

CONNECTICUT SITING COUNCIL
DOCKET NO. 332

IN THE MATTER OF:

AN APPLICATION OF CELLCO PARTNERSHIP d/b/a/ VERIZON WIRELESS
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY
IN THE TOWN OF WASHINGTON, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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August 9, 2007

POST-HEARING BRIEF

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I. INTRODUCTION

On March 29, 2007, Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “Applicant”) filed with the Connecticut Siting Council (“Council”) an application (the “Application”) for a certificate of environmental compatibility and public need (“Certificate”), pursuant to Sections 16-50g et seq. of the Connecticut General Statutes (“Conn. Gen. Stat.”), for the construction, maintenance and operation of a wireless telecommunications facility at one of two proposed locations in the Town of Washington, Connecticut. (Cellco Exhibit 1 (“Cellco 1”)). The “Washington North Facility” would fill a significant portion of an existing coverage gap along Route 202 and local roadways in the northwesterly portion of the Town of Washington (“Town” or “Washington”). (Cellco 1, pp. 1-2 and 8). Cellco currently provides no service at all along Route 202 in the Town of Washington. (Cellco 1, Tab 7; 4/21/07 Transcript (“Tr.”) pp. 28, 31-32). These significant coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted wireless telecommunications coverage within its service area consistent with its Federal Communications Commission (“FCC”) license and the demands of its customers. (Cellco 1, pp. 6-8).

Cellco has presented, for the Council’s consideration, two alternative sites, both of which would satisfy its coverage objective along Route 202 in the northwesterly portion of Washington. The proposed towers would be capable of supporting antennas of additional carriers. (Cellco 1, p. 2). New Cingular Wireless d/b/a AT&T (“AT&T”) intervened in this docket and intends to share Cellco’s Washington North Facility. (6/21/07 Tr. p. 6; AT&T 1, Response (“Resp.”) 1).

The Council commenced a public hearing on the Application on June 21, 2007, and continued the hearing on July 10, 2007. (6/21/07 Tr. p. 3; 7/10/07 Tr. p. 3). Prior to the afternoon

session of the June 21, 2007 hearing, the Council and its staff visited each of the proposed cell sites. At the Council's request, Cellco caused a balloon, with a diameter of approximately 4 feet, to be flown during the June 21, 2007 site visit at each of the proposed cell site locations between 8:00 a.m. and 5:00 p.m. (Cellco 1, p. 15; 7/10/07 Tr. p. 53-54).

This Post-Hearing Brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A.") and the Council's directives. (Tr. 7/10/07 p. 94). This brief evaluates the Application in light of the review criteria set forth in Section 16-50p of the Connecticut General Statutes.

II. FACTUAL BACKGROUND

A. Pre-Application History

Since acquiring its Personal Communication System ("PCS") license from the FCC in May of 2003, Cellco has been actively pursuing the expansion of its network in Litchfield County, Connecticut. What little coverage Cellco has in the Town of Washington today, extends into remote areas of the Town from existing Cellco facilities in the towns of Litchfield and New Milford. (Cellco 1, Tab 7). Route 202, a major east-west thoroughfare in northerly Washington, extends approximately six miles between New Milford to the west and Litchfield to the east. Cellco currently provides no wireless service along Route 202 in the Town of Washington. (Cellco 1, pp. 1-2 and 8, Tab 7). Neither of the existing adjacent facilities (Cellco's New Milford East and Litchfield SW cell sites) can resolve the existing coverage problems that Cellco is experiencing along Route 202 in Washington. (Cellco 1, pp. 10-11, Tab 7). Cellco is also currently exploring the installation of a new cell site in New Milford, Connecticut. This site, Cellco's proposed New Milford NE cell site, would provide coverage along Route 202 to the west of the proposed Washington North facility. (Cellco 6, Resp. 2). As discussed at the hearing, Cellco's coverage

objectives for its New Milford NE search area would be satisfied by a facility at the Northville Fire Department or by the recently proposed Optasite facility (Council Docket No. 342). (Cellco 9, Resp. 13). However, a New Milford NE cell site does not eliminate the need for the Washington North Facility. (Cellco 5, Resp. 2; Cellco 9, Resp. 13 and 14; 6/21/07 Tr. pp. 43-44).

