

**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

**PROPOSED FINDINGS OF FACT**

Pursuant to § 16-50j-31 of the Regulations of Connecticut State Agencies, Optasite Towers LLC and Omnipoint Communications, Inc. (the "co-Applicants") submit these Proposed Findings of Fact ("Proposed Findings").

**Introduction**

1. 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") for the construction, operation and maintenance of a 120-foot monopole wireless telecommunications facility ("Facility") at 651 Paddock Avenue, Meriden, Connecticut ("Property"). (App. at 1).
2. The purpose of the proposed Facility is to provide wireless coverage service to this area for Omnipoint Communications, Inc. ("T-Mobile"). (App. at 1, Exhibit F; T-Mobile Interrogatory Responses; Pre-Filed Testimony of Scott Heffernan ("Heffernan Testimony") at 3).
3. Sprint/Nextel Corporation has expressed its need for a facility in this area and its interest in co-locating on the proposed Facility. (Pre-Filed

Testimony of Keith Coppins ("Coppins Testimony") at 7; 3:00 Transcript ("Tr.") at 93).

4. Pursuant to General Statutes § 16-50m, the Council, after giving due notice thereof, held a public hearing on Thursday, May 3, 2007, beginning at 3:00 p.m., continued at 7:00 p.m., at the City Hall of Meriden, Room 206, 2<sup>nd</sup> Floor, 142 East Main Street, Meriden, Connecticut and continued on Thursday, May 31, 2007 at 10:00 a.m. at the Connecticut Siting Council, Hearing Room 1, 10 Franklin Square, New Britain, Connecticut ("Hearing"). (Hearing Notice; 3:00 p.m. Tr. at 3; May 31<sup>st</sup> Tr. at 3).
5. The Council and its staff made an inspection of the Site on May 3, 2007 at 2:00 p.m. (Hearing Notice).
6. The co-Applicants flew a four (4) foot red balloon at a height of 120 feet at the Site from 8:30 am to 4:30 pm on May 3, 2007. (7:00 p.m. Tr. at 80-81; Exhibit 9).
7. The City of Meriden became a party to this proceeding on May 1, 2007.
8. The Application proposes a 120-foot stealth monopole with an associated 45 foot by 50 foot equipment compound (the "Site"). (Application at 3).
9. As part of this proceeding, the co-Applicants proposed three possible locations for the Site on the Property. (Applicants' Exhibit 10).

#### Need

10. In 1996, the United States Congress recognized a nationwide need for high quality wireless telecommunications services. Through the Federal Telecommunications Act of 1996 (the "Act"), Congress seeks to promote competition, reduce regulation to encourage technical innovation, and foster lower prices for wireless telecommunications services. The Act pre-empts any state or local determination of public need. (App. at 5-6; 3:00 p.m. Tr. at 4-5; Telecommunications Act of 1996).
11. A Facility at the Site will provide coverage for significant coverage gaps experienced by T-Mobile in Meriden specifically along the Wilbur Cross Parkway a/k/a Route 15 ("Rt. 15") and the surrounding area. (App. at 5-6, Exhibit F; Interrogatory Responses; Heffernan Testimony).

12. The State Police have expressed an interest in co-locating equipment on the proposed Facility. (7:00 Tr. at 48).

#### **Coverage**

13. T-Mobile testified that it needs to locate at a height of 117 feet above ground level ("AGL") on this Facility to minimize the number and height of future telecommunications towers in this area. (Heffernan Testimony at 4).
14. T-Mobile testified that, at any of the three alternative locations at the Site, it would still require a minimum height of 117 feet AGL in order to provide adequate coverage to this area. (Exhibit 10).
15. T-Mobile testified that at a height of 107 feet AGL at the proposed Facility, T-Mobile's coverage begins to break up on Route 15 and T-Mobile customers would drop calls in this area of Route 15. (3:00 Tr. at 72-73; Interrogatory Responses).

