

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR  
WIRELESS 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 8 BARNES ROAD IN  
THE TOWN OF CANAAN (FALLS VILLAGE)

DOCKET NO. 409

July 14, 2011

NEW CINGULAR WIRELESS PCS, LLC ("AT&T")  
POST HEARING BRIEF

Respectfully Submitted,

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## PRELIMINARY STATEMENT

New Cingular Wireless PCS, LLC (“AT&T”), by its attorneys, Cuddy & Feder, LLP, respectfully submits this post hearing brief in support of its application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 409. AT&T’s Application addresses the public need for a new tower facility so that wireless carriers may provide their services to residents, travelers along State Routes 63 and 126 and U.S. Route 7 and local roads and areas in the Town of Canaan (Falls Village). Throughout the proceedings in this Docket, AT&T provided data, testimony and otherwise responded to matters raised by the Town and other parties to give the Council a full and complete picture of the public need for reliable service in this part of Falls Village, possible siting alternatives and the potential environmental effects associated with the proposed AT&T tower facility. The process revealed that a proposed tower at 8 Barnes Road is the only known viable location to meet the public’s need for service in this area of Falls Village. Further, that while there are some impacts associated with the proposed Facility, these impacts can be appropriately mitigated and more importantly, these impacts do not outweigh the demonstrated public need for the proposed Facility. As such, AT&T is requesting a Certificate for a new 150’ tower facility to meet the public need for wireless services in this part of Falls Village.

## STATEMENT OF FACTS

### I. AT&T's Need & Comprehensive Site Search

AT&T's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to access its wireless network. In this case, AT&T experiences a gap in coverage in Falls Village along Routes 7, 126 and 63 and local roads and areas. Thus, a site search area (#2413) was established by AT&T's RF engineers based on this documented gap in coverage. AT&T Ex. 1, pg.10, Tab 2. Indeed, AT&T's coverage gap in this area of Falls Village was further documented by drive-test data. AT&T Ex. 3, Response No.s 10 & 14.

AT&T began its search for sites by identifying all existing sites in Falls Village and surrounding towns as shown on the existing coverage map and list of neighboring sites included in the Application. AT&T Ex. 1, pg. 11, Tabs 1 & 2. AT&T also searched the Siting Council database to identify other existing or proposed wireless sites outside of its site search area. AT&T Ex. 1, pg.11. AT&T maintains facilities on all known surrounding wireless sites in close proximity to this site search area and other structures were analyzed and determined not to be viable alternatives for providing service to AT&T's identified coverage gap. Of note, AT&T proposes to use the approved Verizon tower in Falls Village located at the Falls Village Volunteer Fire Department at a later date to provide coverage to another area of Falls Village.

Id.

Once it was determined that a new tower facility was needed to provide coverage in this part of Falls Village, AT&T investigated numerous properties within the site search area, including locations suggested by the Town of Canaan Inland Wetlands/Conservation Commissions.

AT&T Ex. 1, pg. 12, Tab 2. As set forth in the Application itself, AT&T investigated a total of thirteen locations. Id.

All but one of these locations were rejected by AT&T due to the fact that none but the proposed site would provide adequate coverage. Id. As a result of its site search process AT&T was able to reach an agreement with the owners of the 8 Barnes Road location which became the proposed site in this proceeding. AT&T Ex. 1, pg. 12.

At the request of the Siting Council, AT&T also investigated a potential multiple site configuration to provide reliable service to the identified coverage gap. AT&T Ex. 8, Response No. 2. AT&T's RF engineers evaluated the area and identified locations where a potential multiple site configuration would provide service. Due to the terrain in this area of Falls Village, AT&T's RF engineers identified areas to the north and south as potential feasible locations for a multiple tower solution and provided this analysis to AT&T's real estate consultants. AT&T Ex. 9. AT&T's real estate consultants then identified specific parcels within these areas and contacted property owners to determine their willingness to lease space for a tower site. AT&T's RF engineers then analyzed specific potential two tower site scenarios using the specific parcels identified by AT&T's real estate consultants. AT&T Ex. 8, Response No. 2. AT&T's RF engineers confirmed that none of potential two tower configurations provided comparable coverage to that of the proposed Facility. In addition, the property to the north, which is a critical component of any of the two tower configurations, is not available as the property owner is not interested in leasing space for a tower site. Id., 6/16/11 Hr. Tr. pg.50. Consequently, the analysis showed that a multiple tower configuration is not a viable alternative to the proposed Facility at Barnes Road.