In an effort to avoid the unnecessary proliferation of towers, Cellco explored the use of the existing steeple at the New Preston Congregational Church located at 15 Church Street in New Preston. Such an installation is prohibited by the Washington Zoning Regulations and was not pursued. (See Washington Zoning Regulations – Cellco 1c.; AT&T 1, p. 4 and Tab 4). No other existing structure of appropriate height exists in the New Preston area. (Cellco 1, Tab 9).

If a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and/or where the visual impact of the site is reduced to the greatest extent possible. To minimize the impact of a new tower in this case, Cellco has proposed to camouflage the Washington North Facility as a simulated pine tree or “monopine”. (Cellco 1, pp. 2-3). The Town of Washington is opposed to the monopine design and has expressed a preference for a slender monopole design with flush-mounted antennas. (Town 1, p. 4).

B. Local Contacts

On January 19, 2007, Town of Washington First Selectman Richard C. Sears received copies of technical information summarizing Cellco’s plans for the telecommunications facility in Washington. Prior to this meeting, Mr. Sears had several conversations with Cellco’s real estate representatives about potential alternative site locations including the New Preston Fire House property on Route 202. (Cellco 1, pp. 19-20, Tab 9). Mr. Sears distributed the technical information to the Town’s land use agencies and commissions. On March 5, 2007, Cellco made a

formal presentation on the tower proposal during an informational meeting with municipal officials and town residents. Following that informational meeting, at the request of Mr. Sears, Cellco flew a balloon on Sunday, March 18, 2007. Notice of the balloon float was sent to abutting landowners of each of the proposed cell sites, was posted on the Town's web site and was discussed in two local newspaper articles. (Cellco 1, p. 20).

C. Tower Sharing

Consistent with its practice, Cellco regularly explores opportunities to share its facilities with other wireless service providers. Cellco will design the approved Washington North tower so that it could be shared by other carriers, known and unknown at the time of the Council's decision. (Cellco 1, pp. 11-12). AT&T is interested in sharing the Washington North Facility and participated in the Docket No. 332 proceeding. (AT&T 1, Resp. 1).

D. The Washington North Proposal

Cellco proposes to construct a tower at one of two locations, either of which would satisfy its coverage objectives in the northerly portion of the Town. (Cellco 1, pp. 2-3 and 8). The first alternative location would be located on a 32.07 acre parcel at 6 Mountain Road, in the Town's R-1 Residential zone district ("Site 1"). This property is mostly vacant and is used for residential purposes by the property owner. At Site 1, Cellco would construct a 150-foot telecommunications tower disguised as a pine tree. Simulated branches would extend an additional seven feet above the top of the tower. The total height of the tree tower would be 157 feet above ground level ("AGL"). At this site, Cellco would install a total of twelve (12) panel-type antennas with their centerline at the 150-foot level on the tower. Equipment associated with the antennas would be located in a 12' x 30' shelter located near the base of the tower. All site improvements associated with Site 1 would be located within a 80' x 120' leased area. Access to

Site 1 would extend from Mountain Road, over an existing driveway on an adjacent parcel at 16 Mountain Road, then over a gravel driveway, a total distance of approximately 1,065 feet to the cell site. The access drive will follow an existing dirt and gravel roadway for most of its length. Both the tower and leased area have been designed to accommodate additional carriers. (Cellco 1, pp. 2-3, Tab 1).

The second alternative location would be located on a 1.25 acre parcel in the Town's B-3 Marble Dale Business zone ("Site 2"). At Site 2, Cellco would construct a 150-foot telecommunications tower disguised as a pine tree. Simulated branches would extend an additional seven feet above the top of the tower. The total height of the tree tower would be 157 feet AGL. At Site 2, Cellco would install a total of twelve (12) panel-type antennas with their centerline at the 150-foot level on the tower. Equipment associated with the Cellco antennas would be located in a 12' x 30' shelter located near the base of the tower. All site improvements associated with the proposed facility would be located within a 60' x 95' leased area. Access to Site 2 would extend from New Milford Turnpike (Route 202) along a portion of the property owner's existing driveway, a distance of approximately 200 feet to the cell site, then along a new gravel drive an additional distance of 150 feet. Both the tower and leased area are designed to accommodate additional carriers. (Cellco 1, pp. 2-3, Tab 2).

III. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50p FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act (the "Act"), Conn. Gen. Stat. §16-50g *et seq.*, sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate . . . The council shall file, with its order, an opinion stating in full its reasons for the decision. 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; (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 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. . . .

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a “public need for the facility.” Conn. Gen. Stat. § 16-50p(a)(1). Second, the Applicant must identify “the nature of the probable environmental impact” of the proposed facility through review of the numerous elements specified in Conn. Gen. Stat. § 16-50p(a)(2), and then demonstrate that these impacts “are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for the Washington North Facility

The first step in the review of the pending Application addresses the public need for the proposed facility. As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and a degree of competition in mobile telephone service. (Cellco 1, pp. 6-8). More recently, the Federal Telecommunications Act of 1996 (the

“Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to encourage the rapid deployment of new telecommunications technologies. The Council took administrative notice of the Telecommunications Act in this docket. (Cellco 1, pp. 6-8; Council Adm. Notice 7).

Cellco currently provides no wireless service along Route 202 or to the surrounding areas in northwesterly portions of the Town. What little coverage Cellco provides in Washington today is limited to remote areas of the Town closest to Cellco’s existing New Milford East and Litchfield SW cell sites. (Cellco 1, Tab 7). The record evidence in this docket clearly demonstrates the need for wireless service and, therefore, a wireless facility in northern Washington.

The record in this docket also contains ample written evidence and testimony that Cellco antennas at the 150-foot level on either the Site 1 or Site 2 would allow Cellco to achieve its coverage objectives along Route 202 in Washington and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. (Cellco 1, p. 8, Tab 7). Site 1 at 150 feet would provide reliable coverage to a 3.5 mile portion of Route 202 and an overall area of approximately 4.64 square miles. Site 2 at 150 feet would provide reliable coverage to a 3.4 mile portion of Route 202 and an overall area of 3.6 square miles. (Cellco 1, pp. 2-3). Either proposed site would provide adequate overlapping coverage with a proposed cell site in the northeast portion of the Town of New Milford; either a Cellco facility at the Northville Fire Department or an Optasite facility as proposed in Council Docket No. 342. (Cellco 9, Resp. 13 and

14). This evidence and testimony remains unrefuted and would clearly support a finding that there is a need for the proposed facility.¹

B. Nature of Probable Impacts

The second step in the statutory review procedure addresses the probable environmental impacts of the proposed facility and particularly the following factors:

1. Natural Environment and Ecological Balance

The proposed development of either Site 1 or Site 2 has eliminated, to the extent possible, impacts to the natural environment. At Site 1, Cellco intends to use an existing driveway for a substantial portion of its access way to the cell site. A new 12-foot wide gravel driveway would extend from the edge of the existing dirt road to the cell site location, a short distance of approximately 150 feet. Construction of the cell site compound will be limited to the 80' x 120' leased area.(Cellco 1, Tab 1).

At Site 2, Cellco will utilize the owner's existing driveway extending from New Milford Turnpike a distance of approximately 200 feet, then over a new gravel driveway extension an additional 100 feet to the cell site. (Cellco 1, Tab 2). Construction of the Site 2 compound will require the installation of retaining walls and the establishment of a two-tiered site compound. (Cellco 1, Tab 2).

2. Public Health and Safety

Cellco has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the proposed facility would be minimal or nonexistent.

¹ Propagation maps prepared by the Town's RF expert, Walter Cooper, were described as "generally similar" to Cellco's propagation maps included in the record. (7/10/07 Tr. p. 69).

First, the potential for the proposed Site 1 or Site 2 towers to fall does not pose an unreasonable risk to health and safety. The proposed towers would be designed and built to meet Electronic Industries Association (“EIA”) standards adopted for the State of Connecticut as part of the State Building Code. (Cellco 1, Tab 1, p. 6; Tab 2, p. 6; Tr. 7/10/07 pp. 88-89). The tower radius at Site 1 remains entirely within the owner’s parcel. (Cellco 1, Tab 1). At Site 2 the tower radius extends onto adjacent properties to the north, east and west. (Cellco 2, Tab 2; 6/21/07 Tr. pp. 83-86). Other than the proposed equipment shelters there are no structures within the fall radius of the Site 1 tower. (Cellco 1, Tab 1). Several structures, including the owner’s residence are located within the fall radius for the Site 2 tower. (Cellco 1, Tab 2; 6/21/07 Tr. pp. 83-85).

