STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

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January 13, 2015

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

RE: **DOCKET NO. 448** – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.

Dear Attorney Baldwin:

By its Decision and Order dated January 8, 2015, the Connecticut Siting Council (Council) granted a Certificate of Environmental Compatibility and Public Need (Certificate) to Cellco Partnership d/b/a Verizon Wireless for the construction, maintenance, and operation of a telecommunications facility located at 831 Derby Milford Road, Orange, Connecticut.

Enclosed are the Council's Certificate, Findings of Fact, Opinion, Conclusions of Law, and Decision and Order.

Very truly yours,

Robert Stein MAB

Robert Stein
Chairman

RS/cm

Enclosures (5)

c: Parties and Intervenors (without Certificate enclosure)
State Documents Librarian (without Certificate enclosure)

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STATE OF CONNECTICUT)

ss. New Britain, Connecticut : January 13, 2015

COUNTY OF HARTFORD)

I hereby certify that the foregoing is a true and correct copy of the Findings of Fact, Opinion, Decision and Order, and Conclusions of Law issued by the Connecticut Siting Council, State of Connecticut.

ATTEST:

Melanie A. Bachman
Acting Executive Director
Connecticut Siting Council

I certify that a copy of the Findings of Fact, Opinion, Decision and Order, and Conclusions of Law in Docket No. 448 has been forwarded by Certified First Class Return Receipt Requested mail, on January 12, 2015, to all parties and intervenors of record as listed on the attached service list, dated July 30, 2014.

ATTEST:

Carriann Mulcahy
Secretary II
Connecticut Siting Council

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	☒ 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 kbaldwin@rc.com Sandy Carter, Regulatory Manager Verizon Wireless 99 East River Drive East Hartford, CT 06108 Alexandria.carter@verizonwireless.com
Intervenor (Approved on July 17, 2014)	☒ E-mail	Albert Subbloie, Jacqueline Barbara, Glenn MacInnes, Jill MacInnes	Mario F. Coppola, Esq. Berchem, Moses, and Devlin, P.C. 1221 Post Road East Westport, CT 06880 (203) 227-9545 mcoppola@bmdlaw.com
Intervenor (Approved on July 29, 2014	☒ E-mail	The Honorable Gayle Slossberg Senator 14th District Legislative Office Building Room 2000 Hartford, CT 06106 Gslossberg@yahoo.com The Honorable James Maroney State Representative 119th District Legislative Office Building Room 5006 Hartford, CT 06106 Paul.davis@cga.ct.gov The Honorable Themis Klarides State Representative 114th District Legislative Office Building Room 4200 Hartford, CT 06106 Themis.klarides@housegop.ct.gov The Honorable Paul Davis State Representative 117th District Legislative Office Building Room 4045 Hartford, CT 06106 James.marone@cga.ct.gov	The Honorable Gayle Slossberg Senator 14th District Legislative Office Building Room 2000 Hartford, CT 06106 Gslossberg@yahoo.com

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January 13, 2015

TO: Classified/Legal Supervisor
448150112
The New Haven Register
40 Sargent Drive
New Haven, CT 06511

FROM: Carriann Mulcahy, Secretary II

RE: **DOCKET NO. 448** – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.

Please publish the attached notice as soon as possible, but not on Saturday, Sunday, or a holiday.

Please send an affidavit of publication and invoice to my attention.

Thank you.

CM

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NOTICE

Pursuant to General Statutes § 16-50p (a), the Connecticut Siting Council (Council) announces that, on January 8, 2015, the Council issued Findings of Fact, an Opinion, a Decision and Order, and Conclusions of Law approving an application from Cellco Partnership d/b/a Verizon Wireless for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 831 Derby Milford Road, Orange, Connecticut. This application record is available for public inspection in the Council's office, Ten Franklin Square, New Britain, Connecticut.

DOCKET NO. 448 – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.	}	Connecticut Siting Council January 8, 2015

Findings of Fact

Introduction

1. Cellco Partnership d/b/a Verizon Wireless (Cellco), in accordance with provisions of Connecticut General Statutes (C.G.S.) § 16-50g, et seq, applied to the Connecticut Siting Council (Council) on May 13, 2014 for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance, and operation of a 100-foot wireless telecommunications facility at 831 Derby Milford Road in Orange, Connecticut (refer to Figure 1). (Cellco 1 pp. 1, 2)

2. Cellco is a Delaware limited liability company with an office at 99 East River Drive, East Hartford, Connecticut. Cellco is licensed by the Federal Communications Commission (FCC) to construct and operate a personal wireless services system in Connecticut. The company does not conduct any business in the State of Connecticut other than the provision of wireless services under FCC rules and regulations. (Cellco 1, p. 4)

3. The party in this proceeding is Cellco. The intervenors in this proceeding are Albert Subbloie, Jacqueline Barbara, Glenn MacInnes, Jill MacInnes, Gayle Slossberg, State Senator 14th District, James Maroney, State Representative 119th District, Themis Klarides, State Representative 114th District, and Paul Davis, State Representative 117th District, grouped as intervenors with the same interests in accordance with C.G.S. § 16-50n(c), and hereinafter referred to as the Intervenors. (Record -Evidentiary hearing continuation memo dated July 18, 2014; Evidentiary hearing continuation memo dated July 30, 2014)

4. The purpose of the proposed facility is to provide wireless services and increase capacity to the west-central portion of Orange, eastern Shelton and southeast Derby. (Cellco 1, p. I, Tab 6)

5. Pursuant to C.G.S. § 16-50*l*(b), public notice of the filing of the application was published in the New Haven Register on May 8 and May 9, 2014. (Cellco 1, p. 5; Cellco 6)

6. Pursuant to C.G.S. § 16-50*l*(b), notice of the application was provided to all abutting property owners by certified mail. Confirmation of delivery was received from all notices sent to abutting property owners. (Applicant 1, pp. 5-6, Tab 4; Cellco 3, response 1)

7. On May 13, 2014, Cellco provided notice to all federal, state and local officials and agencies listed in C.G.S. § 16-50*l*(b). (Cellco 1, p. 5, Tab 2)

8. Upon receipt of the application, the Council sent a letter to the Town of Orange and the City of Shelton, which is within 2,500 feet of the proposed facility, on May 14, 2014, as notification that the application was received and is being processed, in accordance with C.G.S. §16-50gg. (Record)

9. During a regular Council meeting on June 12, 2014, the application was deemed complete pursuant to Connecticut Regulations of State Agencies § 16-50*l*-1a and the public hearing schedule approved by the Council. Due to the unavailability of a hearing venue in the Town of Orange, Shelton City Hall was selected as a suitable alternative since the proposed tower site is within 2,500 feet of the Shelton City line and within three miles of the Shelton City Hall. (Council Meeting Minutes of June 12,2014; Council's June 24, 2014 response to State Senator Slossberg's letter of June 17, 2014)

10. Pursuant to C.G.S. §16-50m, the Council published legal notice of the date and time of the public hearing in the New Haven Register on June 17, 2014. (Record)

11. In compliance with the Regulations of Connecticut State Agencies (R.C.S.A.) §16-50j-21, Cellco installed a four-foot by six-foot sign at the entrance of the subject property on July 2, 2014. The sign presented information regarding the project and the Council's public hearing. (Cellco 5)

12. The Council and its staff conducted an inspection of the proposed site on July 17, 2014, beginning at 2:00 p.m. During the field inspection, Cellco flew a red balloon at the proposed site to simulate the height of the proposed tower. The balloon was initially located approximately 47 feet from the proposed tower location. This initial location had no material effect on visibility from locations off-site, as it was four feet higher in ground elevation than the proposed tower site and thus the balloon was slightly higher than the proposed height. The balloon was moved to the proposed tower location during the field review. A balloon was aloft from 7:45 a.m. to 6:00 p.m. for the convenience of the public. (Hearing Procedure Memo dated June 24, 2014; Tr. 1, pp. 29-31)

13. Pursuant to C.G.S. § 16-50m, the Council, after giving due notice thereof, held a public hearing on July 17, 2014, beginning with the evidentiary portion of the hearing at 3:00 p.m. and continuing with the public comment session at 7:05 p.m. at the Shelton City Hall, 54 Hill Street, Shelton, Connecticut. (Council's Hearing Notice dated June 13, 2014; Transcript 1 July 17 – 3:00 p.m. [Tr. 1], p. 1; Transcript 2 July 17– 7:05 p.m. [Tr. 2], p. 120)

14. The Council continued the public evidentiary hearings on August 12, September 16, and October 23, 2014, at the Council's offices at 10 Franklin Square, New Britain, Connecticut. (Council's Continued Hearing Memos dated July 18, August 13, September 17, 2014; Transcript 3 August 12 – 1:00 p.m. [Tr. 3], p. 165; Transcript 4 September 16 – 11:02 a.m. [Tr. 4], p. 329; Transcript 5 October 23 – 11:05 a.m. [Tr. 5], p. 568)

State Agency Comment

15. Pursuant to C.G.S. § 16-50j (g), on June 13, 2014 and October 23, 2014, the following State agencies were solicited by the Council to submit written comments regarding the proposed facility: Department of Energy and Environmental Protection (DEEP); Department of Public Health (DPH); Council on Environmental Quality (CEQ); Public Utilities Regulatory Authority (PURA); Office of Policy and Management (OPM); Department of Economic and Community Development (DECD); Department of Agriculture (DOAg); Department of Transportation (DOT); Connecticut Airport Authority (CAA); State Historic Preservation Office (SHPO); and Department of Emergency Services and Public Protection (DESPP). (Record)