## II. AT&T's Technical Consultation with the Town of Canaan (Falls Village)

In October of 2009, AT&T filed a technical report with Falls Village which included specifics about the proposed site, the public need for the facility, the site selection process and the environmental effects of the proposed facility including a visual report. AT&T Ex. 1, pg. 23, See also, Technical Report bulk filed with Siting Council. The First Selectman coordinated a public information session with the Falls Village Board of Selectman, Planning & Zoning Commission, Inland Wetlands & Watercourses Commission and the Conservation Commission that was held on December 9, 2010. AT&T Ex. 1, pg.23. AT&T representatives attended the meeting, discussed the proposed facility and requested comments on any possible alternative sites or designs. Id. The municipal consultation did result in a few suggested alternative sites that were fully investigated by AT&T and none were determined feasible alternative locations. The results of AT&T's analyses were provided to the Town. AT&T Ex. 1, pgs. 23-24, Tab 10. Subsequent to the information session, AT&T conducted a Town noticed balloon float in February 2010. Id.

As part of its continued due diligence before Application filing, AT&T and its consultants developed and gathered more data in response to comments from the information session held on December 9, 2010. As a result of this additional analysis, AT&T determined that a relocation of the proposed Facility approximately 1,200 feet to the west and north of the tower site location identified in the Technical Report would provide a significant reduction in the length of the access drive as well as provide improved services to the coverage gap. AT&T Ex. 1, pg. 24. AT&T shared details of the proposed Facility relocation and design update with the Town in correspondence dated September 10, 2010. AT&T Ex. 1, Tab 10.

### III. AT&T's Certificate Application, Parties & Intervenors & Pre-Hearing Filings

On October 18, 2010, AT&T submitted its application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility at 8 Barnes Road. As set forth in the Application, the proposed facility would consist of a 150-foot tall monopole, antennas and associated equipment within a fenced equipment compound in the northwest portion of an assemblage of parcels located at 8 Barnes Road in Falls Village. AT&T's minimum required height at the site is 130' AGL and AT&T proposes a 150' tall facility to accommodate co-location by other carriers. AT&T Ex. 1, Tab 3. Thereafter, parties and intervenors admitted to the proceeding were Patty and Guy Rovezzi, The Falls Village Inland Wetlands/Conservation Commissions (IW/CC) and the Falls Village Planning & Zoning Commission. On January 11, 2011, AT&T submitted a "Leaf-Off" Visual Evaluation Report. AT&T submitted responses to Siting Council pre-hearing interrogatories on January 26, 2011. On February 10<sup>th</sup> & 11<sup>th</sup>, 2010, AT&T submitted responses to the Falls Village IW/CC pre-hearing interrogatories, which included eighty-one interrogatories and were received by AT&T less than one week before the deadline for submission of responses. A public hearing was scheduled by the Council for February 17, 2010.

### IV. Public Hearings and AT&T Supplemental Submissions

On February 17, 2011, AT&T raised a balloon at the site and the Siting Council conducted a viewing of surrounding properties. Given the weather conditions, a tour of the facility compound area was not feasible and as such, at that day's public hearing, a video of a site walk was viewed and submitted as part of the record. At the hearing, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the need for the facility, lack of alternative sites and any environmental effects associated with construction of a tower at the site.

After the public hearing evening session, the parties and intervenors cross-examined AT&T's witnesses.

