, the Council must also find adequate need for this particular Facility. To that end, Sprint unquestionably demonstrated through testimony and exhibits its need for a Facility in Hamden. The coverage plots, computer modeling, dropped call data and Public Hearing testimony all verify Sprint's gap in wireless coverage along Route 10 as well as in the surrounding areas of Hamden and Cheshire.<sup>15</sup> In fact, this Facility will provide 2.8-miles of coverage along Route 10 and 4.5 square miles of overall improved coverage.<sup>16</sup> To fulfill these deficiencies in coverage while allowing for collocation and the ability to hand off to surrounding sites, Sprint's minimum antenna centerline necessary is 160 feet.<sup>17</sup>

In addition, on March 16, 2007, Attorney Kenneth Baldwin on behalf of Cellco Partnership d/b/a Verizon Wireless ("Verizon") wrote to S. Derek Phelps, Executive Director of the Siting Council, to inform the Council of Verizon's intention to collocate at this Facility once it is approved.

Not only will the siting of the Facility clearly improve competition in the marketplace by allowing for the collocation of other carriers, it will contribute to the welfare and safety of the public should the Town decide it would like to locate its emergency response antennas on the tower. At this time, the Town has not expressed an interest in collocating, however, the offer will stand in the future.<sup>18</sup>

The cumulative effect of the evidence presented by Sprint demonstrates an acute deficiency in the wireless service it currently provides along Route 10 and the need to locate a

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<sup>14</sup> SP-1 at 6.

<sup>15</sup> SP-1 at 6, 14; Tr. 3:00 p.m. at 51.

<sup>16</sup> SP-2 at 2.

<sup>17</sup> SP-1 at Tab

Facility on the Hamden Fish and Game property to fulfill this deficiency. Coupled with the FCC's determination of a general public need for wireless service, the evidence in the record establishes the requisite "public need" as set forth in Conn. Gen. Stat. § 16-50p(a).

### **III. IMPACT**

The Facility will not have a significant adverse effect on the environment, including public health and safety.

#### *A) Ecological Resources*

The development activities at the Site will not significantly impact any wetlands or watercourses.<sup>19</sup> Moreover, there will be no water usage or wastewater discharge associated with building or maintaining the Facility, and no water supply or sanitary facilities are proposed at the site. In addition, the plan of development for the Facility includes erosion and sediment control measures to minimize soil exposure, control run-off, shield and/or bind the soil, and trap sediments. Furthermore, Sprint will use common building materials that will not produce any environmentally damaging leachates and Sprint will not use transformers containing polychlorinated biphenyls at the Facility.<sup>20</sup>

Furthermore, Sprint will comply with all the comments set forth by the Department of Public Health's Drinking Water Section in their March 26, 2007 correspondence to the Council.<sup>21</sup> Sprint understands that its Facility is within the Watershed Area for the Mill River System and the Level A Aquifer Protection Area of the North Sleeping Giant Well Field, both of which are sources of drinking water and Sprint will work to ensure that all appropriate measures are taken to protect those drinking water supplies.

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<sup>18</sup> SP-1 at 7-8; Tr. 3:00 p.m. at 52.

<sup>19</sup> SP-1 at 17; Tr. 3:00 p.m. at 15.

<sup>20</sup> SP-1 at 16-17.

<sup>21</sup> Record.

No air pollutants will be generated during the development of the Site or during the normal operations of the Facility. In addition, the only noise associated with the Facility will be during its construction. The noise from such activity, however, is equal to the noise produced when constructing a single family home and will cease when the construction ends. The construction period is estimated at approximately six weeks. Post-construction, Sprint does not anticipate having an affect on the traffic pattern in the area as Sprint will make only one monthly maintenance and inspection visit to the Site.<sup>22</sup>

In addition, the Facility is not anticipated to have a significant impact on wildlife due to the relatively small area of disturbance to the forested area and the existing nearby firing range. Any wildlife displaced during construction have suitable habitat in close proximity to allow for natural relocation.<sup>23</sup>

*B) Scenic Resources*

Sprint's Facility will not have a significant visual impact on the surrounding community. To make that determination, Sprint undertook an extensive visual analysis of the Site.<sup>24</sup> The visual analysis indicated that there will be approximately 59 acres of year round visibility and 97 acres of seasonal visibility.<sup>25</sup> In addition, the Facility will not be visible from any scenic roads in the area because there are no state or local scenic roads within a two-mile radius of the Facility.<sup>26</sup>

In order to reduce the profile of the Facility, Sprint can change the antenna platform to a T-bar configuration (keeping the same 157-foot centerline) and still meet its coverage objectives.<sup>27</sup> Internally mounting the antennas is not an option for this Facility because it will

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<sup>22</sup> SP-1 at 17-18.

<sup>23</sup> SP-1 at 19.

<sup>24</sup> SP-1 at 21-22, Tab 12.

<sup>25</sup> SP-1 at 21-22.

<sup>26</sup> Tr. 3:00 p.m. at 15.

<sup>27</sup> Tr. 3:00 p.m. at 38-39, 66.

decrease the diversity Sprint needs in its antenna sector array therefore causing an increased number of dropped call.<sup>28</sup> Specifically, because the site is east of Route 10, Sprint needs to have one antenna sector pointing north, one south and one west.<sup>29</sup> That configuration is much harder to achieve than the normal 120 degrees of separation.<sup>30</sup> In this case, the reduction in coverage caused by the lack of diversity provided by an internal antenna array would have an effect similar to lowering the height.<sup>31</sup>

*C) Cultural & Historic Resources*

There will be no adverse impacts on any cultural resources in the Hamden area as a result of the Facility. Sprint, as part of its site investigation process, conducted a thorough review of the environmental resources outlined in the National Environmental Policy Act (“NEPA”).<sup>32</sup> The review assists Sprint in determining if the Facility lies in an environmentally or culturally sensitive area. As part of the investigation, Sprint reviewed several criteria including: officially designated wilderness areas, wildlife preserves, threatened or endangered species habitats, the National Register of Historic Places, Indian religious sites and flood plains. The NEPA review concluded that the Facility will not lie within an environmentally or culturally sensitive area and there will be no adverse impact on any historical resource as a result of the Facility.<sup>33</sup>

*D) Safety*

The Facility will not pose any risk to human health, be it the community-at-large or employees who visit the Facility. Sprint’s calculations demonstrate that the power density will

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<sup>28</sup> Tr. 3:00 p.m. at 37, 66.

<sup>29</sup> Tr. 3:00 p.m. at 37.

<sup>30</sup> *Id.*

<sup>31</sup> Tr. 3:00 p.m. at 41.

<sup>32</sup> SP-1 at 23-25, Tab 14.

<sup>33</sup> *Id.*

be significantly less than the FCC mandated limits in all locations around the monopole, even with extremely conservative assumptions.<sup>34</sup>

#### IV. CONCLUSION

Sprint has provided ample evidence in this docket for the Council to conclude that a Facility is necessary at the Hamden Fish and Game Protective at 150 Willow Street in Hamden to provide wireless coverage to Route 10 and the surrounding areas. Moreover, Sprint has also proven that a Facility in this location will have minimal environmental impact. Therefore, Sprint respectfully requests that the Council grant its Application for a Certificate at 150 Willow Street in Hamden, Connecticut.

Respectfully submitted,  
Sprint Nextel Corporation

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<sup>34</sup> Id.