#### **Site Search**

16. Optasite determined that there were no existing structures of a suitable height or location from which the existing lack of coverage experienced by licensed telecommunications carriers in this area of Meriden could be remedied. Only after determining that there were no buildings or structures of sufficient height in this area did Optasite search for an appropriate location for a new telecommunications facility. (App. at 8-9; Coppins Testimony at 4).
18. Optasite conducted a survey of property within the area to identify the best possible location to serve the needs of T-Mobile and other wireless carriers. Optasite found that site selection in the area was limited by dense residential development throughout the area. Therefore, Optasite focused its search efforts on larger parcels. (Coppins Testimony at 3; Applicants' Exhibit 8).
19. Optasite approached the Department of Transportation ("DOT") to discuss the possible development of a facility on DOT property off of Miller Avenue (the "DOT Property"). The DOT indicated it is not willing to lease any

- portion of the DOT Property for the development of a Facility. (Pre-filed Testimony of Charles Regulbuto ("Regulbuto Testimony") at 2).
20. Optasite approached Sterling Village Condominiums to discuss the possible development of a Facility on property owned by Sterling Village adjacent to the DOT Property. Sterling Village rejected Optasite's lease proposal. (3:00 Tr. at 41-42).
  21. The City of Meriden proposed three city-owned parcels as proposed alternatives for locating a Facility. (City's Exhibit 1, 2).
  22. Those city-owned parcels include: 1) 883 Paddock Avenue; 2) Thomas Hooker School; and 3) Nessing Field. (City's Exhibit 1, 2).
  23. Subsequent to the City proposing 883 Paddock Avenue and thorough investigation was completed by Optasite, the City stated it is not interested in developing a Facility at 883 Paddock Avenue. (May 31<sup>st</sup> Tr. at 153).
  24. T-Mobile analyzed the Thomas Hooker School and stated that the school is too close to a rooftop installation that already exists on Main Street and therefore would not work from a radio frequency perspective. Therefore, developing a Facility at the Thomas Hooker School is not technically feasible. (May 31<sup>st</sup> Tr. at 44).
  25. T-Mobile analyzed Nessing Field and stated it would require a minimum height of 160 feet in order to provide coverage to the majority of the target area. (May 31<sup>st</sup> Tr. 33-34).
  26. Nessing Field has a deed restriction that limits its use "for the sole purpose of establishing, creating and maintaining a public park" and therefore the City of Meriden is prohibited from developing a Facility at Nessing Field. (Applicants' Admin. Notice 2; May 31<sup>st</sup> Tr. at 33).
  27. In order to develop a Facility at Nessing Field 160 feet in height or higher, the fall zone of the Facility would necessarily encroach on the existing baseball fields that exist at Nessing Field. (May 31<sup>st</sup> Tr. at 39).
  28. There are numerous residential properties abutting the Nessing Field property that would be visually impacted by a 160 foot Facility on that property. (May 31<sup>st</sup> Tr. at 126, 149).

29. The visual impact of a 160 foot Facility at Nessing Field would be greater than the visual impact of the proposed 120 foot Facility at the Property. (May 31<sup>st</sup> Tr. at 183).

#### The Site

30. In its Application, Optasite proposed to construct the Facility in the easterly end of the 3.89 acre parcel of land owned by First Assembly Church of God, known as 651 Paddock Avenue, Map 0906, Block 098D, Lot 0020-0005 of the Meriden Tax Assessor's Map. (App. at 3, Exhibit A).
31. The Site is located in the S-R Suburban Residential zone. The Meriden Zoning Regulations (the "Regulations") do not prohibit wireless facilities in residential zones. (App. at 3, 10-16; Regulations).
32. The Site is currently developed with a church and associated parking. The easterly boundary of the Site is wooded and abuts Rt. 15. (App. at 3; May 3<sup>rd</sup> Field Review).
33. The area surrounding the Site is primarily composed of residential land. (App. at Exhibit H; Coppins Testimony; Applicants' Exhibit 10).
34. The proposed Facility has been designed to accommodate T-Mobile and the equipment of three (3) other telecommunications carriers, the State Police as well as the Town of Meriden emergency services equipment, if requested. (App. at 2, Exhibit A; Exhibit 10; 7:00 Tr. at 48).
35. The Facility will accommodate the antennas and equipment of T-Mobile at a height of 117 feet AGL. (App. Exhibit A; Applicants Exhibit 10).
36. The 45 by 50 foot compound area at the base of the Facility will include locations for T-Mobile, the State Police and the equipment of three (3) other telecommunications carriers. The compound will be enclosed by a wooden stockade fence. (App. at 9, Exhibit A; Applicants' Exhibit 10; May 31<sup>st</sup> Tr. at 18).
37. Vehicular access is proposed over an existing driveway off of Paddock Avenue over the existing church driveway and parking area. (App. at 10, Exhibit A; Applicants' Exhibit 10).