Thereafter, the public hearing was adjourned to June 16, 2011. AT&T responded to requests for additional information by the Siting Council in a supplemental submission dated May 20, 2011. At the June 16, 2011 continued public hearing, the Siting Council heard additional testimony from AT&T's panel of witnesses on the need for the facility, lack of alternatives, including the lack of a multiple tower configuration and environmental effects of the proposed site.

The public hearing was closed on June 16, 2011 after all of the parties and intervenors were given a full and fair opportunity to present their direct cases and the Applicant rebutted same.

## POINT I

### **A PUBLIC NEED CLEARLY EXISTS FOR A NEW TOWER FACILITY IN FALLS VILLAGE**

Pursuant to Connecticut General Statutes (“CGS”) Section 16-50p, the Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need”. CGS § 16-50p(a)(1). In this Docket, AT&T provided coverage analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable wireless services to residents and the traveling public along Routes 63 and 126 and US Route 7 in Falls Village. Indeed, the application materials provided by AT&T fully demonstrate that a tower is needed in this area at a minimum height of 130’ AGL to provide reliable wireless telecommunications service to the public. AT&T Ex. 1, Tab 1; AT&T Ex. 3, Response No.s 10, 13, 14 & 15; 2/17/11 3pm Hr. Tr. pgs. 33-34. Moreover, AT&T’s evidence demonstrates that given the terrain in this area of Falls Village there are no viable multiple site configurations that would provide reliable service to the area where service is needed. AT&T Ex. 9, Response No. 2; 6/16/11 Hr. Tr. pgs. 20-22; 44-49.

Importantly, it should be noted that no competent evidence or testimony was offered by other parties or intervenors to rebut AT&T’s testimony on the subject of a public need for a new tower in this part of Falls Village. Indeed, none of the ninety (90) documents submitted by the IW/CC contained any empirical data or evidence regarding public need. A significant coverage gap exists in the AT&T network and radiates out to include lack of reliable in-vehicle and in-building service in a wide area of Falls Village in and around State Routes 63, 7, 126 and Under Mountain Road. AT&T Ex. 1, Tab 1; AT&T Ex. 3, Response No. 10. AT&T’s evidence in this Docket also clearly demonstrated that none of the suggested alternative sites, or any multiple site

configuration are viable options for providing reliable service where service is needed. AT&T Ex. 1, Tabs 2 & 10; AT&T Ex. 9, Response No. 2; 6/16/11 Hr. Tr., pgs. 35-45.

Based on the AT&T evidence, State knowledge of the existing wireless network infrastructure in this part of the State for all the carriers and the lack of any evidence to the contrary, AT&T submits that the public need for a new tower facility in this area of Falls Village to provide coverage where adequate and reliable coverage does not exist today is simply not an issue in this Docket.

## POINT II

### **THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE PROPERTIES OR VIABLE MULTIPLE SITE CONFIGURATIONS FOR SITING THE PROPOSED WIRELESS FACILITY**

AT&T submitted significant evidence that there are no existing structures, or other viable alternative properties, or any viable multiple site configurations for providing reliable service to this area of Falls Village. AT&T's search for sites included a comprehensive investigation of thirteen locations prior to the submission of its Application, which included the Verizon facility at the Falls Village Volunteer Fire Department property, an existing private lattice tower and existing water tanks. AT&T Ex.1, Tab 2; AT&T Ex. 8, Response No. 1. As demonstrated by AT&T's evidence and testimony, due to the terrain challenges in this area of Falls Village, many properties were not viable alternatives for radio frequency reasons. AT&T Ex.1, Tab 2; AT&T Ex. 4, Response No. 69; 6/16/11 Hr. Tr., pgs. 35-45.