Second, worst-case potential public exposure to radio-frequency (“RF”) power density for Cellco operations at the nearest point of uncontrolled access (the base of each tower) would be 2.46% of the FCC standard for either Site 1 or Site 2. Power density levels at each site would drop off rapidly as distance from the tower increases. (Cellco 1, p. 16, Tab 1, p. 8; Tab 2, p. 8). At the request of the Town, Cellco also prepared a second power density calculation that assumes the tower was shared by all potential wireless carriers licensed to operate in Litchfield County, including Cellco, Alltel, Sprint Nextel, AT&T, Cingular and T-Mobile. Under these hypothetical circumstances, the worst-case potential public exposure to RF power density would be 37.67% of the FCC standard. (Cellco 12).

3. Scenic Values

As noted in the Application, the primary impact of any tower facility is visual. (Cellco 1, p. 14). Cellco’s site search methodology, described in the Site Search Summary, is designed in large part to minimize the overall visual impact of such facilities. (Cellco 1, Tab 9). As discussed above, wherever feasible, Cellco attempts to avoid the construction of a new tower by first attempting to

identify existing towers or other tall non-tower structures in or near its search area. (Cellco 1, Tab 9). In its site search summary, Cellco identified the only two existing tower sites in the northern Washington area, one in New Milford and one in Litchfield. Cellco already has antennas at the highest possible location on each of these existing towers (Cellco's New Milford East and Litchfield SW cell sites). (Cellco 1, p. 10, Tab 6 and Tab 9). Cellco identified the New Preston Congregational Church steeple as the only existing tall structure in or near the Washington North search area that could conceivably satisfy its coverage objectives in the area. (Cellco 1, pp. 10-11, Tab 9). Current zoning regulations, however, prohibit use of this existing church steeple for telecommunications purposes. (Cellco 1, p. 11, Tab 9; AT&T 1, p. 4, Tab 4; 7/10/07 Tr. pp. 70-71).

If it determines that a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the site would be reduced to the greatest extent possible. Visual impact of a tower facility can be further reduced through the proper use of alternative tower structures; so-called "stealth installations." Where appropriate, telecommunications towers camouflaged as, for example, flagpoles, pine trees and church bell towers, can help to reduce visual impacts associated with more traditional telecommunications towers. (Cellco 1, pp. 14-15). In Washington, given the significant tree growth and topography of the area, Cellco has asked the Council to consider the use of a stealth tower application, in this case a "monopine" tree tower. Even though the visual impact of either proposed site is minimal, the stealth application in this instance may further reduce the overall visual impact of this tower. (Cellco 1, pp. 14-15). The Town has requested that the Council require Cellco to install a "streamline monopole" with flush-mounted antennas rather than a tree tower at either site location. (Town 1, p. 4). Cellco could use flush-mounted antennas at either of

the proposed Washington site locations. Doing so, however, would result in a loss of approximately 2db of coverage in the northern Washington area. To compensate for this loss, Cellco's antennas would need to be mounted at the 160-foot level, 10 feet higher than proposed in the Application. (6/21/07 Tr. pp. 88-89; 7/10/07 Tr. pp. 31-32). The Town was agreeable to the increase in tower height to 160 feet if it resulted in the installation of a monopole with flush-mounted antennas. (7/10/07 Tr. pp. 64-65).

As the record indicates, the location of the proposed tree towers has allowed Cellco to propose structures at the minimum height required to satisfy its capacity needs in the area while eliminating, to the extent possible, visual impact on the surrounding landscape. (Cellco 1, Tabs 1, 2 and 10).

4. Historical Values

As it does with all of its tower applications, prior to filing the Application with the Council, Cellco requested that the State Historic Preservation Office ("SHPO") of the Connecticut Historical Commission (the "Commission") review the proposed sites. (Cellco 1, Tab 11). Based on his review of the information submitted by Cellco, the Deputy State Historic Preservation Officer determined that the development of a telecommunications tower at the sites proposed would have "no effect" on historic, architectural or archaeological resources listed on or eligible for the National Register of Historic Places. (Cellco 1, p. 20, Tab 11). Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission's review that are sufficient to warrant a denial of this Application. There is no evidence in the Docket No. 332 record that would suggest otherwise.

