

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC
AND OMNIPOINT COMMUNICATIONS, INC.
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT 651 PADDOCK AVENUE IN
CITY OF MERIDEN, CONNECTICUT

DOCKET NO. 329

Date: June 29, 2007

**POST-HEARING BRIEF OF OPTASITE TOWERS LLC AND OMNIPOINT
COMMUNICATIONS, INC.**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A."), Optasite Towers LLC and Omnipoint Communications, Inc. (the "co-Applicants") submit this post-hearing brief in support of the above-captioned application. This brief is limited to (1) the public need for this telecommunications facility, (2) the lack of environmental impact of the proposed facility, and (3) consistency with the mandate of the Connecticut Legislature to avoid the unnecessary proliferation of towers in the state. The co-Applicants also submit their Proposed Findings of Fact in conjunction with this Post-Hearing Brief.

I. BACKGROUND

The co-Applicants, in accordance with provisions of Connecticut General Statutes ("C.G.S.") §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies ("R.C.S.A."), applied to the Connecticut Siting Council ("Council") on February 9, 2007 for a Certificate of Environmental Compatibility and Public Need ("Certificate").

Co-applicant Optasite, Inc. ("Optasite") proposes to construct a 120-foot stealth monopole telecommunications facility at one of three alternative locations located in the eastern portion of a 3.89 acre parcel of land owned by the First Assembly Church of God known as 651 Paddock Avenue, Map 0906, Block 098D, Lot 0020-0005 of the Meriden Tax Assessor's Map ("Property"). The Property is currently developed with a church in the western portion of the Property and associated parking in the rear of the church. The easterly boundary of the Property abuts Route 15.

The 5,000 square foot leased area will include a 45-foot by 50-foot compound area, enclosed by stockade fencing at either Location A, B or C ("Facility"). This Facility will be designed to accommodate the antenna arrays and associated equipment of T-Mobile and the equipment of three (3) other telecommunications carriers. Sprint/Nextel Corporation ("Sprint/Nextel") has expressed an interest in co-locating on the Facility. The State Police have also expressed an interest in co-locating on the Facility.

Prior to filing its Technical Report with the City of Meriden, Optasite had originally proposed to construct the proposed Facility in the parking lot area of the Property (the "Parking Lot Location" or "Location A"). In order to minimize the visual impact of the proposed Facility, Optasite re-designed the site and re-located the Facility into the wooded area, closer to the easterly boundary of the Property (the "Woods Location" or "Location B"). When re-designing the Site for Location B, Optasite voluntarily reduced the size of the equipment compound from 50 feet by 90 feet (as proposed at Location A) to 45 feet by 50 feet to further reduce the visual

impact of the proposed Facility. During the hearing process, the Siting Council expressed its desire to review plans for a third alternative location. Optasite prepared plans for this third location, (the "New Location" or "Location C"). A comparison chart of the three locations is attached below:

	Location A (“Parking Lot”)	Location B (“Woods Location”)	Location C (“New Location”)
Minimum Required Tower Height	120’	120’	120’
Compound Size	50’ by 90’	45’ by 50’	45’ by 50’
Property Line Setbacks	120’	93’	171’
Setback from Nearest Residential Property	146’	146’	131’
Setback from wetlands	173’	18’	57’
Tree Removal	0 trees 6” or greater in diameter	11 trees 6” or greater in diameter	0 trees 6” or greater in diameter
Cut/Fill Required	None	2 cubic yards of cut, 10 cubic yards of fill	None
Visual Impact	42 residences with partial year round views; additional 48 residences with partial seasonable views	Same as Site A	Same as Site A
Historic Impact	None	None	None
FAA	No lighting required	No lighting required	No lighting required

The purpose of this Facility is to provide wireless telecommunications services to Meriden, including along Route 15 (the Wilbur Cross Parkway) and surrounding areas. T-Mobile currently experiences significant gaps in coverage and inadequate coverage in the area. In addition, Sprint/Nextel is currently experiencing significant gaps in coverage or inadequate coverage in the area. A Facility at any of the three Sites will provide wireless coverage service to this area which is currently experiencing inadequate coverage.