AT&T demonstrated that co-location on the Verizon facility at the Falls Village Volunteer Fire Department location would not provide reliable service to the area where service is needed. Indeed, AT&T will co-locate on the Verizon facility to provide service to another area of Falls Village. AT&T Ex. 1, Tabs 1 & 2. AT&T also demonstrated through propagation plots and testimony that the alternative locations suggested by the IW/CC, including the Music Mountain location and the Century Aggregate site, are not viable alternative sites. AT&T Ex. 1 Tabs 2 & 10; AT&T Ex. 4, Response No. 69; 2/17/11 3pm Hr. Tr. pgs. 44-45. As detailed in its Application, as a result of further due diligence prior to its Application filing, AT&T relocated its proposed facility on host property approximately 1,200 feet to the west for improved service. AT&T Ex. 1, pg. 24, Tab 10.

At the request of the Siting Council at the February 17<sup>th</sup> evidentiary hearing, AT&T also investigated potential multiple site configurations. AT&T's evidence clearly showed that due to the terrain in this area of Falls Village and the unavailability of a property required for any multiple site configuration to serve this area that a multiple site configuration is simply not a feasible alternative. AT&T Ex. 8, Response No.2; 2/17/11 3pm Hr. Tr. pg.31. Through his testimony, Mr. Wells demonstrated that the radio frequency analysis of a multiple site configuration for this area of Falls Village resulted in two search areas – one area to the north and one area to the south. 6/16/11 Hr. Tr., pg 47. AT&T's evidence provided the results of the radio frequency analysis of a multiple site configuration which included three potential two site combinations. For all three combinations, a tower 190' in height at the Frueh Family Farm is required. AT&T Ex. 8, Response No. 2; AT&T Ex. 9. Mr. Vivian's testimony confirmed that the Frueh Family Farm property located in the north area is not available for a tower site. 6/16/11 Hr. Tr. pg. 50. Mr. Wells also confirmed that even if the two site configurations were available, none would provide comparable coverage as the proposed Barnes Road facility. AT&T's Ex. 8, Response No. 2, 6/16/11 Hr. Tr. pg. 47. In addition, a multiple site configuration, particularly with one tower of the configuration at 190' AGL, is incompatible with legislative purpose of avoiding the proliferation of towers when balancing the public need and environmental impacts.

It should be noted that no other viable alternative sites or multiple site configurations were offered by other parties or intervenors and that no other parties or intervenors presented any evidence to rebut AT&T's evidence that there are no other viable alternative sites.

Based on its comprehensive investigation of alternative sites and locations, including multiple site configurations, AT&T submits that there is simply no other viable alternative location for the siting of its needed tower facility.

### POINT III

#### **AT&T'S PROPOSED TOWER FACILITY AT BARNES ROAD PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Pursuant to CGS Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impact of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forest and parks, air and water purity and fish and wildlife. AT&T respectfully submits that while some impacts will be associated with the proposed facility, such impacts will have no significant environmental effects on the resources listed in Section 16-50p of the General Statutes and clearly do not outweigh the public need for the facility as proposed in this Docket.

##### 1. Potential Visual Effects

The record in this Docket demonstrates that the proposed tower facility at Barnes Road will have no significant visual impact. A resource listed on the National Register of Historic Places, the South Canaan Meeting House, is located approximately 0.5 mile from the proposed facility. The record indicates a small area of limited visibility from the rear portion of the South Canaan Meeting House property. AT&T Ex. 2. The State Historic Preservation Officer (SHPO) determined, however, that the proposed facility will “have no adverse effect on the defining characteristics of the National Register-listed building.”

At the June 16<sup>th</sup> hearing, it was confirmed that the photographs submitted by the IW/CC of views from the rear of the South Canaan Meeting House property taken on the day of the balloon float were “zoomed” views and as such, did not represent actual views. 6/16/11 Hr. Tr. pgs.167-169.

Given the SHPO determination and AT&T's visual evidence, it is respectfully submitted that the proposed facility will not have a significant visual impact to the South Canaan Meeting House.