5. Recreational Values

There are no recreational activities or facilities at either Site 1 or Site 2 that would be impacted by the proposed tower development. Neither tower would be visible from the nearest recreational resource, the Mount Bushnell State Park Scenic Reserve. (Cellco 1, Tab 10). There is no contrary evidence in the record to support a claim that either the Site 1 or Site 2 tower locations would impact recreation resources in the area.

6. Forests and Parks

There are no State Forests located within a two-mile radius of the cell site locations. The proposed towers will, therefore, have no impact on any State Forest lands or any of the hiking trails located therein. (Cellco 1, Tab 10).

7. Air and Water Quality

a. Air Quality. The equipment associated with the proposed Washington North Facility would generate no air emissions under normal operating conditions. (Cellco 1, Tab 1, p. 7; Tab 2, p. 7). During power outage events and periodically for maintenance purposes, Cellco would utilize an on-site emergency backup generator to provide emergency power to the facility. The use of the generator during these limited periods would result in minor levels of emissions. Pursuant to R.C.S.A. § 22a-174-3, Cellco will obtain an appropriate permit from the Connecticut Department of Environmental Protection (“DEP”) Bureau of Air Management prior to installation of the proposed generator. (Cellco 1, Tab 1, p. 7; Tab 2, p. 7).

b. Water Quality. The proposed Washington North Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private sewage system. There are no lakes, ponds, rivers, streams, wetlands or other regulated

water bodies located at either the Site 1 or Site 2 locations. Thus, the proposed facility would not impact local water quality. (Cellco 1, Tab 1, p. 7; Tab 2, p. 7).

Cellco proposes to install a diesel-fuel back-up generator within its equipment building for use during power outages. (Cellco 1, pp. 2-3 and 17). The generator will maintain a “belly” tank installed as an integral part of the generator unit. This tank is double-walled and maintains leak detection alarms. The floor of the generator room itself is recessed and is capable of containing 120% of the capacity of all generator fluids (fuel and oil). The floor of Cellco’s generator room also maintains leak detection alarms. (Cellco 1, p. 17).

8. Fish and Wildlife

As a part of its National Environmental Policy Act (“NEPA”) Checklist, Cellco received comments on the proposed facility from the U.S. Department of Interior, Fish and Wildlife Service (“USFWS”) and the Environmental and Geographic Information Center of the DEP. Both the USFWS and the DEP have confirmed that no known populations of Federal or State Endangered, Threatened or Special Concern Species occur at the site. (Cellco 1, p. 15, Tab 11).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the proposed facility, Connecticut General Statutes § 16-50p requires that the Applicant demonstrate why these impacts “are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts associated with the proposal would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application.

As discussed above, the only potential adverse impact from the proposed towers involves “scenic values.” As the record overwhelmingly demonstrates, both of the proposed towers would

have minimal impacts on scenic values in the area. (Cellco 1, pp. 14-15, Tab 10). These limited aesthetic impacts may be, and in this case are, outweighed by the public benefit derived from the establishment of this facility. Unlike many other types of development, telecommunications facilities do not cause indirect environmental impacts, such as increased traffic and related pollution.

The limited aesthetic and environmental impacts of the proposed facility can be further mitigated by the sharing of the facility. The proposed facility is capable of supporting additional carriers. To date, in addition to Cellco, AT&T has expressed an interest in sharing the Washington North Facility. (AT&T 1; 7/10/07 Tr. pp. 77-87).

In sum, the potential environmental impacts from the proposed facility would be minimal when balanced against the significant benefits the facility would provide to the public. These impacts do not provide a sufficient basis to deny the Application. The proposed Washington North Facility, therefore, satisfies the criteria for a Certificate pursuant to Connecticut General Statutes § 16-50p, and the Applicant's request for a Certificate should be granted.

IV. CONCLUSION

Based on the unrefuted evidence contained in the record and the arguments presented above, Cellco has satisfied the criteria in Connecticut General Statutes Section 16-50p. Accordingly, the issuance of a Certificate to the Applicant is appropriate and fully consistent with the Act.

Respectfully submitted,
CELLCO PARTNERSHIP D/B/A VERIZON
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CERTIFICATION

This is to certify that on this 9th day of August 2007, a copy of the foregoing was mailed, postage prepaid, to the following:

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