16. The Council received a response from the DPH Drinking Water Section stating that the site is not within a public water supply source area. (DPH Comments dated May 28, 2014)

17. The following agencies did not respond to the Council's request for comment on the application: DOT, DEEP, CEQ, PURA, OPM, DECD, DOAg, CAA, SHPO, and DESPP. (Record)

Municipal Consultation

18. Cellco commenced the 90-day pre-application municipal consultation process by meeting with the Orange First Selectman James Zeoli on January 31, 2014. Cellco provided copies of the technical report and discussed the project with First Selectman Zeoli. Cellco also sent copies of the technical report to

the City of Shelton on January 31, 2014, as Shelton is within 2,500 feet of the proposed project. (Cellco 1, p. 20)

19. Cellco appeared before the Orange Planning and Zoning Commission on February 18, 2014 to discuss the proposed facility. At the meeting, the Commission requested that Cellco provide photosimulations of a tree tower design in the application, and that plantings be installed to screen views of ground equipment. (Cellco 1, p. 20; Tr. 1, p. 99)

20. Neither the Town of Orange nor the City of Shelton expressed interest in locating emergency service equipment at the site. (Cellco 1, p. 12)

Public Need for Service

21. In 1996, the United States Congress recognized a nationwide need for high quality wireless telecommunications services, including cellular telephone service. Through the Federal Telecommunications Act of 1996, Congress seeks to promote competition, encourage technical innovations, and foster lower prices for telecommunications services. (Council Administrative Notice Item No. 4)

22. In issuing cellular licenses, the Federal government has preempted the determination of public need for cellular service by the states, and has established design standards to ensure technical integrity and nationwide compatibility among all systems. Cellco is licensed by the Federal Communications Commission (FCC) to provide personal wireless communication service to Connecticut wireless markets, including the proposed service area. (Council Administrative Notice Item No. 4; Cellco 1, p. 4, Tab 4)

23. Section 253 of the Telecommunications Act of 1996 prohibits any state or local statute or regulation, or other state or local legal requirement from prohibiting or having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (Council Administrative Notice Item No. 4)

24. Section 704 of the Telecommunications Act of 1996 prohibits local and state entities from discriminating among providers of functionally equivalent services and from prohibiting or having the effect of prohibiting the provision of personal wireless services. This section also requires state or local governments to act on applications within a reasonable period of time and to make any denial of an application in writing supported by substantial evidence in a written record. (Council Administrative Notice Item No. 4)

25. Section 704 of the Telecommunications Act of 1996 also prohibits any state or local entity from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions, which include effects on human health and wildlife, to the extent that such towers and equipment comply with FCC's regulations concerning such emissions. (Council Administrative Notice Item No. 4)

26. In February 2009, as part of the American Recovery and Reinvestment Act, Congress directed the FCC to develop a National Broadband Plan to ensure every American has "access to broadband capability." Congress also required that this plan include a detailed strategy for achieving affordability and maximizing use of broadband to advance "consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes." (Council Administrative Notice Item No. 18)

27. Section 706 of the Telecommunications Act of 1996 requires each state commission with regulatory jurisdiction over telecommunications services to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, including elementary and secondary schools, by utilizing regulating methods that promote competition in the local telecommunications market and remove barriers to infrastructure investment. (Council Administrative Notice Item No. 4)

28. In December 2009, President Barack Obama recognized cell phone towers as critical infrastructure vital to the United States. The Department of Homeland Security, in collaboration with other Federal stakeholders, State, local, and tribal governments, and private sector partners, has developed the National Infrastructure Protection Plan to establish a framework for securing our resources and maintaining their resilience from all hazards during an event or emergency. (Council Administrative Notice Item No. 11)

29. In February 2012, Congress adopted the Middle Class Tax Relief and Job Creation Act to advance wireless broadband service for both public safety and commercial users. The Act established the First Responder Network Authority to oversee the construction and operation of a nationwide public safety wireless broadband network. Section 6409 of the Act contributes to the twin goals of commercial and public safety wireless broadband deployment through several measures that promote rapid deployment of the network facilities needed for the provision of broadband wireless services. (Council Administrative Notice Item No. 8)

30. In June 2012, President Barack Obama issued an Executive Order to accelerate broadband infrastructure deployment declaring that broadband access is a crucial resource essential to the nation's global competitiveness, driving job creation, promoting innovation, expanding markets for American businesses and affording public safety agencies the opportunity for greater levels of effectiveness and interoperability. (Council Administrative Notice Item No. 20)

31. Pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also referred to as the Spectrum Act, a state or local government may not deny and shall approve any request for collocation, removal or replacement of equipment on an existing wireless tower provided that this does not constitute a substantial change in the physical dimensions of the tower. The Federal Communications Commission defines a substantial change in the physical dimensions of a tower as follows:
    a) An increase in the existing height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater. Changes in height should be measured from the dimensions of the tower, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
    b) Adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
    c) Installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four, or more than one new equipment shelter.
    d) A change that entails any excavation or deployment outside the current site.
    e) A change that would defeat the concealment elements of the tower.
    f) A change that does not comply with conditions associated with the siting approval of the construction or modification of the tower, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would exceed the thresholds identified in (a) – (d).

    (Council Administrative Notice Item No. 8; Council Administrative Notice Item No. 20)

32. According to state policy, if the Council finds that a request for shared use of a facility by a municipality or other person, firm, corporation or public agency is technically, legally, environmentally and economically feasible, and the Council finds that the request for shared use of a facility meets public safety concerns, the Council shall issue an order approving such shared use to avoid the unnecessary proliferation of towers in the state. (C.G.S. §16-50aa)

Existing and Proposed Wireless Services – Cellco

33. Six existing Cellco facilities located within four miles of the site are currently providing service to portions of the Orange-Shelton-Derby area. The locations of these facilities are listed below:
    a) Ogg Meadow Road, Orange – Cellco is located at 160 feet on a 160-foot tower (Orange 2);
    b) 700 Grassy Hill Road, Orange – Cellco is located at 120 feet on a 140-foot tower (Orange 3);
    c) 528 Wheeler's Farm Road, Milford – Cellco is located at 110 feet on a 120-foot tower (Milford NE);
    d) 30 Oliver Terrace, Shelton, – Cellco is located at 140 feet on a 140-foot tower (Shelton 2);
    e) 123 Minerva Street, Derby – Cellco is located at 68 feet within a church bell tower (Derby); and
    f) 71 Pleasant View Road, Derby – Cellco is located at 107 feet on a 120-foot tower (Derby North).
    (Cellco 1, pp. 2-3)

34. The proposed facility is designed to provide service to the existing wireless service gaps as well as to provide capacity relief to these adjacent Cellco facilities. (Cellco 1, p. 2; Tr. 4, pp. 295-297)

35. Cellco would deploy 700 MHz (long-term evolution - LTE) and 2100 MHz (advanced wireless service - AWS) equipment at the site. Both the 700 MHz and 2100 MHz frequencies would provide LTE data services. (Cellco 3, response 7)

36. The 700 MHz frequency is the base of the LTE network, as it would provide coverage to a larger area than the 2100 MHz network, establishing the service area of a given sector. The 700 MHz frequency also penetrates vegetation better than the 2100 MHz frequency. (Intervenors 6, p. 15; Tr. 3, pp. 357-358)

37. The site would provide 700 MHz services to a 12.7 square mile area (refer to Figure 2) and 2100 MHz services to a 5.0 square mile area (refer to Figure 3). (Cellco 11, responses 21, 22; Tr. 4, pp. 460-462)

38. The proposed site would provide reliable service to existing wireless service gaps that total 1.2 square miles at 700 MHz and 2.0 square miles at 2100 MHz (refer to Figures 4 and 5). The service-deficient areas include portions of Route 34, Route 110, and Route 121. (Cellco 11, responses 21, 22; Cellco 14, response 9)

39. Cellco intends to deploy 850 MHz and 1900 MHz frequencies at the proposed site to transmit CDMA voice services and data services at a later date. Cellco is still experiencing growth in CDMA data service demand. (Cellco 1, p. 2; Cellco 3, responses 7, 12; Tr. 3, pp. 218-219; Tr. 4, p. 511)

40. The 850 MHz and 1900 MHz CDMA systems would eventually be phased out as customers are converted to LTE networks, possibly by the year 2021. The 1900 MHz CDMA system at the proposed site would be converted to support LTE services in the future. (Intervenors 6, p. 6; Tr. 1, pp. 62-65; Tr. 4, pp. 414-415, 509-511, 519-520; Tr. 5, p. 595, 681-682)

41. To monitor wireless network performance, Cellco uses a proprietary analytical tool that measures capacity demand data. Some of the parameters of the analytical tool made available in this proceeding include the following: Forward Data Volume (FDV), the amount of data transmitted from a sector of a cell site to the user for a specific busy hour; Average Scheduled Eligible Users (ASEU), the number of customers using a particular sector of a cell site at the established threshold limits; and Average Active Connections (AvgAC), the number of active connections to any given sector of the cell site being evaluated. (Cellco 14, response 9; Tr. 1, pp. 185-194)

42. Cellco's data analysis indicates the Milford NE alpha sector has experienced a FDV increase of 108 percent since June 2012. The FDV for Derby beta sector has increased 10.4 percent since December 2013 and the Derby North gamma sector has increased 21.2 percent since January 2014. (Cellco 14, response 9)