Of the over 8,000 acre study area within a 2-mile radius of the tower, visibility will be limited to approximately 513 acres with the majority of visibility occurring over several of the low-lying swamps north and west of the proposed facility. With respect to residential visibility, a resource not specifically listed in CGS Section 16-50p, an estimated 19 residential properties may have at least partial year-round views of the proposed Facility and a majority of these residential properties currently have views of the existing Connecticut Light & Power overhead electricity utility infrastructure. AT&T Ex. 1, Tab 6; AT&T Ex. 2. Limited views are anticipated from select portions of Route 7, a designated State scenic road. AT&T's visual evidence demonstrates views are expected to be most prominent along the segment of Route 7 that abut the Robbins Swamp Wildlife Management Area with intermittent areas of visibility along portions of the roadway between Page Road and Under Mountain Road. Land uses along this segment of Route 7 include open space associated with Robbins Swamp Wildlife Management Area; several commercial land uses and agricultural/open fields with sparse residential development. AT&T Ex. 1, Tab 6; AT&T Ex. 8, Tab 2.

At the request of the Siting Council, AT&T also evaluated the potential visibility of twelve (12) prominent vistas/peaks as well as and portions of the Appalachian National Scenic Trail and Mohawk Trail located beyond the 2-mile radius study area. Many of these features are located beyond five miles from the proposed facility, a distance where in most cases, a telecommunications tower may not be discernable by the human eye. AT&T Ex. 8, Tab 2. Given

the distance from the proposed facility and intervening terrain, no views from any of these twelve features are anticipated. Id.

In order to reduce visibility of the structure, AT&T is willing to implement an appropriate design alternative to the standard monopole such as a brown or laminated pole with exterior flush mounted antennas ("brown stick"). As demonstrated in the record, a "monopine" or stealth "lookout/fire tower" would not be an appropriate camouflaging technique for the proposed facility given that the tower structure would be seen above the surrounding tree canopy. AT&T Ex. 8, Tab 2; 2/17/11 3pm Hr. Tr. pgs 26-27. With respect to external flush-mounted antennas, Mr. Wells testified that the proposed 150' height would accommodate the three levels required given that AT&T's minimum required height for non-flush mounted antennas is 130' AGL. 2/17/11 3pm Hr. Tr. pg. 27; 6/6/11 Hr. Tr. pgs. 63-64.

It should also be noted that AT&T's visual evidence and testimony clearly demonstrated that the visual information submitted by the IW/CC was not accurate. The record shows that the "viewshed" map submitted by the IW/CC grossly overestimated visibility as it was not field verified and noted visibility from several areas where field verification confirmed that there was no visibility. In addition, the claim by the IW/CC witness that a 2 mile radius visual study area is not sufficient is rebutted by AT&T's evidence demonstrating that visibility is not anticipated from visual receptors located over two miles from the proposed facility. AT&T Ex. 8, Tab 2.

It is respectfully submitted that AT&T's evidence and testimony in this proceeding demonstrates that visibility of the proposed facility will not result in a significant adverse visual impact.

## 2. Potential Impacts to the Natural Environment

As clearly established in this Docket, impacts to the natural environment from AT&T's proposed facility are not significant.

### a. Wetlands, Watercourses, and Floodplains

No wetlands were delineated on the proposed site or within 200 feet of the proposed development area. AT&T Ex 1, Tab 4; 2/17/11 3pm Hr. Tr. pg. 59. Accordingly, no impacts to wetlands are anticipated.

### b. Habitat Assessment and Wildlife

As demonstrated in the record, AT&T conducted a habitat evaluation and submitted the results to the Connecticut Department of Environmental Protection ("DEP") for review. Upon review of AT&T's habitat evaluation, in correspondence dated September 2, 2010, the DEP determined that there are "no known extant populations of Federal, State Endangered, Threatened or Special Concern Species that occur at the site." AT&T Ex. 1, Tab 8; AT&T Ex. 4 & Ex. 6; 6/16/11 Hr. Tr., pgs. 27-28; 2/17/11 3pm Hr. Tr. pgs. 63-64.

