

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 LOCATED IN
ROXBURY, CONNECTICUT

DOCKET NO. 428

JANUARY 7, 2013

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. 428. AT&T’s Application addresses the public need for a new tower facility so that AT&T may provide its services to residents and travelers along State Route 67 and local roads and areas in the Town of Roxbury. Throughout the proceedings in this Docket, AT&T provided data, testimony and otherwise responded to matters raised by the Town and parties to the Docket to give the Council a full and complete picture of the public need for reliable service in this part of Roxbury. AT&T proposed two possible siting alternatives and provided the potential environmental effects associated with each proposed tower facility. Further, that while there are some impacts associated with each proposed Facility candidate, these impacts can be appropriately mitigated and do not outweigh the demonstrated public need for a Facility in Roxbury. As such, AT&T is requesting a Certificate for a new tower facility to meet the public need for wireless services in this area of Roxbury.

STATEMENT OF FACTS

I. AT&T's Need & Comprehensive Site Search & Municipal Consultation

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 Roxbury along Route 67 and local roads and areas.

AT&T Exhibit 1 (Application or "App."), p. 9., Tab 1. Thus, AT&T's RF engineers established a site search area (SR1876) based on this documented gap in coverage AT&T Ex. 1. p. 9, Tab 1.

AT&T began its search for sites by identifying all existing sites in Roxbury and surrounding towns as shown on the existing coverage map and list of neighboring sites included in the Application. AT&T Ex. 1, pg. 12, 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. 11-12. AT&T currently maintains a number of existing facilities on surrounding wireless sites in proximity to the 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. AT&T Ex. 1, Tab 2.

Once AT&T determined it needed a new tower facility to provide coverage in this part of Roxbury, AT&T investigated numerous properties within the site search area, AT&T AT&T Ex. 1., Tab 2. As set forth in the Application itself, AT&T investigated a total of sixteen (16) locations. AT&T Ex. 1., p. 12, Tab 2. Representatives for AT&T originally identified the Candidate B location on Transylvania Road as one which could host a facility and provide reliable service to the targeted coverage area. AT&T Ex. 1, p. 12, Tab 2. AT&T submitted a technical report to the Towns of Roxbury and Woodbury on August 26, 2009 which included specifics about the proposed site at 126 Transylvania Road (Candidate B) including the public

need for the facility, the site selection process and the environmental effects of the proposed facility. AT&T Ex. 1, p. 12, Tab 6; Bulk Filing.

As part of the municipal consultation regarding the Candidate B facility, the Town of Roxbury requested AT&T pursue alternate candidates, including further follow up with the owners of an undeveloped parcel along Route 67, which would become Candidate A. AT&T Ex. 1, p. 12, Tab 6. The owners of the Candidate A parcel independently secured approvals from the State of Connecticut Department of Transportation, the Town of Roxbury Inland Wetlands Commission for an access drive to the Candidate A parcel prior to agreeing to a lease with AT&T. (App. p. 13; Responses to Bronson Mountain Interrogatories (“Bronson Mountain”) Set III, A6). AT&T and the owners of the Site A parcel subsequently came to lease terms. (AT&T Ex. 1, p. 13, Bronson Mountain Interrogatories Set III, A6). By letter dated September 30, 2011 AT&T provided a Technical Report with details of a facility at the Candidate A site to the Towns of Roxbury, Southbury and Woodbury. AT&T Ex. 1, Tab 6, Bulk Filing. AT&T subsequently attended a public information meeting at Roxbury Town Hall on November 17, 2011. AT&T Ex. 1, pg. 23.

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

On July 2, 2012, AT&T submitted its application to the Siting Council for a Certificate to construct, maintain and operate a cellular telecommunications facility at one of two candidate locations. The site of AT&T’s proposed Candidate A Facility is on an undeveloped parcel fronting Southbury Road. The proposed Candidate A facility consists of a new 170’ monopole and associated unmanned equipment. AT&T will mount up to twelve (12) panel antennas and twelve tower mounted amplifiers on a low profile platform at a height of 167’ AGL. A 12’ by

20' equipment shelter will be installed adjacent to the tower within a fenced gravel compound. AT&T Ex. 1, Tabs 3 and 3(A).

