

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

In Re: Application of New Cingular Wireless : Docket No. 373  
PCS, LLC (AT&T) for a Certificate of Environmental :  
Compatibility and Public Need for the Construction :  
Maintenance and Operation of a Telecommunications :  
Tower Facility at St. Matthew Lutheran Church at :  
224 Lovely Street in the Town of Avon : AUGUST 21, 2009

TOWN OF AVON POST-HEARING BRIEF REGARDING AT&T'S APPLICATION FOR  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

The Town of Avon ("Avon" or "Town") respectfully submits this post-hearing brief in support of its position that the Council approve a freestanding stealth steeple structure should it determine that the applicant has adequately demonstrated public need for a telecommunications facility at the St. Matthew Lutheran Church location. There is ample evidence in the record, including AT&T's late-filed exhibits, supporting the feasibility of a freestanding stealth steeple on the church premises. Moreover, based on hearing testimony and other evidence in the record, it is also clear that the Town and many of its residents—in particular those neighbors and nearby residents who would have views of the proposed facility—prefer a freestanding stealth steeple design to any of the other designs proposed by AT&T. As discussed in this brief, the freestanding steeple design addresses many of the Town's concerns and is the Town's preferred alternative for a telecommunications facility at the proposed location in a residential neighborhood.

## DISCUSSION

On or about January 9, 2009, the applicant New Cingular Wireless PCS, LLC (“AT&T”) filed an application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance and operation of a telecommunications tower facility at St. Matthew Lutheran Church at 224 Lovely Street in Avon, Connecticut (the “Application”). In its Application, AT&T proposed to construct a 100-foot tall self-supporting monopole within a 49’ x 49’ fenced equipment compound. The compound would be enclosed by a stockade security fence and would accommodate AT&T’s equipment cabinets and the equipment of two other wireless carriers (the “Proposed Facility”). AT&T Exhibit 1. Youghiogheny Communications-Northeast, LLC (“Pocket Wireless”) subsequently intervened in the proceedings and expressed interest in co-locating on a facility constructed at the church location.

By way of context, the proposed site is an approximately 5.25 acre parcel in an R-30 residential zoning district. AT&T Exhibit 1. The site is already developed with a church, a shed, a fenced in playground, parking areas, and a parsonage, which is used for residential purposes. There are approximately 39 residences within 1,000 feet of the proposed site. AT&T Exhibit 3. The nearest property owner to the site is approximately 189 feet from the tower site and the nearest residence, excluding the parsonage, is located approximately 238 feet from the site. Id. The facility’s proposed location is identified as “Option 1” on AT&T’s Revised Locus Plan. See Attachment 1 to AT&T’s Late Filed Exhibit, dated August 4, 2009. “Option 1” is located adjacent to the church’s parking lot on the south side of the parcel. One

proposed on site alternative, so-called "Option 2," is located near the center rear of the property. See Id. A third option is located in an area described at the public hearings as the "sand pit" and depicted as "Option 3." See Id.

Pursuant to Conn. Gen. Stat. § 16-50gg, on or about March 11, 2009, the Town submitted its location preferences and siting criteria as part of this proceeding. Avon Exhibit 1 (the "Town Criteria"). As set forth in this submittal, the Town identified its concerns with the Proposed Facility and provided, for the Council's consideration, the relevant criteria set forth in the Town of Avon's Zoning Regulations ("Regulations"). Additionally, the Town Criteria outlined the Town's preferences regarding the design of the facility, should it be determined by the Council that it is necessary to locate a facility at the church location.

As expressed in the Town Criteria, among the Town's chief concerns is that the visual impact of the facility, as proposed, will have an adverse and detrimental affect on the surrounding residential properties resulting in diminished property values and quality of life for nearby residents. Avon Exhibit 1; see also Wiese Exs. 1 & 2. In the Town Criteria, through pre-filed testimony of Steven Kushner, the Director of Planning and Community Development for the Town of Avon, and through testimony of Mr. Kushner at the public hearing on March 31, 2009 and July 7, 2009, the Town has expressed its position that (i) the Proposed Facility conflicts with the residential character of the neighborhood and (ii) that the Proposed Facility is not compatible with the Town's Special Exception Criteria, which are set forth in Section VIII of the Regulations. Avon Exhibit 1; Exhibit 3.