43. The Milford NE alpha sector and Derby beta sector have experienced an increase in AvgAC of 86 percent and 62 percent, respectively, over the past 13 months. Additionally, the Shelton 2 Beta sector AvgAC has increased 56 percent in 2014. (Cellco 14, response 9; Tr. 1, pp. 185-194; Tr. 4, pp. 452-453)

44. Cellco's analysis determined that capacity issues are occurring at wireless facilities adjacent to the proposed site because of exponential growth in customer data usage. Usage would further increase once Voice over LTE services are deployed on the 700 MHz system, as it uses data to transmit voice services. Cellco intends to deploy Voice over LTE by the end of 2014 and thus the current FDV and AvgAC measurements do not include data used by this service. (Cellco 3, response 7; Cellco 14, response 9; Tr. 1, pp. 62-68; Tr. 4, pp. 294-296)

45. The proposed site would provide capacity relief to eight sectors on the six surrounding Cellco sites. Four of the eight sectors are trending towards exhaustion, as follows:

Cellco Facility	**700 MHz Sectors with capacity relief from proposed site**	**Projected sector exhaust date**
Orange 2	Gamma	Beyond 3 years
Orange 3	Alpha Gamma	Beyond 3 years Beyond 3 years
Milford NE	Alpha	09/04/14
Shelton 2	Beta	03/22/16
Derby	Beta	09/07/15
Derby North	Beta Gamma	Beyond 3 years 06/13/16

(Cellco 14, response 9; Tr. 4, p. 456)

46. Cellco has already deployed 2100 MHz equipment at three of the exhausting sectors (Derby beta, Derby North gamma, Shelton 2 beta) to relieve capacity demands. LTE devices would first be assigned to use the 2100 MHz system if channel conditions exist to create an effective connection. Despite this deployment, the associated 700 MHz sectors are still trending towards exhaustion because the 2100 MHz network has a much smaller service area than the 700 MHz network. Other factors currently affecting network performance include the type of device a customer is using, as some devices do not have the capability of using the 2100 MHz system. Even a 2100 MHz-capable device, however, could sometimes determine the 700 MHz frequency is providing better service than the 2100 MHz frequency in cases where the two service footprints overlap. (Cellco 1, Tab 6; Cellco 14, response 9; Tr. 4, pp. 457-459; Tr. 5, pp. 689-691)

47. The proposed site would shift service demands to the proposed facility from the four sectors that are exhausting as well as from the four sectors that are not exhausting so that a user has as many options as possible to access the network. Sector capacity relief does not necessarily mean the service areas of the proposed site need to overlap considerably with the service areas of an adjacent site, since certain power users in a small overlapping geographic area could make significant service demands. (Tr. 4, pp. 314, 453-456, 464-470)

48. The Intervenors produced a report using sector dominance mapping to assert that the proposed facility is not in the proper location to serve capacity needs because it would primarily relieve the Derby North beta sector, a sector not projected to exhaust within the next 3 years. Cellco's analysis of its sector dominance information is generally consistent with the Intervenors', but there are slight differences: for example, the Intervenors' dominance mapping depicts a certain geographic area served by the Derby North Beta sector; however, Cellco states the mapping does not depict service into this geographic area from other adjacent sectors, some of which Cellco projects to exhaust by 2016. Therefore, within this geographic area, the proposed facility would serve not only the Derby North Beta sector, but adjacent sectors as well. (Intervenors 6, p. 15; Tr. 5, pp. 685-686)

Site Selection

49. Cellco established a search ring for its Orange North facility in June 2013. The search ring was located in the general area between Derby Milford Road, Northwood Road, Wildwood Road and Glenbrook Road in Orange. (Cellco 1, Tab 8; Cellco 3, response 9)

50. Cellco investigated nine sites in the northwestern Orange area, one of which was selected as the proposed site: 831 Derby Milford Road. The eight rejected parcels and reasons for their rejection are as follows:
    a) 814 Glenbrook Road, Orange – The property owner was not interested.
    b) 870 Garden Road, Orange – The property owner was not interested.
    c) Beth Israel Cemetery, Derby Milford Road, Orange – There was not enough space to locate a facility.
    d) 414 Cold Spring Lane, Orange – There was not enough space to locate a facility.
    e) 1730 Derby Milford Road, Orange – The site did not meet the requirements of Cellco's radio frequency engineer.
    f) 962 Grassy Hill Road, Orange – Site is an existing 35-foot tall water tank that is too low and too close to existing Cellco sites to meet radio frequency objectives.
    g) 986 Grassy Hill Road, Orange – Site is too close to Cellco's Orange 3 site.
    h) Turkey Hill Preserve, Orange – Site suggested by the Town is too close to Cellco's Orange 3 site and too far from Cellco's Derby North and Shelton 2 sites.

    (Cellco 1 – Tab 8; Cellco 3, response 11; Cellco 11, responses 17, 59, 61, 63, 65; Tr. 3, p. 175)

51. The Intervenors suggested a conservation parcel, the Housatonic Overlook/Tuckers Ravine preserve, on High Ridge Road in Orange as a potential tower site but the parcel is not available as it is preserved open space. The Town also did not suggest this parcel as an alternative during the pre-application municipal consultation process. (Cellco 11, Response 68; Cellco 12, response 69; Intervenors 3; Tr. 3, pp. 282-287)

52. The Intervenors suggested a residentially-zoned parcel at 803 Derby Milford Road in Orange as a potential alternative. Cellco determined the 1.35-acre parcel is located in an established residential neighborhood, has limited ground space for a facility and offers no buffer to adjacent parcels. (Cellco 11, response 70)

53. The Intervenors suggested Mount Saint Peter's Cemetery at 219 New Haven Avenue in Derby as an alternative. Cellco conducted a site visit with cemetery officials and the Intervenors on August 20, 2014. Cemetery officials selected two sites within the cemetery as possible locations for a tower facility. Cellco determined the cemetery property itself was not viable due to the Catholic Archdiocese of Hartford's current policy prohibiting telecommunications facilities in its member cemeteries. Additionally, both locations within the cemetery have topographic challenges as they are at low ground elevations and adjacent to a steep hillside; these issues create wireless service deficiencies that could only be overcome by constructing a facility at least 200 feet in height. A tower facility of such height would have a greater visual impact than the proposed facility. (Cellco 11, response 66; Intervenors 3)

54. The Intervenors suggested an additional site during the September 16, 2014 public hearing, but the precise location and availability of that site was not identified. (Tr. 4, pp. 435-438)

55. The property owner of 831 Derby Milford Road, Walter and Maryellen Bespuda Living Trust, is not amenable to relocating the site near the buildings on the property, on the east side of the ridge. Other locations on the property were rejected as they would disrupt active hay fields or would be too visible across open fields. (Cellco 14, response 5; Tr. 4, pp. 472-476)

56. A small cell facility would not meet radio frequency objectives as these types of facilities, typically 30 to 40 feet in height, only serve an area of several hundred acres. Cellco seeks to provide services to an area measured in square miles. The same service issues also pertain to facilities placed on utility poles. (Cellco 11, responses 57, 75)

57. The proposed site cannot fully provide 2100 MHz services to the Route 34 area north of the site in Derby. Cellco intends to install a small cell facility along the Route 34 corridor to provide additional 2100 MHz service. (Cellco 14, response 9)

Facility Description

58. The proposed site is located on a 34.6-acre parcel that is used for agriculture. Several farm-related buildings are on the parcel. (Cellco 1, p. 1, Tab 3; Tr. 1, p. 15, 73; Tr. 4, pp. 405-406)

59. The property is zoned residential and is located northeast of Derby Milford Road. (Cellco 1, p. 18)

60. The proposed tower site is located in an old field area, approximately 460 feet from Derby Milford Road. The tower site is at an elevation of 134 feet above mean sea level (amsl). (Cellco 1, Tab 1)

61. Cellco would construct a 100-foot monopole at the site. The tower diameter would be 46 inches at the base, tapering to 26 inches at the top. (Cellco 1, Tab 1)

62. The tower would be designed to support a total of four levels of antennas with a 10-foot center-to-center vertical separation. No other carriers expressed interest in locating on the facility at this time. (Cellco 1, Tab 1; Tr. 1, p. 115)

63. Cellco would install up to 12 antennas and associated remote radio heads on an antenna platform at the 100-foot level of the tower. The antennas would extend to a height of 103 feet agl. (Cellco 1, p. 2, Tab 1)

64. The facility would be connected to Cellco's Windsor and Wallingford mobile telephone switching offices by fiber optic cable. (Cellco 11, response 42)

65. The tower and foundation would be designed to accommodate a 20-foot tower extension to facilitate tower sharing. (Cellco 1, p. 12)

66. Cellco would establish a 50-foot by 50-foot equipment compound within a 100-foot by 100-foot lease area at the base of the tower. A 12-foot by 30-foot equipment shelter would be installed within the fenced compound (refer to Figure 6). (Cellco 1, Tab 1; Cellco 3, response 5)

67. Access to the tower site would be from a new 12-foot wide gravel drive extending from Derby Milford Road across an existing hay field to the site. The first 15 feet of the road would be paved. (Cellco 1, Tab 1; Tr. 1, p. 21)

68. The grade of the access drive is approximately 10 percent. (Tr. 1, pp. 19-21)

69. Construction of the road would require the excavation of a rock ledge embankment that abuts Derby Milford Road. The ledge would be removed by mechanical chipping. The slopes on either side of the embankment would be lowered. (Tr. 1, pp. 19-21)

