



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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August 17, 2009

TO: Parties & Intervenors

FROM: S. Derek Phelps, Executive Director

RE: **DOCKET NO. 376** - New Cingular Wireless PCS, LLC (AT&T) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 24 Dinglebrook Lane, Newtown, Connecticut.

The Connecticut Siting Council (Council) intends to take administrative notice of the following item in the Docket No. 376 proceeding, assuming that there is no objection from parties and intervenors:

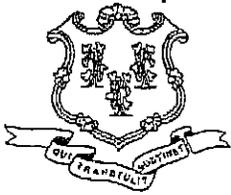
- Connecticut Department of Environmental Protection letter dated August 10, 2009

If any party or intervenor in this proceeding objects to the Council taking administrative notice of the above-noted document, please file your objection in writing no later than August 25, 2009.

Thank you for your cooperation.

SDP/MP

Enclosure: Connecticut Department of Environmental Protection letter dated August 10, 2009



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



August 10, 2009

Christopher B. Fisher
Cuddy & Feder
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601

RECEIVED
AUG 13 2009
CONNECTICUT
SITING COUNCIL

Re: Development of Wireless Telecommunication Tower Facilities
State Forests and Parks

Dear Mr. Fisher:

This letter is in response to your letter dated June 4, 2009 and sent to me on behalf of your client New Cingular Wireless PCS, LLP ("AT&T"). Your letter requests "written confirmation of DEP's interpretation of State law as it relates to the leasing of state forest and park properties for purposes of developing wireless communications tower facilities by entities like AT&T."

I can confirm that it is DEP's interpretation of the statutes, and our policy that state park and forest lands not be leased for the purpose of developing wireless communications tower facilities.

As you may know, the Department of Environmental Protection is the State of Connecticut agency responsible for the acquisition of lands for the beneficial use and enjoyment of the public, and protection of the state's valuable natural resources. Open space land is purchased as additions to the State's system of parks, forests, wildlife, fisheries and natural resource management areas. The DEP acquires land that represents the ecological diversity of Connecticut, including natural features such as rivers, mountainous areas, coastal systems and other natural areas, in order to ensure the conservation of such land for recreational, scientific, educational, cultural and aesthetic purposes. Development of these lands for communications tower facilities with access driveways, necessary ancillary maintenance buildings, and secured fall zones is inconsistent with the purpose for which these lands have been acquired.

Your letter cited two Connecticut Statutes; CGS Sec. 23-25, and Sec. 26-3b. You correctly point out in your letter that CGS 23-25 permits, in certain circumstances, the Commissioner to grant leases for public purposes "to any public authority" for any portion of any state forest or state park if said commissioner finds that "such purposes are not in conflict with park or forest purposes." Our understanding of this statute is that it does not apply to your situation because your client, AT&T, is not a public authority, and therefore does not meet the basic criteria established by the statute. Furthermore, as stated above, wireless communication tower facilities do conflict with park and forest purposes.

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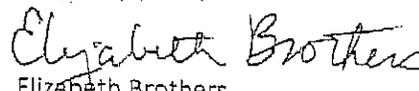
Christopher B. Fisher

The second law you referenced, CGS Sec. 26-3b, does give the Commissioner of Environmental Protection the authority, subject to the approval of the State Properties Review Board, to rent property in its custody or control when he deems "that it would be in the interest of the state." In addition, CGS Sec. 26-3 states "said commissioner may, with the approval of the Attorney General, grant rights-of-way or other easements.....if said commissioner finds that such purposes are not in conflict with the public interest..." These statutes allow the Commissioner, along with the State Properties Review Board and the Attorney General's office, discretion in determining if there is a public benefit to be derived by granting an easement and if such a grant would conflict with the current use or protection of the property. Again, the development of state lands with communication towers does conflict with the purposes for which these lands have been acquired, therefore it is unlikely that the Commissioner of Environmental Protection would approve such an easement.

Finally, the DEP does have a Directive concerning the development of state land for communication towers. The directive was published June 9, 1992, and is entitled "Communications Towers - Land Use - DEP Properties." The directive states that "The principal goals in the management of Connecticut's properties which are under the direct control of the Department of Environmental Protection is to protect and preserve special examples of Connecticut's landscape, to provide public access and recreational opportunities compatible with the preservation goal and/or to develop and maintain a healthy forest cover from a multiple use standpoint. As such, only those uses which are compatible with these goals should be allowed." The Directive goes on to state that some radio towers within state property may be required and that five radio tower sites currently exist on state property and that these sites may be available for occupancy. A copy of this directive is attached for your convenience. The procedure for requesting space on those towers is outlined in the directive as well.

I hope this provides some assistance in clarifying the DEP's position concerning development of communication tower facilities on state land. If you have any additional questions or we can be of further assistance, please feel free to contact me directly at 860-424-3086 or via email to elizabeth.brothers@ct.gov.

Very truly yours,


Elizabeth Brothers
Assistant Director

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input checked="" type="checkbox"/> U.S. Mail	New Cingular Wireless PCS, LLC (AT&T)	Christopher B. Fisher, Esq. Cuddy & Feder LLP 445 Hamilton Avenue, 14 th Floor White Plains, NY 10601 (914) 761-1300 (914) 761-5372 fax cfisher@cuddyfeder.com AT&T 500 Enterprise Drive Rocky Hill, CT 06067 Attention: Michele Briggs (860) 513-7700 (860) 513-7190 - fax Michele.g.briggs@att.com
Intervenor (granted on 04/07/09)	<input checked="" type="checkbox"/> E-mail	Cellco Partnership d/b/a Verizon Wireless	Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8200 (860) 275-8299 fax kbaldwin@rc.com