

**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 1 DEERFIELD LANE,
ANSONIA, CONNECTICUT

DOCKET NO. 340

Date: OCTOBER 18, 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 (hereinafter “Optasite”) and Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., d/b/a T-Mobile (hereinafter “T-Mobile”) (collectively 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 the 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 June 5, 2007 for a Certificate of Environmental Compatibility and Public Need ("Certificate").

Co-Applicant Optasite proposes to construct a 180-foot steel monopole¹ telecommunications facility in the central-western portion of a 16 acre parcel of land owned by Macabee Properties, LLC located at 1 Deerfield Lane, Assessors Map 100, Block 2 of the Ansonia Tax Assessor's Records (the "Site" or "Property"). The Site is currently developed with a horse boarding and riding facility and associated accessory structures. In addition, the Site contains an apartment building with four residential apartments. The 45-foot by 75-foot leased area will include a 43-foot by 73-foot fenced compound area at the Site ("Facility"). This Facility will be designed to accommodate the antenna arrays and associated equipment of T-Mobile and the equipment of five (5) other telecommunications carriers. Cellco Partnership d/b/a Verizon Wireless has expressed an interest in co-locating on the Facility. See Verizon Wireless Exhibit 1.

The purpose of this Facility is to provide wireless telecommunications services to Ansonia/Woodbridge, including along Peck Hill Road, Route 313 and surrounding areas. See Pre-filed Testimony of Scott Heffernan. T-Mobile currently experiences significant gaps in coverage and inadequate coverage in the area. A Facility at the Site will provide wireless coverage service to this area which currently suffers from inadequate coverage. Id.

¹ The Co-Applicants submitted the Application for a 180-foot monopole with Co-Applicant T-Mobile co-locating at 177 feet AGL. During the hearing, T-Mobile testified that it could co-locate at 167 feet AGL. In addition, intervenor Cellco Partnership d/b/a Verizon Wireless testified that it could co-locate at 157 feet AGL so long as it was able to install either a full antenna platform or a t-arm antenna array. (3:00 Tr. at 84).

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

A. T-Mobile's Need

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. See Co-Applicants' Exhibit 1 ("App.") at Exhibit G.

There are no other telecommunications facilities in this area of Ansonia/Woodbridge and no utility structures or other suitably tall structures on which to locate a telecommunications facility. T-Mobile has established that it is currently experiencing significant coverage gaps and capacity problems along Peck Hill Road, Route 313 and the surrounding area which result in inadequate coverage in this area. These communications issues can be alleviated with the construction of this Facility, which will provide benefits for both the residents and businesses in Ansonia and Woodbridge. A Facility at the proposed Site will alleviate that inadequacy. In particular, the Mayor of Ansonia noted that there are four schools within the area of the proposed Facility that currently experience inadequate wireless communications coverage and emergency services coverage. In the event of an emergency, adequate and reliable wireless and emergency services are vital in these schools. The proposed Facility will provide those services.

B. Need of Other Providers

In addition to the need clearly established by T-Mobile, Verizon Wireless has intervened and expressed its need to co-locate on the proposed Facility. Verizon Exhibit 1; 3:00 Tr. at 78. Verizon Wireless has indicated that at a height of 157 feet AGL on the proposed Facility with either a full antenna platform or t-arm antenna installation, it can fill its existing coverage gaps in the area. 3:00 Tr. at 78. The City of Ansonia has also expressed its interest in locating emergency equipment on the proposed Facility. 3:00 Tr. at 38. In addition, the Town of Woodbridge's Police Department has expressed its interest in locating its emergency equipment on the proposed Facility. Id. Clearly, the provision of reliable emergency services is important for the community and residents of this area of Ansonia/Woodbridge and is filling a vital public need.