The site of AT&T's proposed Candidate B Facility is 126 Transylvania Road. The proposed Candidate B facility consists of a new 170' monopole and associated unmanned equipment. AT&T would mount up to twelve (12) panel antennas and twelve tower mounted amplifiers on a low profile platform at a height of 167' AGL. A 12' by 20' equipment shelter will be installed adjacent to the tower within a fenced gravel compound. AT&T Ex. 1, Tabs 4 and 4(A).

Intervenors admitted to the proceeding were the Towns of Roxbury and Woodbury and the Bronson Mountain Homeowners Association (or "BMHA"). AT&T submitted responses to Siting Council pre-hearing interrogatories on August 16, 2012, September 11, 2012 and October 22, 2012. AT&T Exhibits 2, 3 & 12. AT&T also submitted responses to interrogatories from the Town of Roxbury on September 11, 2012, and BMHA on September 11, 2012, October 23, 2012 and November 29, 2012. AT&T Exhibits 4, 5, 13 & 14. A field visit, balloon float and public hearing were scheduled by the Council for September 18, 2012.

IV. Public Hearings and AT&T Supplemental Submissions

On September 18, 2012, AT&T raised balloons at both candidate locations and the Siting Council conducted a viewing of each candidate site. Due to weather conditions, the balloons were raised to the full height on a limited basis. Libertine, Tr. 1, September 18, 2012, pp 21-22. Thereafter, the public hearing was continued and subsequently closed on December 6, 2012. At the hearings, the Siting Council heard comprehensive testimony from AT&T's panel of witnesses on the need for the facility, lack of other alternative sites and any environmental effects associated with construction of a tower at the site at each candidate location. The intervenors were provided an opportunity to cross-examine AT&T's witnesses at the December

6, 2012 continued hearing. After all of the Applicant and intervenors were given a full and fair opportunity to present their direct cases and the Applicant rebutted same the hearing was closed on December 6, 2012. Tr. 3, December 6, 2012, p. 82.

POINT I
A PUBLIC NEED CLEARLY EXISTS
FOR A NEW TOWER FACILITY IN ROXBURY

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 Route 67 in Roxbury. Indeed, the application materials provided by AT&T fully demonstrate that a tower is needed in this area at a minimum height of 170’ AGL at either candidate location. AT&T Ex. 1, p. 9, CSC Responses Set I, Tab A; CSC Responses Set II, A4.

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 Roxbury. The Town of Roxbury, through its interrogatories, indicated generally that it felt alternate technology was available but provided no expert testimony or evidence of same. Indeed, the Town indicated anecdotally that it felt Verizon provided some service in the area of AT&T’s need but no evidence or technical information were supplied. Further, the Town acknowledged under cross-examination that Verizon is located approximately 40 feet higher on the handoff site to the north at Lower County Road. (Henry, Tr. 3, p.78). Based on AT&T’s 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 Roxbury to provide coverage where adequate and reliable coverage does not exist today is simply not at issue in this Docket.

POINT II

THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVES FOR SITING THE PROPOSED WIRELESS FACILITY

AT&T submitted significant evidence that there are no existing structures, or other viable alternative properties for providing reliable service to this area of Roxbury. AT&T's search for sites included a comprehensive investigation of sixteen (16) locations. AT&T Ex. 1, p 12, Tab 2. As demonstrated by AT&T's evidence and testimony, due to the terrain challenges in this area of Roxbury, many properties were not viable alternatives for radio frequency reasons. AT&T Ex. 1, Tab 2. Other parties offered no other viable alternative sites or configurations and no other party or intervenor rebutted AT&T's evidence that there are no other viable alternative sites. Based on its comprehensive investigation of alternative sites and locations AT&T submits that there is simply no other viable alternative location for the siting of its needed tower facility.

POINT III

NEITHER OF AT&T'S CANDIDATE TOWER FACILITIES PRESENTS ANY 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

AT&T respectfully submits that the evidence and testimony in this proceeding, as summarized below, demonstrates that visibility of either proposed Candidate facility will not result in a significant adverse visual impact. Neither candidate facility is located within 250 feet of a school or daycare center. CSC Responses Set I, A20 & A41.

