

CONNECTICUT SITING COUNCIL
DOCKET NO. 341

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
AT 174 ASHFORD CENTER ROAD, ASHFORD, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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October 29, 2007

POST-HEARING BRIEF

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I. INTRODUCTION

On June 8, 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 174 Ashford Center Road in the Town of Ashford (“Town”) (Cellco Exhibit 1 (“Cellco 1”). The so-called “Ashford North Facility” would provide for much needed coverage along the heavily-traveled Routes 44 and 89 in Ashford. (Cellco 1, pp. 1-2). Cellco’s network currently experiences significant coverage gaps, at both cellular and PCS frequencies in the areas between Cellco’s existing Ashford West and Ashford cell sites. (Cellco 1, p. 6, Tab 6). These coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted, and reliable wireless telecommunications coverage within its service area consistent with its Federal Communications Commission (“FCC”) license and the demands of its wireless telecommunications users. (Cellco 1, p. 7).

The proposed Ashford North cell site (the “Site”) would consist of a 70’ x 70’ fenced compound within a 100’ x 100’ leased area in the southerly portion of an approximately 1.96-acre parcel owned by P&G Realty, LLC at 174 Ashford Center Road (the “Property”). (Cellco 1, p. 2). As proposed, the 120-foot monopole tower would be capable of supporting antennas for additional carriers and the Town. (Cellco 1, p. 2).

The Council conducted a public hearing on the Application on September 27, 2007. (Transcript (“Tr.”) (afternoon) p. 3). Prior to the afternoon session of the hearing, the Council and

its staff visited the Site. At the Council's request, Cellco caused a balloon to be flown during the site visit at the proposed tower height. (Cellco 1, p. 14; Tr. (afternoon) p. 11).

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. (evening) pp. 5-6). 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

Cellco conducted a search for an appropriate location for a facility to resolve significant coverage problems along Routes 44 and 89, as well as local roadways in the south-central portion of Ashford. Cellco's existing Ashford and Ashford West facilities cannot satisfy Cellco's coverage objectives in this area. (Cellco 1, p. 7, Tab 6). In an effort to avoid the unnecessary proliferation of towers, Cellco investigated the use of an existing National Grid tower off Knowlton Hill Road in Ashford. (Cellco 1, p. 10, Tab 8). This existing tower was rejected because, even with antennas at the highest available height, the tower would not satisfy Cellco's coverage objectives in the Ashford North target area. (Cellco 1, pp. 9-10, Tab 8). 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 where the visual impact of the site would be reduced to the greatest extent possible. (Cellco 1, Tab 9).

B. Local Contacts

On March 2, 2007, Cellco representatives met with Ralph Fletcher, First Selectman for the Town, to discuss its plans for the development of the Ashford North Facility. Cellco provided the

Town with copies of certain technical information summarizing its plans for the proposed facility. (Cellco 1, p. 19; Cellco 1.d.).

By letter dated September 10, 2007, the Town, through the First Selectman, informed the Council that it was interested in installing emergency service antennas on the proposed tower. Cellco has agreed to make space available on the tower and within the site compound to the Town at no charge. (Tr. (afternoon) pp. 15-18 and 33).

C. Tower Sharing

Consistent with its practice, Cellco regularly explores opportunities to share its facilities with other wireless service providers. Cellco has designed the 120-foot tower so that it could be shared by other carriers. To date, no other carrier has expressed an interest in sharing the Ashford North Facility. (Cellco 1, p. 11). As mentioned above, Cellco would also make space on its tower available to the Town's emergency service providers. (Cellco 1, p. 11; Tr. (afternoon) pp. 15-18 and 33).

D. The Ashford North Proposal

The Ashford North Facility would consist of a 70' x 70' fenced compound within a 100' x 100' leased area located in the southerly portion of the approximately 1.96-acre Property. (Cellco 1, Tab 1 p.1). At the Site, Cellco would construct a 120-foot self-supporting tower. (Cellco 1, p. 2, Tab 1 p. 1). Cellco would install a total of twelve (12) antennas (six cellular and six PCS) on T-arms. (Cellco 1, pp. 2, 11, Tab 1, p. 1). Equipment associated with the antenna would be housed in a 12' x 30' equipment shelter located near the base of the tower. (Cellco 1, p. 2). The equipment shelter would maintain a pitched roof and clapboard-like siding. (Cellco 1, p. 2). The Site will be surrounded by a significant landscaped buffer to screen views into the compound. (Cellco 1, Tab 1; Tr. (afternoon) pp. 22-24). Vehicular access to the Site would extend from Ashford Center Road

over existing paved and gravel parking areas on the Property. (Cellco 1, Tab 1 p. 1). Utility service would extend from existing service along Ashford Center Road. (Cellco 1, Tab 1 p. 1).

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 Ashford 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. 5-6). More recently, the Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. (Cellco 1, pp. 5-6). Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. (Cellco 1, pp. 5-6). 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. (Cellco 1, pp. 5-6). The Council took administrative notice of the Telecommunications Act. (Council Adm. Notice 7).

The record contains ample, written evidence and testimony that a 120-foot tower at the Property would allow Cellco to achieve and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. (Cellco 1, p. 7).