70. Cellco would install two catch basins at the base of the access drive where it intersects with Derby Milford Road. The basins would tie into an existing catch basin on Derby Milford Road. Cellco would examine techniques to prevent large amounts of sediment from washing into the proposed culverts during construction and once the site is completed. (Cellco 1, Tab 1; Tr. 1, pp. 21-22, 90)

71. Runoff from the proposed access drive would be controlled by swales and a level spreader on the northwest side of the driveway. The level spreader would discharge towards the abutting cemetery. Cellco would examine and may relocate the level spreader discharge to a point on the east side of the drive to keep runoff from being directed towards the cemetery property. (Cellco 1, Tab 1; Tr. 1, pp. 23 - 24, 91-93)

72. The north side of the access drive would be stabilized with either riprap or a fortified grass mat. (Cellco 1, Tab 1, Tr. 1, p. 23)

73. Stormwater at the compound would be managed by the installation of a grass line swale and two level spreaders. (Cellco 1, Tab 1; Tr. 1, p. 24)

74. Utilities would be installed underground to the site from existing utilities along Derby Milford Road. The exact tie-in point would be determined by the local public utility. (Cellco 1, Tab 1, Tab 10; Tr. 1, pp. 101-103)

75. Land use within a quarter mile of the tower site includes active agricultural lands, residential, woodland, and a cemetery. (Cellco 1, Tab 1, Tab 10)

76. Pursuant to CGS § 16-50p(a)(3)(G), the nearest school is the Turkey Hill School, located approximately 0.8 miles southeast of the site at 441 Turkey Hill Road in Orange. The nearest commercial day care center is Little Academy, located approximately 0.8 miles west of the site at 250 River Road in Shelton. The tower would not be visible from the Turkey Hill School and may be seasonally visible from the Little Academy. (Cellco 1, Tab 10)

77. There are 27 residentially-zoned parcels and 11 residences within 1,000 feet of the proposed tower site. The nearest residence is 770 feet west of the tower site at 899 Derby Milford Road. The nearest property line is 145 feet to the west (OR Shalom/B.J.S.G. Cemetery Association). (Cellco 1, p. 15; Cellco 7; Cellco 9, response 3; Tr. 1, p. 13)

78. The proposed site would comply with the Town's Zoning Regulations regarding tower setbacks, with the exception of the 225-foot property line setback. (Cellco 1a; Cellco 11, response 55; Tr. 1, p. 116)

79. The site preparation phase of construction is expected to take approximately four weeks. Installation of the tower and shelter would take an additional two weeks. Installation of antennas and related equipment would take approximately two additional weeks, resulting in a total of up to eight weeks of construction. After completion of construction, facility integration and system testing would take an additional approximately two weeks before the site would be operational. (Cellco 1, p. 22)

80. The estimated construction cost of the proposed facility is:

Tower and antennas	$ 130,000.
Equipment building	50,000
Utility Installation	20,000.
Radio equipment	450,000.
Site Preparation and Facility Installation	125,000.
Total Cost	$ 775,000.

(Cellco 1, p. 22)

Backup Power

81. In response to two significant storm events in 2011, Governor Malloy formed a Two Storm Panel (Panel) that was charged with an objective review and evaluation of Connecticut's approach to the prevention, planning and mitigation of impacts associated with emergencies and natural disasters that can reasonably be anticipated to impact the state. Two of the Panel's findings are as follows:
   a) "Wireless telecommunications service providers were not prepared to serve residential and business customers during a power outage. Certain companies had limited backup generator capacity;" and
   b) "The failure of a large portion of Connecticut's telecommunications system during the two storms is a life safety issue."

   (Council Administrative Notice Item No. 42)

82. The Panel made the following recommendations:
   a) "State regulatory bodies should review telecommunications services currently in place to verify that the vendors have sufficient generator and backhaul capacity to meet the emergency needs of consumers and businesses:" and
   b) The Connecticut Siting Council should require continuity of service plans for any cellular tower to be erected. In addition, where possible, the Siting Council should issue clear and uniform standards for issues including, but not limited to, generators, battery backups, backhaul capacity, response times for existing cellular towers."

   (Council Administrative Notice Item No. 42)

83. In response to the findings and recommendations of the Panel, Public Act 12-148, An Act Enhancing Emergency Preparedness and Response, codified at C.G.S. §16-50*ll*, required the Council, in consultation and coordination with the Department of Energy and Environmental Protection, the Department of Emergency Services and Public Protection and the Public Utilities Regulatory Authority (PURA), to study the feasibility of requiring backup power for telecommunications towers and antennas as the reliability of such telecommunications service is considered to be in the public interest and necessary for the public health and safety. The study was completed on January 24, 2013. (Council Administrative Notice Item No. 24)

84. The Council's study included consideration of the following matters:
    a) Federal, state and local jurisdictional issues of such backup power requirements, including, but not limited to, siting issues;
    b) Similar laws or initiatives in other states;
    c) The technical and legal feasibility of such backup power requirements;
    d) The environmental issues concerning such backup power; and
    e) Any other issue concerning backup power that PURA deems relevant to such study.

    (Council Administrative Notice Item No. 24)

85. The Council reached the following conclusions in the study:
    a) "Sharing a backup source is feasible for CMRS providers, within certain limits. Going forward, the Council will explore this option in applications for new tower facilities;" and
    b) "The Council will continue to urge reassessment and implementation of new technologies to improve network operations overall, including improvements in backup power."

    (Council Administrative Notice Item No. 24)

86. For backup power, Cellco would install a 50 kW diesel generator with a 210 gallon diesel fuel tank located within its equipment shelter. It could run for 4 days before refueling, assuming normal cell site operating conditions. (Cellco 3, response 3)

87. Although it is possible multiple carriers could share a single generator, AT&T and T-Mobile did not express interest in co-locating on the proposed tower at this time. (Cellco 3, response 4)

88. Noise created as a result of, or relating to, an emergency, such as an emergency backup generator, is exempt from the State Noise Control Regulations. (R.C.S.A. §22a-69-1.8)

Public Safety

89. The Wireless Communications and Public Safety Act of 1999 (911 Act) was enacted by Congress to promote and enhance public safety by making 9-1-1 the universal emergency assistance number, by furthering deployment of wireless 9-1-1 capabilities, and by encouraging construction and operation of seamless ubiquitous and reliable networks for wireless services. (Council Administrative Notice Item No. 6)

90. The proposed facility would be in compliance with the requirements of the 911 Act and would provide Enhanced 911 services. (Cellco 1, pp. 7- 8)

91. On May 15, 2014, Cellco as well as other wireless carriers have voluntarily begun supporting text-to-911 services nationwide in areas where municipal Public Safety Answering Points support text-to-911 technology (PASP). A PSAP has not been established in the Orange area to date. Text-to-911 will extend emergency services to those who are deaf, hard of hearing, have a speech disability, or are in situations where a voice call to 911 may be dangerous or impossible. However, even after a carrier upgrades its network, a user's ability to text to 911 is limited by the ability of the local 911 call center to accept a text message. The FCC does not have the authority to regulate 911 call centers; therefore, it cannot require them to accept text messages. (Council Administrative Notice No. 19; Cellco 3, response 14, response 15)

92. Pursuant to the Warning, Alert and Response Network Act of 2006, the FCC has established a Personal Localized Alerting Network (PLAN) that requires wireless communication providers to issue text message alerts from Federal bodies, including the President of the United States. PLAN would allow the public to receive e-mails and text messages on mobile devices based on geographic location. The proposed facility would enable the public to receive e-mails and text messages from the CT Alert ENS system. (Council Administrative Notice No. 5)

93. The tower would be constructed in accordance with the Electronic Industries Association Standard TIA/EIA-222-F "Structural Standards for Steel Antenna Towers and Antenna Support Structures". (Cellco 1, Tab 1)

94. The proposed equipment compound would be surrounded by a six-foot high chain-link fence with barbed wire. The fence would have 2-inch wire mesh. (Cellco 1, p. 13, Tab 1)

95. Cellco's equipment shelter would be equipped with a remotely monitored intrusion alarm. (Cellco 1, p. 13)

Environmental Considerations

96. The tower site is located at the interface between wetland, woodland, and old field areas. A narrow ridge top rises to the east of the site, to a height of 150 feet amsl. A second hayfield and outbuildings are located to the east and below the ridge. (Cellco 1, Tab 11; Tr. 1, pp. 72-73)

97. Development of the site would require the removal of five trees with a diameter of six inches at breast height. Two large trees adjacent to the southeast side of the access road would be protected during construction. (Cellco 1, Tab 10; Cellco 9, Item 5; Tr. 1, p. 14)

98. The nearest wetland to the proposed site is a perennial stream system, identified as Wetland 1, that is located approximately 60 feet from the proposed access drive entrance and across Derby Milford Road. The significantly incised stream system has few or no bordering wetlands. (Cellco 1, Tab 11)

99. A second wetland, identified as Wetland 2, is located approximately 108 feet to the northeast and downgradient of the compound. This wetland is a forested hillside seep wetland system with an interior perennial stream that extends through woodlands north and west of the site, eventually draining to the southwest along Derby Milford Road. (Cellco 1, Tab 11; Cellco 14, response 2; Tr. 1, p. 97)