On May 1, 2007, the Siting Council granted party status to the City of Meriden in this docket. In the various exhibits submitted by the City, the City has suggested three city-owned properties as proposed alternatives to a Facility at the Property: 1) 883 Paddock Avenue; 2) The Thomas Hooker School; and 3) Nessing Field. The evidence submitted in this docket indicates that, after thorough investigation by Optasite, the City is no longer interested/willing to locate the Facility at 883 Paddock Avenue. (See May 31st Tr. at 153). In addition, T-Mobile provided unrefuted testimony that the Thomas Hooker School was not a technically feasible option from a radio frequency perspective.

T-Mobile provided unrefuted testimony that in order to provide adequate coverage from Nessing Field, T-Mobile would require a minimum height of 160 feet or higher. However, Nessing Field has a deed restriction that prohibits the City of Meriden from using it for any purpose other than recreation/public park. In addition, there is unrefuted testimony that the visual impact of a Facility forty (40) feet at least higher than the proposed Facility will be far greater than that of the proposed Facility. Furthermore, there are numerous, abutting residential properties that would

be visually impacted by a Facility at Nessing Field. Therefore, even if the City of Meriden was able to circumvent the restriction contained in the property deed and could allow a Facility to be developed on Nessing Field, the environmental impact of a Facility at Nessing Field would be far greater than that of the proposed Facility.

II. A SIGNIFICANT PUBLIC NEED EXISTS FOR A TELECOMMUNICATIONS FACILITY IN THIS AREA

Connecticut General Statute ("C.G.S.") §16-50p(a) mandates that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need..." C.G.S. §16-50p(a). There can be no dispute that there is a significant public need for this Facility.

There are no other telecommunications facilities in this area of Meriden, and no utility structures or other suitably tall structures on which to locate a telecommunications facility. Adequate and reliable telecommunication capabilities are beneficial to persons who are traveling through, working, or living in the area. These communications issues can be alleviated with the construction of this Facility, which will provide benefits for both the residents and businesses in the City.

T-Mobile has established that it is currently experiencing significant coverage gaps and capacity problems which result in inadequate coverage in this area. A Facility at any of the proposed Sites will alleviate that inadequacy.

III. THE FACILITY WILL HAVE A MINIMAL ENVIRONMENTAL IMPACT

In addition to demonstrating the public need for the Facility, the co-Applicants have identified "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..." as required by C.G.S. §16-50p(a). Indeed, the record in this matter convincingly demonstrates that the Facility will have a minimal environmental impact on the surrounding areas, and will not conflict with any environmental policies of the State of Connecticut. Several Court decisions have affirmed the issuance of Certificates for similar facilities and projects that involved comparable or greater environmental impacts than that proposed in the present Application. Westport v. Connecticut Siting Council, 47 Conn. Sup. 382 (2001), Aff'd, Westport v. Connecticut Siting Council, 260 Conn. 266, 796 A.2d 510 (2002); Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

The co-Applicants conducted a complete and comprehensive environmental analysis of this proposal, which can be found at Exhibits: I (Wetlands Report), J (Visual Resource Evaluation), K (Phase I Environmental Site Assessment), L (State Agency Correspondence) and N (NEPA Compliance documentation). The State and Federal Agencies contacted as part of this environmental analysis provided substantive responses and conclusions. The environmental analysis concludes that:

- i. No wetlands within 50 feet of either Locations A or C; no wetlands within 18 feet of Location B. The proposed access road is not located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See Exhibit I; see also May 31st Transcript ("Tr." at 175);

- ii. No species of concern on the Property (See Exhibit L);
- iii. The Property is not located in a designated wilderness or wildlife preserve area (See Exhibit N);
- iv. No listed species or designate critical habitats occur on or near the Property. (See Exhibit L, Exhibit N);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (See Exhibit L);
- vi. The Property is not located on lands belonging to any federally recognized Indian tribe in Connecticut (See Exhibit M);
- vii. The Facility at any of the three alternative locations will be located outside of the 100 year flood zone; (See Exhibit N); and
- viii. The tower will not be lit (See Interrogatory Responses dated April 2, 2007 at Exhibit 3).