38. Utility service will run underground from existing utility service. No water or sanitary facilities are required and, once built, the Facility will generate minimal traffic because each of the co-locating entities will only need to visit the Site about once a month to perform routine maintenance and inspection. (App. at 9-11, Exhibit A).
39. The total estimated cost of the proposed Facility is approximately \$161,000. The total duration of the construction would be approximately eight weeks. (App. at 18-19).
40. Prior to filing the Application or the Technical Report, Optasite had originally proposed to construct the Facility in the central portion of the Site in the Church parking lot (the "Parking Lot Location"). (3:00 Tr. at 28).
41. In order to reduce the visual impact of the proposed Facility, prior to filing the Technical Report with the City of Meriden, Optasite shifted the Original Site approximately 500 feet to the east to take advantage of existing vegetation (the "Woods Location"). (3:00 Tr. at 45).
42. In order to further reduce the visual impact of the proposed Facility, Optasite voluntarily reduced the size of the equipment compound from 50 feet by 90 feet at the Original Location to 45 feet by 50 feet at the Woods Location. (3:00 Tr. at 45).

#### **Municipal Consultation**

43. Optasite submitted its technical report to the City of Meriden on September 28, 2006. (App. at 17; Bulk Filing).
44. After numerous unreturned phone calls and attempts to contact the City, representatives of Optasite finally spoke with officials from the City of Meriden in November, 2006. (May 31<sup>st</sup> Tr. at 177; Applicants' Exhibit 4).
45. At the direction of the Mayor's office, Optasite met with the City of Meriden's designee, Assistant City Planner Thomas Skoglund on December 19, 2006. (Applicants' Exhibit 4; Coppins Testimony at 4).
46. At that December 19<sup>th</sup> meeting, Mr. Skoglund insisted that Optasite file applications for local approvals including but not limited to, applications for

variances to the Zoning Board of Appeals, wetlands approval to the Inland Wetlands Commission and special permit and site plan applications with the Planning and Zoning Commission, . (Coppins Testimony at 3, Exhibit B; May 31<sup>st</sup> Tr. at 106-107).

47. Optasite forwarded Mr. Skoglund a legal memorandum explaining the exclusive jurisdiction of the Connecticut Siting Council but Mr. Skoglund would not permit Optasite to appear before any of these various local commissions for informational purposes without first filing applications for local approvals. (Coppins Testimony at 3-4).
48. Despite repeated attempts, the City refused to place Optasite on any of the City's planning agency agendas. (Coppins Testimony at 4).
49. Without providing any notice to Optasite, the City of Meriden's Planning Commission met on February 22, 2007 to discuss Optasite's Application. (Coppins Testimony at 4; May 31<sup>st</sup> Tr. at 163).
50. At the December 19<sup>th</sup> meeting with Mr. Skoglund, the City requested that Optasite investigate several City-owned parcels as alternatives to the proposed Facility at the Site, including a parcel located at 883 Paddock Avenue. (Coppins Testimony at 4-6).
51. Optasite investigated 883 Paddock Avenue and forwarded a proposed lease and site details to the City on January 16, 2007. Optasite also forwarded additional information requested by the City including photographs of the type of tower Optasite was proposed to construct. (Coppins Testimony at 4-6, Exhibit C, Exhibit D).
52. Despite having investigated 883 Paddock Avenue at the City's request, the City advised Optasite that it felt the 883 Paddock Avenue property was unsuitable for a telecommunication facility, and never responded to Optasites lease proposal. (Coppins Testimony at 4-6, Exhibit E).