100. Wood frogs, a vernal pool obligate species, were observed during the field review on July 17, 2014. At the request of the Council, a vernal pool assessment was performed on August 4, 2014. During the assessment, two vernal pools were identified in Wetland 2, one of which is a manmade farm pond and the likely location for breeding wood frogs. The other vernal pool is a small depressed area at a woods road culvert crossing. This pool is likely to have a short hydroperiod but may be suitable for wood frog breeding. (Cellco 10, response 1)

101. The proposed site is not within 100 feet from the edges of either vernal pool (refer to Figure 7). Development should be avoided within 100 feet of vernal pools (Vernal Pool Envelope) to maintain water quality, and provide shade and leaf litter for the vernal pool ecosystem. (Council Administrative Notice Item No. 4; Cellco 14, response 2)

102. The proposed site is within vernal pool Critical Terrestrial Habitat (CTH), an area located 100 feet to 750 feet from the edge of a vernal pool. In order to maintain populations of vernal pool obligate amphibian species, development within the CTH should not exceed 25 percent. The development of the proposed site would not increase the developed area of the CTH for either pool beyond 25 percent. (Council Administrative Notice Item No. 4; Cellco 14, response 2)

103. A third wetland is located approximately 260 feet east of the site, on the other side of the narrow ridge, identified as Wetland 3. It is located in a hay field and characterized as an isolated emergent wet meadow. The wetland is drained by a culvert outlet on the southeast side, preventing the long-term storage of standing water. No vernal pool characteristics were observed in this wetland. (Cellco 1, Tab 11; Tr. 1, pp. 80-81, 97-98)

104. Cellco would consider the implementation of a wetland/vernal pool protection plan that includes a wildlife and wetland contractor awareness program, a construction isolation zone, and work zone inspections for sensitive species. (Tr. 1, pp. 79-80, 82-83)

105. Development of the compound area would not affect natural drainage patterns. The compound is surfaced with gravel, minimizing impervious surfaces. Any runoff from the compound area would be directed to and dispersed by two level spreaders. Existing undisturbed vegetation is located between the wetland area and the level spreaders, allowing water to resume natural drainage patterns. (Cellco 1, Tab 11; Tr. 1, pp. 27-29)

106. No federally-designated critical habitat or any federal endangered, threatened, or candidate species are found in the area of the proposed site. (Cellco 2)

107. The immediate area surrounding the site contains woodlands, wetlands, old field habitat and maintained hay fields. This diversity of habitats and relatively undeveloped nature of the parcel provides wildlife connectivity to the various habitats, especially along the narrow ridge that extends in a north-south direction between the old field where the site is proposed and the wetland in the hayfield east of the ridge. (Cellco 1, tab 11; Tr. 1, pp. 73-79)

108. The proposed site is not located within an area identified within the DEEP Natural Diversity Database as containing records of State-listed endangered, threatened, or special concern species. Given that the development of the site would occur in a small area and that a portion of the development would occur within an active hay field, Cellco did not perform site-specific wildlife surveys. (Cellco 2; Tr. 1, pp. 76-78)

109. The area around the proposed site contains suitable habitat for the Eastern Box Turtle, a State Species of Special Concern. The proposed site is located at the interface of box turtle hibernation and foraging habitat. (Cellco 14, response 3)

110. Although no surveys to detect box turtles were conducted at the optimal seasonal time period, Cellco would incorporate an Eastern Box Turtle Protection Program as part of the construction practices to be employed should the proposed facility be approved. The program incorporates DEEP recommended best construction management practices to reduce impact to box turtle populations. (Tr. 1, pp. 84-85)

111. The diesel tank/generator unit would have a double walled fuel tank to prevent leaks. In addition, the tank would be within a room in the equipment shelter with a floor designed to hold the capacity of the tank to ensure no fuel leaks out of the shelter in the event of fuel tank failure. (Tr. 4, pp. 449-450)

112. Operation of the diesel generator would not require an air quality permit from the DEEP. (Cellco 9, Item 6; Tr. 1 pp. 87-88)

113. Throughout the construction period of the proposed facility, Cellco would establish and maintain appropriate soil erosion and sedimentation control measures, in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control*, established by the Connecticut Council for Soil and Water Conservation, in cooperation with the DEEP. (Cellco 1, p. 19)

114. The proposed tower at this site would not constitute an obstruction or hazard to air navigation and would not require any obstruction marking or lighting. (Tr. 1, p. 15)

115. The proposed facility is not located near an Important Bird Area (IBA), as designated by the National Audubon Society. The nearest IBAs to the proposed tower site are Silver Sands State Park in Milford, approximately six miles to the south, and Sandy Point in West Haven, approximately seven miles to the southeast. Due to the distance from the proposed site to the IBAs, there would be no anticipated adverse impact to these IBAs. (Council Administrative Notice No. 59; Cellco 9, Item 5)

116. A designated Critical Bird Habitat area, Turkey Hill Marsh, is located approximately 2.25 miles south of the site along the Housatonic River in Milford. The proposed site would have no effect on this resource. (Cellco 9, Item 5)

117. Although the property contains field areas, the site may not be conducive to successful grassland bird nesting due to the mowing of the fields for hay. If grassland birds were nesting, the proposed site would have no impact on them as the access drive extends along the edge of field habitat. (Tr. 1, pp. 108-110)

118. The proposed facility would comply with the United States Fish and Wildlife Service guidelines for minimizing the potential for telecommunications tower to impact bird species, except for the guideline recommending that towers should not be sited "near wetlands". The guidelines however, do not indicate a recommended distance between a tower and a wetland. (Council Administrative Notice No. 14; Cellco 9, Item 5; Tr. 4, pp. 228-229)

119. The site is not located with a 100-year or 500-year flood zone. (Cellco 1, pp. 19-20)

120. The host property is not part of the state program for the preservation of agricultural land established in C.G.S. § 22-26aa, where development rights to a parcel are acquired by the State. (Cellco 9, response 2)

121. No properties on or eligible for listing in the national Register of Historic Places are located within 0.5 mile of the proposed site. Development of the site would have no impact on archeological resources. (Cellco 1, p. 16; Tr. 1, pp. 31-33)

122. The cumulative worst-case maximum power density from the radio frequency emissions from the operation of Cellco's proposed antennas is 37.8 percent of the standard for the General Public/Uncontrolled Maximum Permissible Exposure, as adopted by the FCC, at the base of the proposed tower. This calculation was based on methodology prescribed by the FCC Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997) that assumes all antennas would be pointed at the base of the tower and all channels would be operating simultaneously, which creates the highest possible power density levels. Under normal operation, the antennas would be oriented outward, directing radio frequency emissions away from the tower, thus resulting in significantly lower power density levels in areas around the tower. (Council Administrative Notice Item No. 2; Cellco 1, p. 17)

Visibility

123. The proposed 100-foot tower would be visible year-round from approximately 46 acres, mostly within one mile of the site (refer to Figure 8). Most of this visibility would be from open field areas, wooded areas and along Derby Milford Road and Garden Road within 1,000 feet of the site. (Cellco 1, Tab 9 – Viewshed Map)

124. Portions of approximately 14 residentially zoned parcels within 1,000 feet of the site that are not owned by the lessor could have year-round views of the proposed facility. (Cellco 7; Cellco 9, response 3)

125. Approximately 23 residences within a two-mile radius of the site may have year-round views of portions of the tower. An additional three residences may have seasonal views. (Cellco 3, response 2)

126. When the leaves are off the trees, the tower would be visible from approximately 300 acres, mostly within one mile of the site. (Cellco 1, Tab 9 – Viewshed Map)

127. Six residential parcels at the southwest end of Rainbow Trail would have seasonal views of the tower. (Cellco 9, response 3)

128. The MacInnes residence at 905 Rainbow Trail would have a limited year-round view of the tower through the trees, as the topography between the MacInnes property and the site includes a small valley, allowing for a direct view of the tower through the trees (refer to Figure 14). (Intervenors 11; Tr. 4, pp. 418-421)

129. The proposed tower would not be visible above the trees when viewed from the roadway of Rainbow Trail. (Cellco 1, Tab 9; Cellco 16)

130. If the tower was extended in height by 20 feet, it would not be visible above the trees when viewed from the roadway of Rainbow Trail. (Tr. 3, p. 206)

131. Visibility of the proposed 100-foot tower from specific locations within a two-mile radius of the site is presented in the table below:

Specific Location	Photo location on Map*	Approx. Portion of Facility Visible	Approx. Distance - Direction to Tower
Belmont Ave at Coram Road, Shelton	1	Undetermined, hillside is backdrop	1.1 miles east
Laurel Heights at Coram Road, Shelton	2	40 feet, hillside as backdrop	1.1 miles northeast
Colony Street at Belmont Ave, Shelton	3+	40 feet, hillside as backdrop	0.8 mile east
Riverview Cemetery	4	15 feet above trees	0.7 miles east
Temple Emanuel Cemetery	5	25 feet through trees	0.6 miles east
Rainbow Trail, 305 driveway entrance	6+	30 feet through trees	0.2 mile southeast
Garden Road	7	30 feet above trees	0.3 miles southwest
Garden Road at Cold Spring Road	8+	60 feet above trees	0.3 mile west
Brookside Drive, near #834	9+	50 feet through trees	0.2 mile northwest
834 Brookside Drive, backyard	10	40 feet above trees	0.2 mile northwest
Glenbrook Road	11	35 feet above trees	0.2 mile north
East Slope Drive	12	20 feet through trees	0.3 mile north
Derby Milford Road	13	30 feet through trees	0.22 mile north
Derby Milford Road, lessors property	14	10 feet, above house and through trees	0.18 mile north
High Ridge Road at Quarter Mile Road	15	10 feet through trees	0.3 mile northeast
Quarter Mile Road	16+	45 feet through trees	0.2 mile northeast
Derby Milford Road, lessors property	17	45 feet across field	0.1 mile northeast
Derby Milford Road, lessors property	18	50 feet across field at access road entrance	0.1 mile northeast
Derby Milford Road, cemetery entrance	19	50 feet through trees	0.1 mile northeast
Beth El of Ansonia Cemetery	20	45 feet through trees	0.06 mile east
905 Rainbow Trail, back window	N/A	Limited year-round view	0.2 mile southeast