As far as the Facility's potential visibility, the Facility is proposed to be located on the Property in order to minimize impact to residential receptors at any of the proposed Sites. The anticipated visibility of the three locations is virtually identical. The topography and the mature vegetation at the Property will significantly limit the visual impact of the Facility at the Property.

Views of the Facility are expected to be limited to primarily within 0.5 miles of the Facility. The proposed Facility will be visible from only 137 acres within a two-mile radius of the tower for each of the three locations, which is less than two percent (2%) of the study area. Of note, there will be no visibility from any scenic roads or areas, state parks or cultural or recreational receptors. In addition, the proposed Facility will be visible from approximately forty-two (42) residences year-round and an

additional forty-eight (48) residences will experience limited seasonal views of the Facility.

In addition, Optasite has voluntarily agreed to undertake additional measures to reduce the visual impact of the proposed Facility as much as possible. First, Optasite has agreed to construct a brown stick with flush-mounted antennas, reducing the visual profile of the proposed Facility. Second, Optasite has agreed to enclose the compound with stockade fencing. Third, Optasite has agreed to landscape around the outside of the equipment compound. Fourth, Optasite has agreed, in addition to the compound landscaping, to also landscape both the northern and southern property boundaries of the Property, greatly reducing the visual impact of the proposed Facility to the abutting property owners.

As the foregoing demonstrates, any environmental impacts associated with the Facility (at any of the three Locations) will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of Meriden, thereby reducing the cumulative environmental impact on the City to the greatest extent possible.

IV. A CERTIFICATE SHOULD ISSUE FOR THE PROPOSED FACILITY TO AVOID THE UNNECESSARY PROLIFERATION OF TOWERS

The Connecticut legislature has declared that the sharing of towers to avoid the unnecessary proliferation of towers is in the public interest. C.G.S. §16-50aa. In addition, §16-50p(b) directs that, when issuing a certificate for a telecommunications tower, the Council "may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the

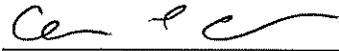
unnecessary proliferation of such facilities in the state.” “The sharing of facilities is encouraged, if not required by General Statutes §16-50p(b)(1)(A).” Nobs v. Connecticut Siting Council, 2000 Conn. Super. LEXIS 1156 (April 28, 2000).

Certification of the proposed Facility at any of the three Locations will help to avoid the unnecessary proliferation of telecommunication facilities in this portion of the state. There are no other existing facilities or structures in this area from which the carriers could co-locate to provide such coverage. Accordingly, the issuance of a Certificate will help avoid the construction of new telecommunications tower(s) in this area of Connecticut. Because all major telecommunications carriers could utilize the Facility as well as local emergency services (if requested), as well as the State Police (as requested), approval by the Council will uphold the state mandate to avoid the unnecessary proliferation of towers.

V. CONCLUSION

It is clear from the evidence presented in the docket that approval of the Facility in this area of Meriden is necessary to provide adequate wireless coverage. The co-Applicants have demonstrated that utilization of the Property at any of three Locations provides the best location for a Facility in this area of Meriden from an environmental and technical perspective. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. As such, the co-Applicants, Optasite Towers LLC and Omnipoint Communications, Inc. respectfully urge the Council to issue a Certificate for the proposed Facility, reflecting in its Decision and Order that consistent with C.G.S. § 16-50x that such approval satisfies and is in lieu of all local and state approvals and certifications.

OPTASITE TOWERS LLC
OMNIPOINT COMMUNICATIONS, INC.



Julie D. Kohler, Esq.
Carrie L. Larson, Esq.
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
(203)368-0211

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

Deborah L. Moore
Acting City Attorney, City of Meriden
Legal Department, City Hall
142 East Main Street
Meriden, CT 06450


Carrie L. Larson, Esq.