These Special Exception Criteria apply when the Avon Planning & Zoning Commission's ("P&ZC") reviews land uses that are not specifically allowed under the Regulations. New telecommunications towers are not allowed in a residential area under Avon's Regulations and if the P&ZC were reviewing this application, it would apply the Special Exception Criteria. These criteria are designed to both protect the essential characteristics of an area while allowing a more intensive use of property. As explained in Mr. Kushner's pre-filed testimony and public hearing testimony, the Proposed Facility is not consistent with the Special Exception Criteria because, among other things, the visual intrusion of the Proposed Facility has not been reduced to the maximum extent possible. As set forth in Mr. Kushner's pre-filed testimony, Mr. Kushner explained:

The proposed tower and compound is likely to be highly visible to residents of Greenwood Drive and the surrounding neighborhood and there are no plans to mitigate the visual intrusion of the tower and compound in the Application. The proposed tower is approximately 40 feet [taller] than the existing church steeple and 40-60 feet [taller] than any tree in the area, many of which are aging and may need replacement. The compound, which is located near Greenwood Drive, has greater than a 2400 sq. ft. footprint. Because the Application does not provide for any visual mitigation plan or landscaping and screening plans for either the tower or the compound, the Application does not meet the minimum criteria.

The Application also fails to discuss any of the Special Exception criteria, including the suitability of the location for the use proposed, appropriateness of the structure in context of the adjoining neighborhood, compatibility of the design in light of the characteristics of the style of buildings in the immediate area, and that the proposed structure will not have any detrimental effects upon the public health, safety, welfare, or property. The [P]roposed Facility does not meet these criteria. In particular, the freestanding monopole design (including its height and size of the compound) is not in harmony with the primarily residential use of the area. The essential characteristics of the area are residential. The failure of the Facility's design to incorporate any of these characteristics will alter the area's residential characteristics. The facility, as proposed, may therefore diminish the value of neighboring properties on account of the failure of

the Facility's design to incorporate the area's residential characteristics and on account of the Applicant's failure to offer any visual mitigation and landscaping and screening plans.

Avon Exhibit 3 at pp. 5-6.

While the Proposed Facility does not meet Town Criteria, a steeple structure, either incorporated into the existing church building or a freestanding steeple design, would significantly improve the facility's incorporation into the residential neighborhood. Indeed, as a result of dialogue and at the request of the Council at the public hearings, AT&T submitted late filed exhibits illustrating a feasible freestanding steeple design. See Attachment 3 to AT&T's Late Filed Exhibit, dated August 4, 2009. At the public hearings, AT&T's panel of witnesses indicated that construction of a freestanding steeple structure was feasible at the site and could be located at either Option 1 or Option 2. Additionally, at the public hearing intervenor Pocket Wireless indicated it would be willing to co-locate on a freestanding steeple structure at the site. With respect to location at the site, at the public hearings, the church indicated a preference for Option 1 so that it could preserve its ability to expand its building, while neighbors on Greenwood Drive indicated a preference for Option 2. The Town respectfully leaves this issue to the discretion of the Council in balancing the needs of the Applicant, church, and intervening parties.

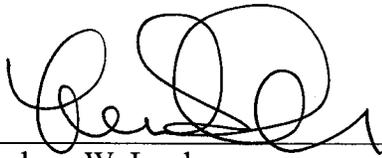
As expressed by Mr. Kushner, the freestanding steeple design would be more compatible with the characteristics of the style of buildings in the immediate area and lessen the impact of a tower on property values. Avon Exhibit 3; see also Wiese Exs. 1 & 2. Moreover, it is the Town's conclusion that a steeple design would improve the visual impact

on the Town's scenic resources. See Attachments 2 and 4 to AT&T's Late Filed Exhibit, dated August 4, 2009 and amendment to Attachment 4, dated August 12, 2009. While the Town would prefer limiting the overall height of a freestanding steeple to 100 feet rather than 120 feet, as depicted in AT&T's late-filed exhibit, the Town would support the additional height if necessary to implement this preferred design. The Town further requests that all equipment is located within the base of the steeple structure or underground. Finally, irrespective of the design of the facility, should the Council grant AT&T a Certificate, the Town requests that Council require AT&T to submit a Development and Management Plan and allow the Town to provide comments to Council staff regarding such detailed plans.

Respectfully Submitted,

THE TOWN OF AVON

By: \_\_\_\_\_

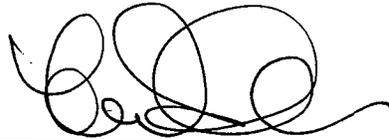
  
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, on this  
21<sup>st</sup> day of August, 2009 to:

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