*Map is attached as Figure 8.
+ Photo simulations of proposed facility from these visibility map locations are attached as Figures 9, 10, 11, 12, 13.
(Cellco 1, Tab 9; Cellco 3, response 13; Intervenors 11)

132. The site's location uses the ridge to the southeast to provide some screening when viewed from Derby Milford Road. The site is also screened by woodlands extending from the northeast to northwest. Although open fields exist to the east and southeast, a row of trees along Garden Road provides some screening of views from that area. (Cellco 9, Viewshed map; Tr. 5, pp. 488-489)

133. There are no hiking trails maintained by the Connecticut Forest and Parks Association in the area of the site. (Council Administrative Notice 57; Cellco 1, Tab 9)

134. There are no scenic roads within two miles of the site. (Cellco 1, Tab 9)

135. Cellco would paint the tower brown in order to blend it into the surroundings when viewed through trees. (Cellco 1, Tab 9; Tr. 1, pp. 40-41)

136. Cellco would install white spruce plantings on the western side of the compound to screen the compound area from the adjacent cemetery. (Cellco 1, Tab 1; Tr. 1, pp. 34, 93-94)

137. Cellco would not consider using a silo at the proposed site because it would require a height of 105-110 feet and a diameter of 20 feet, creating a larger, more obtrusive structure. (Tr. 4, pp. 48-485)

138. A faux-tree tower design would be generally beneficial for views of the tower above the treeline, such as the open field areas (refer to Figure 15), or when viewed through a sparse stand of trees such as the adjacent cemetery (refer to figure 16). (Tr. 1, pp. 41-43, 49)

Alternate Site

139. During the proceeding, the Council inquired if the proposed site could be moved to increase the buffer to Wetland 2 and to disturb less of the wetland/old field interface area. In response, Cellco and the lessor would be amenable to relocating the facility approximately 90 feet to the south. This location, referred to as the Alternate Site, would increase the wetland buffer from approximately 100 feet to 218 feet (refer to Figures 7 & 19). (Cellco 14, responses 2, 4; Tr. 3, pp. 214-216)

140. The Alternate Site is not within the local watershed of Wetland 2. Surface flows would drain west/southwest towards the hay field. (Cellco 14, response 2)

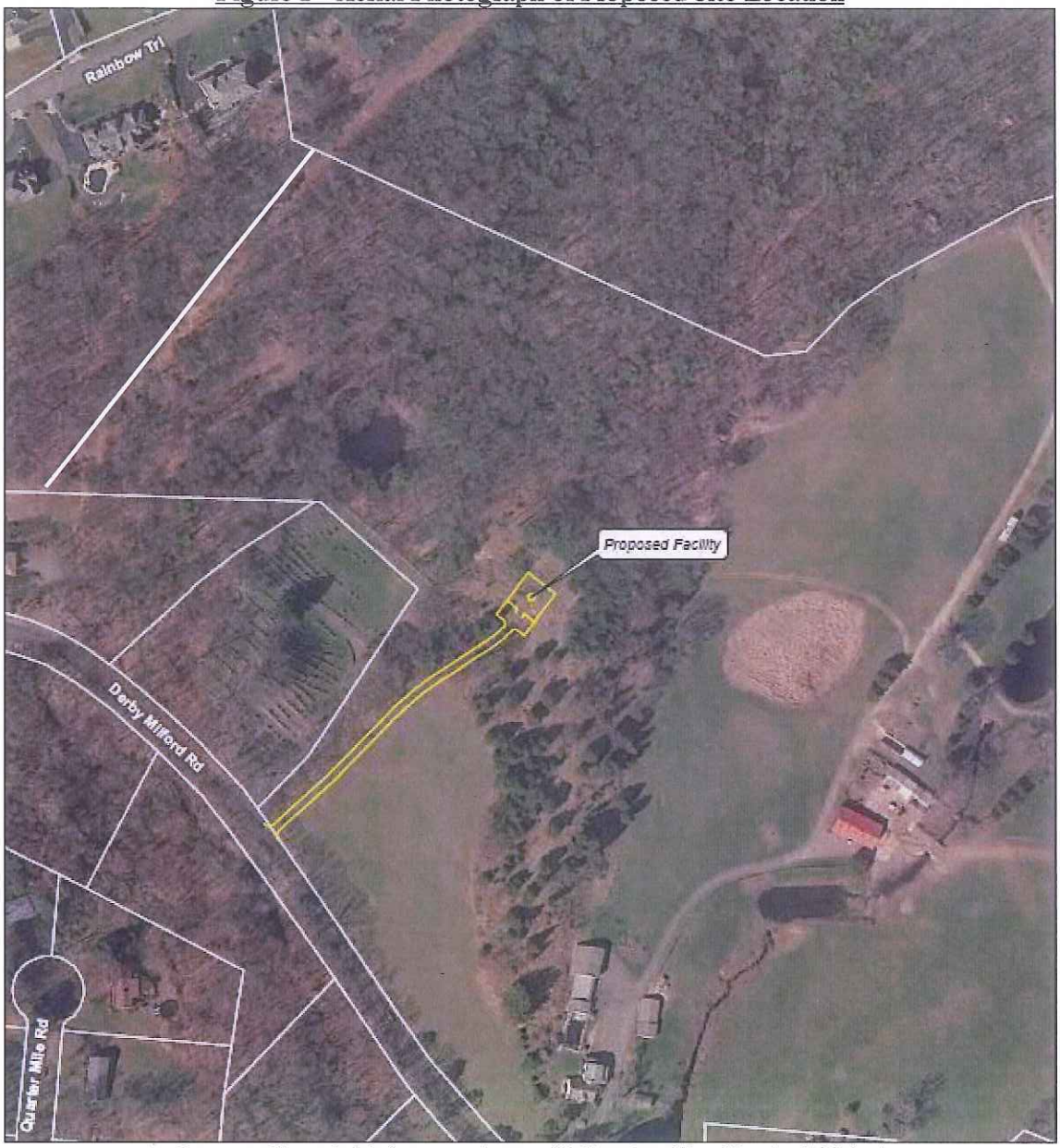
141. The Alternate Site is more protective of box turtle habitat as it is further away from the critical wetland–upland interface area. Additionally, by being placed near the maintained hay field, development of the Alternate Site would have less of an impact on the old field habitat than the original proposed site. (Cellco 14, response 4)

142. The ground elevation at the alternate site is 132 feet amsl, two feet lower than the original proposed site. A six-foot high retaining wall would be required on the east side of the compound, as the compound would be partially excavated from a sloping hillside. (Cellco 14, response 4)

143. The Alternate Site would have no effect on visibility from areas northeast and south of the site. The alternate tower would be more prominent when viewed from Derby Milford Road southeast of the site. (Cellco 16; Tr. 4, pp. 473-475)

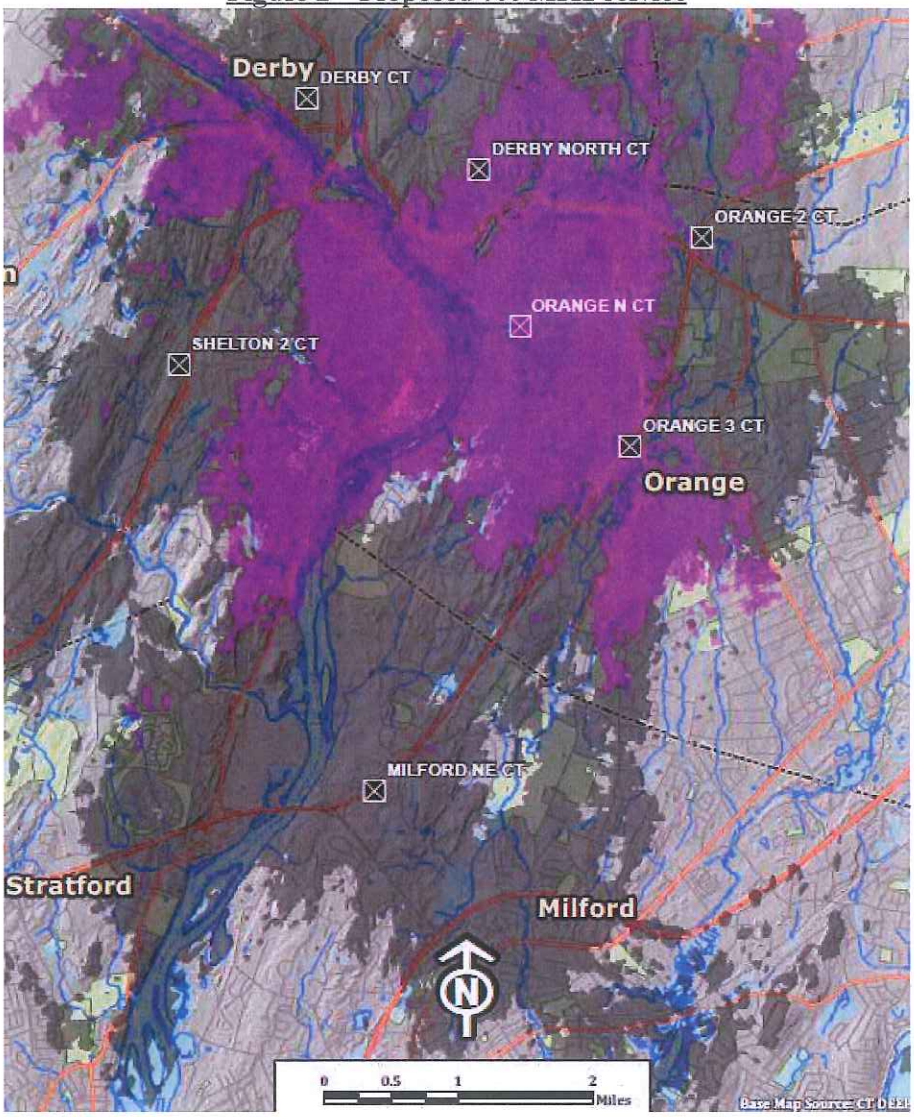
144. Development of the Alternate Site would not require additional tree removal. (Cellco 16, p. 1)