a. Candidate A

The record in this Docket demonstrates that the proposed Candidate A tower facility at Southbury Road will have no significant visual impact. The State Historic Preservation Officer (SHPO) determined, however, that the proposed facility will “have no adverse effect” on historic resources. The areas where the proposed tower would be visible above the tree canopy comprise just 18 acres within the over 8,000 acre study area (or 0.22%). AT&T Ex. 1, p. 16, Tab 3(C). A majority of the anticipated year round visibility associated with the proposed Candidate A Facility would generally occur distant to the site in the general vicinity of the Route 67/Route 172 intersection approximately 0.90-mile to the southeast and over open water on the east side of Transylvania Pond located approximately 1.10 miles to the southeast. AT&T Ex. 1, p. 16, Tab 4(C), Ex. 15, Supplemental Submission, November 29, 2012, Tab A, CSC responses Set I, A29. The proposed monopole will be seen from portions of ten (10) residential properties, which will have partial year-round views of the proposed Facility, and thirteen (13) additional residential properties, which will have potential seasonal views of the proposed Facility. AT&T Ex. 1, p. 16, Tab 3(C). It is further anticipated that existing vegetation will screen the Facility from surrounding properties. AT&T Ex. 1, 16, Tab 3(C).

b. Candidate B

The proposed Candidate B facility at Transylvania Road will have no significant visual impact. A 170' AGL monopole at the Candidate B Facility will be visible year-round from approximately 68 acres or 0.8% of the 8,042 acre study area. AT&T Ex. 1, p. 17, Tab 4(C). The proposed monopole will be seen from portions of ten (10) residential properties, which will have partial year-round views of the proposed Facility, and seven (7) additional residential properties, which will have potential seasonal views of the proposed Facility. AT&T Ex. 1, p. 17, Tab 4(C). It is further anticipated that existing vegetation will screen the Facility from surrounding properties and most views will be distant with the majority of visibility of the Candidate B Facility occurring over select portions of Squire Road, Route 67, Transylvania Road, Bacon Road, Grassy Hill Road, and Hickory Lane. AT&T Ex. 1, p. 17, Tab 4(C).

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

Two wetlands are associated with the Candidate A parcel. A locally approved culvert and road planned for the parcel hosting the Candidate A Facility constitutes a wetlands crossing near Route 67. AT&T Ex. 1, p. 23; Tab 3(A), Tab 5. Construction of the proposed facility and AT&T's own 210' dedicated access drive will not occupy or affect any portion of this wetland/watercourse; utilities would run along the length of the access road to be constructed by the owner. AT&T Ex. 1, Tab 3(A). A second identified wetland to the east of the proposed compound would also not be negatively impacted. AT&T Ex. 1, Tab 3(A). One wetland, conservatively classified as a vernal pool, is associated with the Candidate B Facility and is

approximately 257' to the closest area of disturbance. AT&T Ex. 1, Tab 5; Corrections, September 17, 2012; Supplemental Submission dated November 29, 2012, Attachment B. This onsite vernal pool will not be directly impacted by the proposed development. Supplemental Submission dated November 29, 2012, Attachment B. For either candidate Best Management practices would be implemented to control storm water and erosion control during construction and no impact on wetland resources is associated anticipated with construction of either Candidate Facility. AT&T Ex. 1, p. 23; Tabs 3, 3(A), 4 and 4(A); Ex. 15 - Supplemental Submission dated November 29, 2012, Attachment B.

b. Habitat Assessment and Wildlife

Review of available documentation and consultation with the State of Connecticut Department of Energy and Environmental Protection (“DEEP”) indicated that both Candidate Facilities are in areas known for the Eastern Box Turtle a species of special concern. AT&T AT&T Ex. 1, p. 18, Tabs 3(D) and 4(D). A protection plan for the Candidate A Facility in compliance with DEEP’s recommendations is developed and included in the Application. AT&T Ex. 1, Tab 3(D). A similar plan can be developed in response to all of DEEP’s recommendations for the Candidate B Facility as well and incorporated into a Development and Management Plan as needed. AT&T Ex. 1, p. 18, Tab 4(D). Accordingly, based on the protection plans, no impact to this species of special concern would result from construction of a wireless facility at either candidate site.

c. Clearing, Grading and Drainage Assessment

1. Candidate A

The proposed access to Candidate A includes use of a locally approved but not yet constructed 1,300’ access drive connecting to a new 210’ access drive to the tower. AT&T Ex. 1,

Tab 3(A). AT&T's access 210' drive and tower compound will require grading and clearing. AT&T Ex. 1, Tab 3(A). Approximately 122 trees with a diameter at breast height of 6" or larger will be removed for AT&T's access drive and the installation of underground utilities. AT&T Ex. 1, Tab 3(A); Tr. 3, p. 13. The development of the proposed compound and access drive improvements will require approximately 410 cubic yards of cut and 385 cubic yards of fill. CSC Responses Set I, A23.