Despite the IW/CC's attempt to obtain a contrary determination from the DEP, the DEP confirmed its September 2, 2010 determination that there are "no known extant populations of Federal, State Endangered, Threatened or Special Concern Species that occur at the site" in correspondence to the IW/CC dated February 8, 2011. IW/CC Ex.77; 6/16/11 Hr. Tr. pg. 196.

AT&T also evaluated and determined that the closest Audubon Connecticut designated Important Bird Area is and Important Bird Site identified as Great Mountain Forest located approximately four miles east of the proposed site. AT&T Ex. 8, Response No. 11.

AT&T's evidence and testimony also demonstrates that the clearing associated with the proposed facility and access drive will result in little additional habitat fragmentation beyond the

existing habitat fragmentation that already exists with the existing access drive and hunting cabin. 2/17/11 3pm Hr. Tr. pgs 79-81.

Given AT&T's evaluations and the DEP determination, AT&T respectfully submits that the proposed facility will not significantly impact wildlife or any ecological balance in this area of Falls Village.

c. Clearing, Grading and Drainage Assessment

The proposed access drive includes the improvement of an existing logging trail. The access drive and tower compound will require grading and clearing. AT&T Ex.1, Tab 3.

Approximately 110 trees with a diameter at breast height of 6" or larger will be removed. The development of the proposed compound and access drive improvements will require approximately 370 cubic yards of cut and 4,200 cubic yards of fill. AT&T Ex. 8. AT&T's evidence includes a Drainage Calculation report which demonstrates that the design of all drainage improvements was performed in accordance with the ConnDOT Drainage Manual and meets the criteria specified therein. The access drive improvements include drainage swales to protect the access drive from washout, safely convey stormwater flows and protect outfall locations from erosion. AT&T Ex. 1, Tab 5, AT&T Ex. 8, Response No. 12; 6/16/11 Hr. Tr. pg. 33. As demonstrated in the access drive drainage system design, access drive stability will be achieved by diverting water into the swales, and the use of level spreaders at the swale outfall. In addition, a twelve inch layer of crushed rock will be utilized to establish a well packed and interlocked road surface. AT&T Ex. 3, Response No. 27.

AT&T's facility design will incorporate all appropriate sediment and erosion control measures in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Council of Soil and Water Conservation. AT&T Ex. 1, Tab 3; 2/17//1 3pm Hr. Tr. pg 82.

Given the measures to prevent erosion and control runoff in the drainage design, the distance of approximately 500 feet from the proposed access drive at its closest point to the Hollenbeck River and the fact that Route 63 is located between the proposed facility and the Hollenbeck River, AT&T respectfully submits that the improvements to the access drive for the proposed facility will not have a significant impact to the Hollenbeck River or any other surrounding areas. AT&T Ex. 1, Tab 5, AT&T Ex. 4, Response No. 37, AT&T Ex. 8.

In addition, AT&T respectfully submits that the evidence in this proceeding demonstrates that the proposed access drive improvements will allow safe vehicle access for maintenance of the facility given that the facility is unoccupied and will not present a significant safety risk for emergency purposes. AT&T Ex. 1, Tab 5, AT&T Ex. 8. With respect to construction activities and the proposed access drive, Mr. Vivian confirmed that all construction personnel are safety trained and certified and prior to construction, must have a safety plan in the event of an emergency. 6/16/11 Hr. Tr. pgs. 193-194. And, Mr. Perkins confirmed in his testimony that construction vehicles safely accessed an approved telecommunications site with similar grades in Woodbridge and that the Siting Council drove up the unimproved access road with 30% grades at the Woodbridge site. 6/16/11 Hr. Tr. pg. 121.