Figure 1 – Aerial Photograph of Proposed Site Location



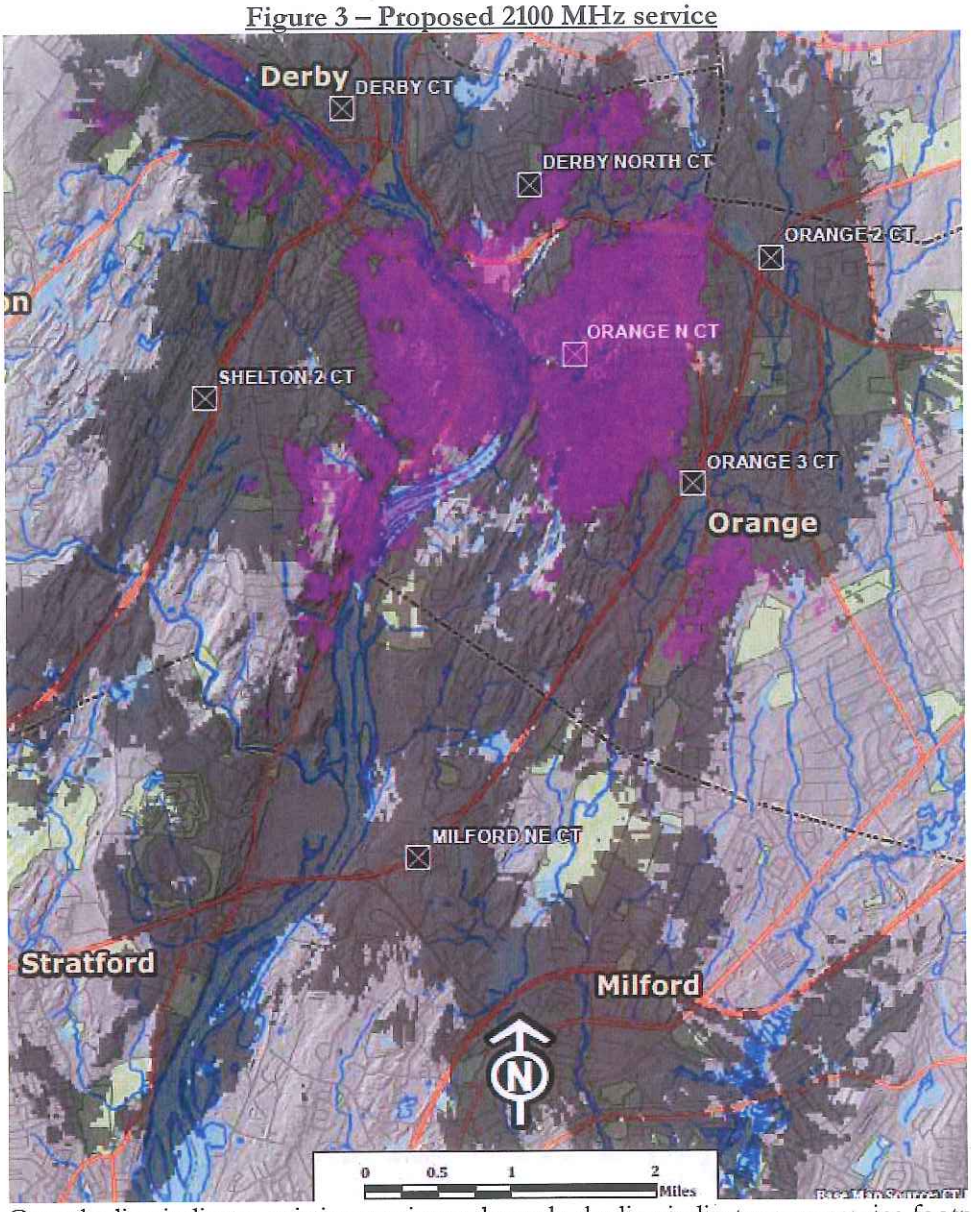
Property lines (white) approximate. (Cellco 1, p.iii – Site Aerial Map)

Figure 2 – Proposed 700 MHz service



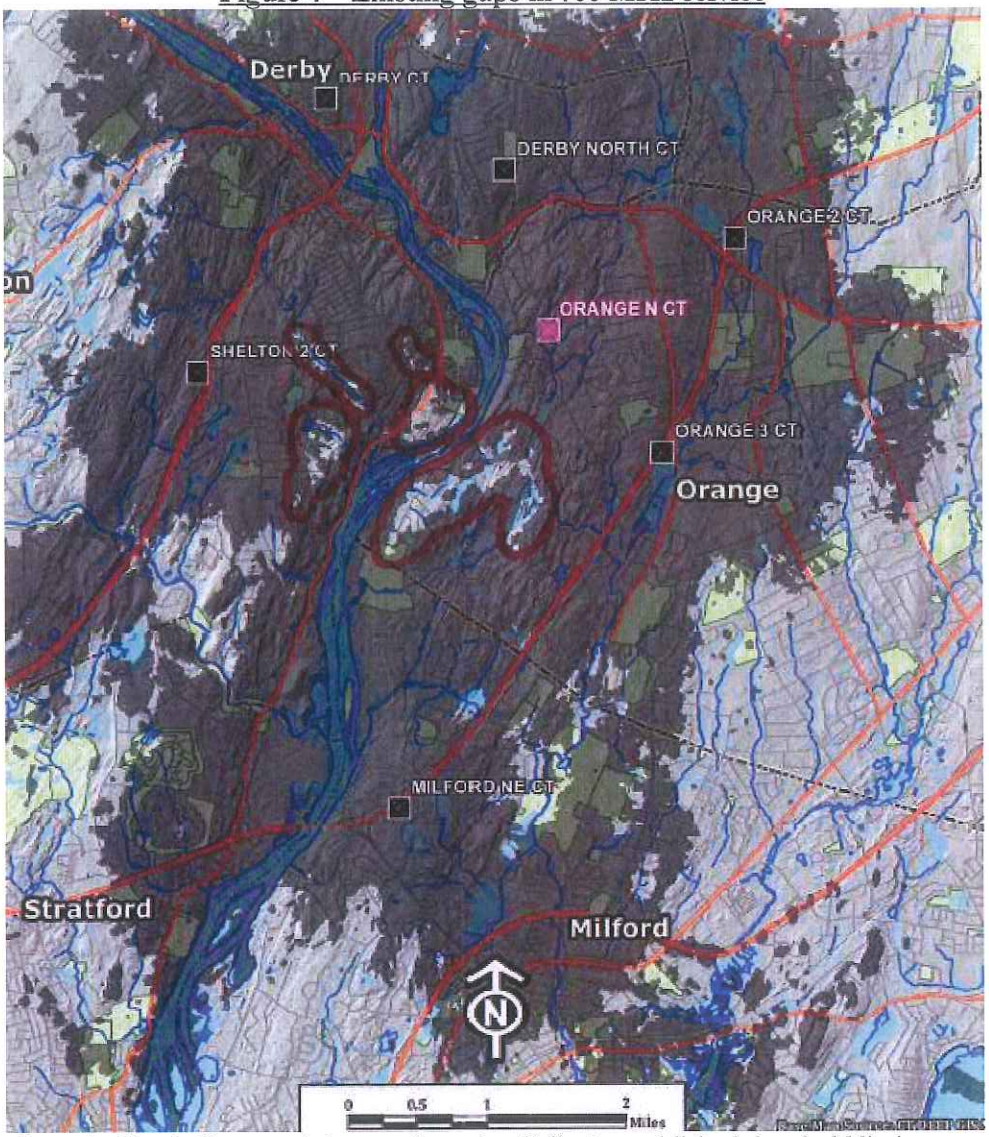
Gray shading indicates existing service and purple shading indicates new service footprint using Cellco's established threshold limits. (Cellco 1, Tab 6; Tr. 4, pp. 460- 464)