#### **Environmental Considerations**

53. The Site contains no known existing populations of Federal or State Endangered, Threatened or Special Concern Species, according to the

Connecticut Department of Environmental Protection Diversity Database. (App. at 14, Exhibit N).

54. The proposed development will not directly or indirectly affect any wetlands or watercourses. (App. at 13, Exhibit I; Pre-filed Testimony of Thomas Pietras ("Pietras Testimony") at 3; May 31<sup>st</sup> Tr. at 175-176).
55. The State Historic Preservation Officer (SHPO) has determined that the construction of the Facility will not have an effect on historic, architectural, or archaeological resources listed on or eligible for the National Register of Historic Places. (App. at 13, Exhibit L; May 31<sup>st</sup> Tr. 181-182).
56. In making its determination that construction of the proposed Facility will not have an effect on historic architectural or archeological resources listed on or eligible for the National Register of Historic Places, SHPO was aware of the existence of the Deacon Rice House in proximity to the Site. (May 31<sup>st</sup> Tr. at 180-182).
57. According to an aeronautical study conducted by the Federal Aviation Administration (FAA), the proposed Facility would not require marking or lighting. (App. at 17-18, Exhibit P; Interrogatory Responses dated April 2, 2007 at Exhibit 3).
58. There would be no impact any known scenic, historic or recreational areas. (App. at 12, Exhibit J).
59. The maximum emissions levels from the proposed Facility would be less than 6% of the safety criteria adopted by the FCC. (App. at Exhibit M).

#### **Visibility**

60. The Facility is proposed to be located at the Site in order to minimize impact to residential receptors; the Facility will be located as low as it can be while still providing the necessary coverage to the area. (App. at 11, Exhibit J).
62. The proposed Facility will be visible from only 137 acres within a two-mile radius of the tower, which is only 1.7% of the entire study area (App. at 11, Exhibit J).
63. Views from the Facility are expected to be limited to primarily within

- 0.5 miles of the Facility. (Application at 11, Exhibit J).
64. The compound area will have a de minimis visual impact as it will be screened by the proposed stockade fencing as well as the vegetative screening provided by the existing vegetation at the Site. (App. at 12, Exhibit J).
  65. The reduced compound size of 45 feet by 50 feet will further reduce any visual impact of the equipment compound. (3:00 Tr. at 26).
  66. Optasite has voluntarily agreed to not only provide landscaping around the proposed stockade fencing of the equipment compound but also along the boundary lines of the Site to the north and to the south. This proposed landscaping will further minimize the visual impact of the proposed Facility, particularly for the abutting property owners. (May 31<sup>st</sup> Tr. at 184-186).
  67. The visual impact of a Facility at a minimum of 160 feet at Nessing Field will be far greater than the visual impact of the proposed Facility at the Site at 120 feet. (May 31<sup>st</sup> Tr. at 183).
  68. There are residences immediately abutting Nessing Field that would be visually impacted by a Facility of a minimum of 160 feet at Nessing Field. (May 31<sup>st</sup> Tr. at 149, 183).
  69. The visual impact of a Facility at 155 feet at 883 Paddock Avenue would be greater than the visual impact of the proposed Facility at the site at 120 feet. (3:00 Tr. at 66).
  70. There are numerous residences immediately abutting 883 Paddock Avenue that would be visually impacted by a Facility of a minimum of 155 feet at 883 Paddock Avenue. (3:00 Tr. at 66).
  71. Siting several, shorter towers would have a greater visual impact than the single, proposed Facility at 120 feet in height at the Site. (7:00 Tr. at 50).

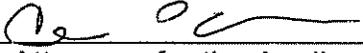
### **Towersharing**

72. This Facility will provide co-location opportunities for public safety communications systems and four (4) wireless carriers, thus avoiding

the proliferation of towers.

73. The State Police have expressed their interest in co-locating on this Facility. (7:00 Tr. at 48).
74. Sprint/Nextel Corporation has expressed its need for a facility in this area and its interest in co-locating on the proposed Facility. (Pre-Filed Testimony of Keith Coppins ("Coppins Testimony") at 7; 3:00 Transcript ("Tr.") at 93).

Respectfully Submitted,

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**Certification**

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

Deborah L. Moore  
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Carrie L. Larson