It is important to note that the parties and intervenors in this Docket did not provide any empirical data or evidence regarding drainage or runoff to rebut AT&T's evidence. Indeed, the IW/CC's submissions and comments from their witness, Mr. Calkins were based on the information contained in AT&T's October 2009 Technical Report, which did not include AT&T's drainage calculations or details of the drainage design. IW/CC Ex. 9A & 9B. As such, the IW/CC's witness' comments were not based on AT&T's drainage design. In addition, the record confirms that the information regarding drainage provided by the IW/CC's witness Mr.

Dziekan was not based on any calculations or supported by competent data. 6/16/11 Hr. Tr. pgs. 174-176.

AT&T respectfully submits that it established that the proposed improvements to the existing logging trail for the access drive will have no significant impact on the surrounding area and will allow for the safe access.

### 3. Other Environmental Considerations

There are no other relevant or disputed environmental factors for consideration by the Council in this Docket. The tower facility will comply with all public health and safety requirements. Additionally, since the facility is unmanned, there will be no impacts to traffic, air or water. As such, the Council should find and determine that the facility proposed by AT&T will not have any significant environmental effects that outweigh the demonstrated public need for the proposed facility.

## POINT IV

### **THE SITING COUNCIL IS NOT AUTHORIZED TO INTERPRET AT&T'S REAL PROPERTY RIGHTS**

The proposed access drive extends from Barnes Road along an existing access drive and logging trail that is benefited by a recorded perpetual easement and right-of-way for all purposes for which a public highway may be used, including utilities. AT&T Ex. 1. AT&T proposes improvements to this existing access drive for its proposed facility and maintains that based on its lease with the beneficiary of the recorded easement, it has the legal right to use the existing right-of-way easement for access to its proposed facility and is authorized to implement the proposed improvements.

Section 16-50p of the Connecticut General Statutes sets forth the legal criteria the Siting Council must consider to balance the public need for facilities with their probable environmental effects. The Public Utilities Environmental Standards Act ("PUESA") does not give the Siting Council jurisdiction to consider or interpret an applicant's real estate rights set forth in a lease, deed, right-of-way easement or other legal instruments. As such, the Siting Council has no legal authority to consider objections by property owners as to the real estate interest and access rights an applicant maintains as part of any specific application for a certificate.

Accordingly, any evidence or testimony related to AT&T's rights to use the existing right-of-way or AT&T's ability to improve the existing right-of-way are irrelevant to this proceeding and should be disregarded by the Siting Council.

## CONCLUSION

AT&T has demonstrated a public need for and lack of any significant adverse environmental effects associated with its proposed 150' tower facility at 8 Barnes Road in Falls Village. AT&T's evidence and testimony established a public need for the proposed facility and no competent evidence challenging the public's need for the tower to provide reliable wireless services was presented by any party or intervenor. AT&T's evidence demonstrated that it conducted an exhaustive review of alternatives, included potential two site configurations and the results of its analyses shows that the proposed site at 8 Barnes Road is the only viable location for the siting of the needed facility. Indeed, none of the information submitted by parties and intervenors rebuts the demonstrated lack of alternative siting options. Moreover, based on the record in this proceeding and the several years taken by AT&T to obtain a site, evaluate the project internally and present it to the Town and Siting Council, it is respectfully submitted that a denial would relegate this area of Connecticut to a lack of wireless services for several years.

While there are environmental effects associated with the proposed facility, AT&T established that the effects are not significant and will not have a significant adverse impact. More importantly, any environmental effects associated with the proposed facility do not outweigh the established public need for the facility. The submissions by the parties and intervenors in this proceeding did not include any competent empirical data or analyses that rebutted AT&T's evidence. The proceedings demonstrated that much of the information submitted by the IW/CC was irrelevant and inaccurate. In addition, submissions by the parties and intervenors regarding access drive rights are not relevant to the Siting Council's deliberations as such property rights are not within the Siting Council's jurisdiction.

For the reasons set forth in this legal brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for the proposed facility at 8 Barnes Road.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was sent electronically and by overnight delivery to the Connecticut Siting Council with copy to:

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Dated: July 14, 2011

  
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