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 the Site has eliminated, to the extent possible, impacts on the natural environment at the Property. For example, Cellco proposes to construct a 120-foot tower on a vacant and cleared portion of the Property. The proposed equipment shelter will maintain a pitched roof and clapboard-like siding. The Facility compound will be surrounded by a significant landscaped buffer to screen cell site equipment. (Cellco 1, Tab 1). In addition, Cellco will utilize the existing driveway and parking area at the Property for access to the Site. (Cellco 1 p. 2, Tab 1). Development of the Site would require no tree clearing and minimal grading of the 70' x 70' fenced compound. (Cellco 1, Tab 1 p. 5; Cellco 4, Response ("Resp.") Nos. 12 and 13). Overall, the limited construction activity at the Site would have a negligible environmental impact on the Property.

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.

First, the potential for the proposed tower to fall does not pose an unreasonable risk to health and safety. The proposed tower would be designed and built to meet Electronic Industries Association ("EIA") standards. (Cellco 1, Tab 1 p. 6). Nonetheless, the record provides a basis for analysis utilizing the "worst-case" fall zone of the structure (i.e., using a radius equal to the entire height of the tower). The "worst-case" fall zone at the Site would remain entirely within the Property to the north, south and east, and would cross the boundary to the west onto adjacent land of the owner of the Property. (Cellco 1, Tab 1 – Abutters Map Sheet S-2). The tower could be designed with a pre-engineered fault to eliminate concerns for the fall zone extending onto adjacent

properties. (Tr. (afternoon) p. 15). The nearest residential structure is located on the Gardner property approximately 418 feet to the southeast of the Ashford North Facility. (Cellco 1, p. 13; Tr. (afternoon) p. 9).

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 the tower) would be 11.34% of the FCC standard. Power density levels would drop off rapidly as distance from the tower increases. (Cellco 1, p. 15, Tab 1 p. 8).

3. Scenic Values

As noted in the Application, the primary impact of any tower is visual. Cellco’s site search methodology, described in the Site Search Summary (Cellco 1, Tab 8), is designed in large part to minimize such visual impact. As discussed above, wherever feasible, Cellco avoids construction of a new tower by first attempting to identify existing towers or other tall non-tower structures in or near the search area. (See Cellco 1, Tab 8). Cellco already has antennas located on many of the towers in the immediate area. (Cellco 1, pp. 9-10, Tab 6 and Tab 8). Each of the other tall structures investigated in or near the Ashford North Facility was rejected because the structure could not support Cellco equipment; the structure was not tall enough; or the property could not accommodate Cellco’s equipment shelter. (Cellco 1, pp. 9-11, Tab 8).

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. (Cellco 1, pp. 12-13).

The Ashford North Facility is located approximately 418 feet northwest of the nearest residential structure. (Cellco 1, p. 13; Tr. (afternoon) p. 9). The visual impact of the tower from surrounding residential areas is significantly reduced or entirely eliminated by (1) changes in the

topography of the area; (2) screening provided by surrounding trees; (3) by the design and location of the tower; and (4) a significant landscaped buffer surrounding the tower compound. (Cellco 1, pp. 12-13, Tab 1 and Tab 9).

As the record indicates, the location of the proposed tower has allowed Cellco to propose a structure 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, Tab 1 and Tab 9).

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 Site and provide a written response. (Cellco 1, Tab 10). 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 Site would have “no effect” on historic, architectural, archaeological or cultural resources. (Cellco 1, Tab 10). Furthermore, 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.

5. Recreational Values

There are no recreational activities or facilities at the Property that would be impacted by development of the Site. (Cellco 1, Tab 1, pp. 4-5, Tab 9). The tower is not expected to be visible from the Natchaug State Forest or from the Natchaug Trail. Views of the tower are confined to those areas within 1/10 of a mile to the north and northeast of the tower site. (Cellco 1, Tab 9).

6. Forests and Parks

Portions of the Natchaug State Forest are located within two-miles of the Property. As discussed above, the Ashford North Facility will not be visible from the State Forest and will have little, if any, impact on these areas. (Cellco 1, Tab 1, pp. 4-5, Tab 9).

7. Air and Water Quality

a. Air Quality. The equipment at the Site would generate no air emissions under normal operating conditions. (Cellco 1, Tab 1, 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).

b. Water Quality. The proposed Ashford North Facility would not utilize water, nor discharge substances into any surface water, groundwater, or public sewage system. There are no lakes, ponds, rivers, streams, wetlands or other regulated water bodies located at the Site. Thus, the proposed facility would not impact local water quality. (Cellco 1, Tab 1, p. 7).

Cellco proposes to install an emergency back-up generator within the equipment building for use during power outages. A diesel fuel “belly” tank would be installed as an integral part of the generator unit. (Cellco 1, pp. 11 and 16). To avoid the potential for impact to area ground and surface waters, the proposed tank would be double-walled and the equipment shelter would include

a containment system capable of containing up to one and a half times the fuel capacity of the generator. (Cellco 1, p. 16).

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. 14, Tab 10).

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 from the Site 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 Site involves “scenic values.” As the record overwhelmingly demonstrates, the proposed Site would have minimal impacts on scenic values in the area. (Cellco 1, pp. 12-13, Tab 9). 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.

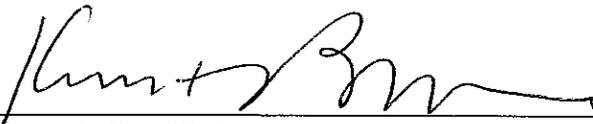
In sum, the potential environmental impacts from the proposed facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the Application. The Site, therefore, satisfies the criteria for a Certificate pursuant to Connecticut General Statutes § 16-50p, and the Applicant's request for a Certificate should be granted.

IV. CONCLUSION

Based on the 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
WIRELESS

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