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: J (Wetlands Impact Analysis), K (Visual Resource Evaluation), Exhibit L (Phase I Environmental Site Assessment), Exhibit M (DEP and SHPO Correspondence), Exhibit P (FAA Determination) and Exhibit 1 to Pre-Filed Testimony of Michael Libertine (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 200 feet of the Site; neither the access nor the compound area is located within any wetlands or designated upland area; no direct or indirect impact on wetlands or watercourses (See Exhibit J);
- ii. No species of concern exist on the Site (Exhibit 1 to Pre-Filed Testimony of Michael Libertine);
- iii. The Site is not located in a designated wilderness or wildlife preserve area (Exhibit 1 to Pre-Filed Testimony of Michael Libertine);

- iv. No listed species or designate critical habitats occur on or near the Site. (Exhibit M; Exhibit 1 to Pre-Filed Testimony of Michael Libertine);
- v. According to the State Historic Preservation Office, there will be no adverse impact on cultural resources, including historic areas (Exhibit M; Exhibit 1 to Pre-Filed Testimony of Michael Libertine);
- vi. The Site is not located on lands belonging to any federally recognized Indian tribe in Connecticut (Exhibit 1 to Pre-Filed Testimony of Michael Libertine);
- vii. The Facility will be located outside of the 100 year flood zone; (Exhibit 1 to Pre-Filed Testimony of Michael Libertine); and
- viii. The tower will not be lit (Exhibit P).

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. The topography in the vicinity of the Property will significantly limit the visual impact of the Facility. In addition, the extensive vegetation and size of the Property will serve to further reduce any potential visual impact on residential areas.

Views of the Facility are expected to be limited to primarily within 0.5 miles of the Facility and will occur largely on the Property itself. The proposed Facility will be visible from only 14 acres within a two-mile radius of the proposed Facility, which is less than 1% of the study area. Of note, there will be no visibility from any scenic roads or areas, state parks or cultural or recreational receptors. The proposed Facility will have minimal visual impact on the Ansonia Nature and Recreation Center. In addition, the Co-Applicants testified that the location of the Facility on the

Property was specifically chosen in order to balance the potential visual impact to the Ansonia Nature and Recreation Center as well as the surrounding residential areas.

The proposed Facility will be visible from approximately seven (7) residences year-round and an additional eight (8) residences will experience limited seasonal views of the Facility.

As the foregoing demonstrates, any environmental impacts associated with the Facility will be extremely limited. Further, the Facility will eliminate the need for additional facilities in this area of Ansonia, thereby reducing the cumulative environmental impact on the Town 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 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, 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 this docket that approval of the Facility in this area of Ansonia is necessary to provide adequate wireless coverage. The Co-Applicants have demonstrated that utilization of the Property provides the best location for a Facility in this area of Ansonia. This Facility is the optimal solution for the lack of coverage in this area, with the least amount of environmental impact. In addition, the proposed Facility will provide a unique co-location opportunity – allowing co-location for T-Mobile, Verizon Wireless, and 4 other carriers, but also both the City of Ansonia and Town of Woodbridge. As such, the Co-Applicants, Optasite and T-Mobile respectfully urge the Council to issue a Certificate for the proposed Facility.

**OPTASITE TOWERS LLC AND
OMNIPOINT COMMUNICATIONS, INC.**

By: 
Attorneys for the Applicants
Julie D. Kohler, Esq.
jkohler@cohenandwolf.com
Carrie L. Larson, Esq.
clarson@cohenandwolf.com
Cohen and Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604
Tel. (203) 368-0211
Fax (203) 394-9901

CERTIFICATE OF SERVICE

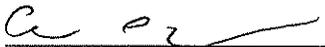
I hereby certify that on this day a copy of the foregoing was delivered by regular mail, postage prepaid, to all parties and intervenors of record.

Keith A. Russo
Osborne Lane Associates, LLC.
c/o The Fieber Group
47 Elm Street
New Canaan, CT 06840

Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Gennaro Savino
128 Ford Road
Woodbridge, CT 06525

Brian Freeman
5 Hampton Trail
Wallingford, CT 06492


Carrie L. Larson, Esq.