With respect to the access to Candidate A, it should be noted that BMHA as intervenor failed to provide any expert testimony or sworn evidence of any kind in this Docket. See, Docket No. 428 Hearing Program, December 6, 2012; Knuff, Tr. pp 64-65. Further, BMHA understood it could have provided an affirmative case but chose not to. Knuff, Tr. pp 64-65. Instead, references were provided to the record of the property owners' application to the Roxbury Inland Wetlands Commission which indicated the potential use of the property for a cell tower facility. BMHA consists of owners of property abutting or near the Candidate A premises. Knuff, Tr. 3 p. 64-65. Notably, however, the 2012 decision of the Inland Wetlands Commission was not appealed. Barton, Tr. 3 p. 76. Indeed, instead of providing evidence as to any potential impacts, BMHA has highlighted that the approved road which will serve the Candidate A parcel and from which AT&T would construct its access has already been deemed to have no significant impact by the Inland Wetlands Commission - a fact underscored by the First Selectman's own testimony. Henry, Tr. 3 p. 72. BMHA also theorized that the approved road is only for a cell tower facility, but has failed to address why, if that is the case, the road goes 400' past AT&T's facility. Lusitani, Tr. p. 40. In sum, there is no evidence that approvals granted by the Town of Roxbury are somehow invalid and no evidence of potential significant environmental impact has been put forth by BMHA.

2. Candidate B

The proposed access drive at Candidate B includes the installation of a new 600' of new access drive. AT&T Ex. 1, Tabs 4 and 4(A). The access drive and tower compound will require grading and clearing. AT&T Ex. 1, Tabs 4 and 4(A). Approximately 68 trees with a diameter at breast height of 6" or larger will be removed. AT&T Ex.1, Tab 4(A). The development of the proposed compound and access drive improvements will require approximately 692 cubic yards of cut and 582 cubic yards of fill. AT&T Ex. 1, Tab 4(A). ; Hearing Information Corrections dated September 17, 2012.

As noted, AT&T's facility design for either candidate 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, Tabs 3(A) & 4(A). Of note, the intervening parties in this Docket did not provide any empirical data or evidence regarding drainage or runoff to rebut AT&T's evidence. As provided by expert testimony, Town of Roxbury concerns regarding drainage of the Candidate B facility site were addressed as a result of the municipal consultation which resulted in changes to storm water design that included the addition of infiltrators. AT&T Ex. 1, Tab 4(A); Kobylenski, Tr. 3 pp 8-9. Indeed, the proposed design addresses the difference in runoff that could occur if the Candidate B Facility is constructed keeping the amount of runoff equal to or slightly less than existing conditions. Kobylenski, Tr. 3, p. 9. No impacts to downstream wetlands are anticipated. Gustafson, Tr. 3, p. 10.

AT&T respectfully submits that it established that the proposed improvements for the access drive at either candidate will have no significant impact on the surrounding area and will allow for the safe access and use of the Candidate facilities.

3. Other Environmental Considerations

There are no other relevant or disputed environmental factors for consideration by the Council in this Docket. A tower facility at either candidate location will comply with all public health and safety requirements. Additionally, since the type of facility proposed 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.

CONCLUSION

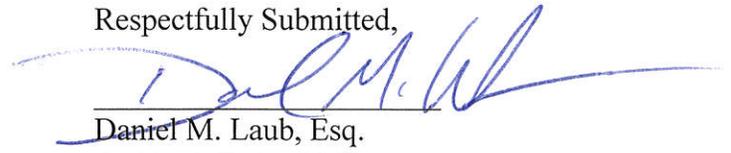
AT&T has demonstrated a public need for and lack of any significant adverse environmental effects associated with a tower facility at either candidate location presented in this Docket in Roxbury. AT&T's evidence and testimony established a public need for a facility and no party or intervenor presented competent evidence challenging the public's need for the tower to provide reliable wireless services. AT&T's evidence demonstrated that it conducted an exhaustive review of alternatives and the results of its analyses shows that the proposed Candidate locations are the only viable locations 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.

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 either proposed facility do not outweigh the established public need for a 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.

For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, a Certificate should be issued for a facility at one of the two candidate locations proposed in Docket 428.

Respectfully Submitted,



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