Figure 3 – Proposed 2100 MHz service



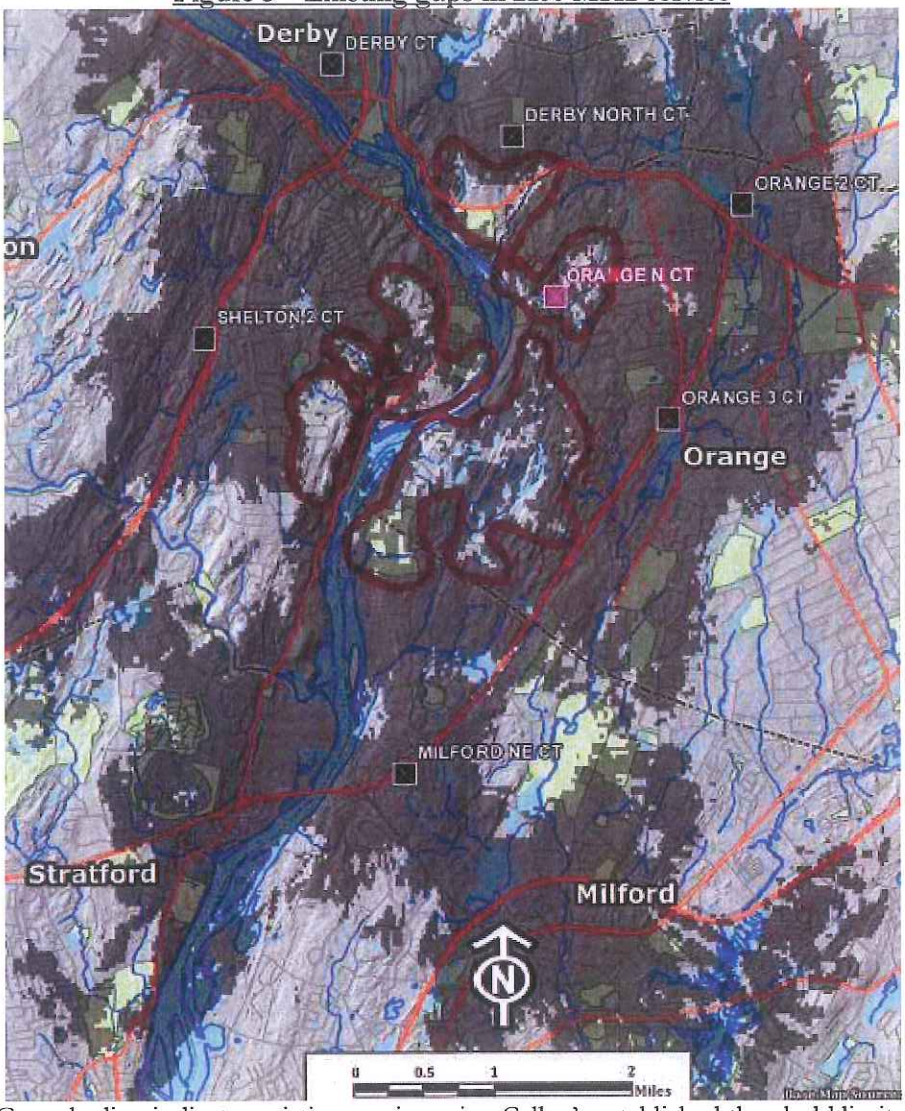
Gray shading indicates existing service and purple shading indicates new service footprint using Cellco's established threshold limits. (Cellco 1, Tab 6; Tr. 4, pp. 460- 464)

Figure 4 – Existing gaps in 700 MHz service



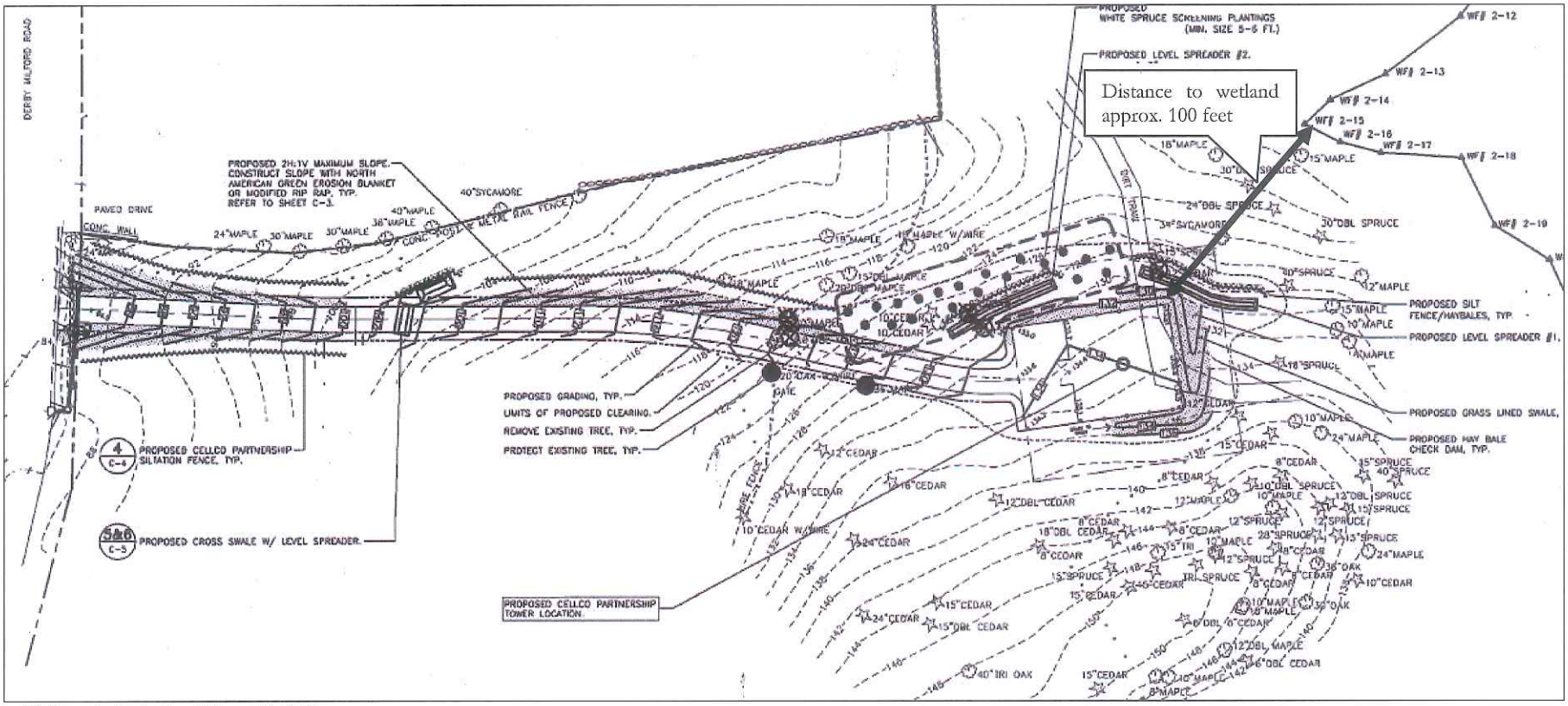
Gray shading indicates existing service using Cellco's established threshold limits. Service gaps are outlined in brown. (Cellco 11, response 18; Tr. 4, pp. 460- 464)

Figure 5 – Existing gaps in 2100 MHz service



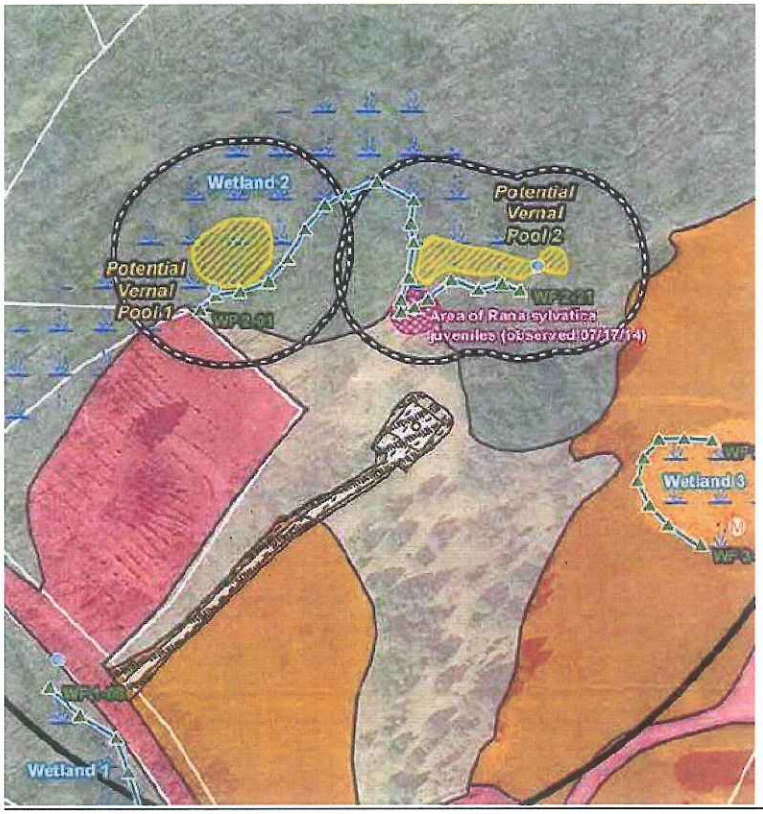
Gray shading indicates existing service using Cellco's established threshold limits. Service gaps are outlined in brown. (Cellco 11, response 18; Tr. 4, Tr. 4, pp. 460-464)

Figure 6 – Proposed Site Plan

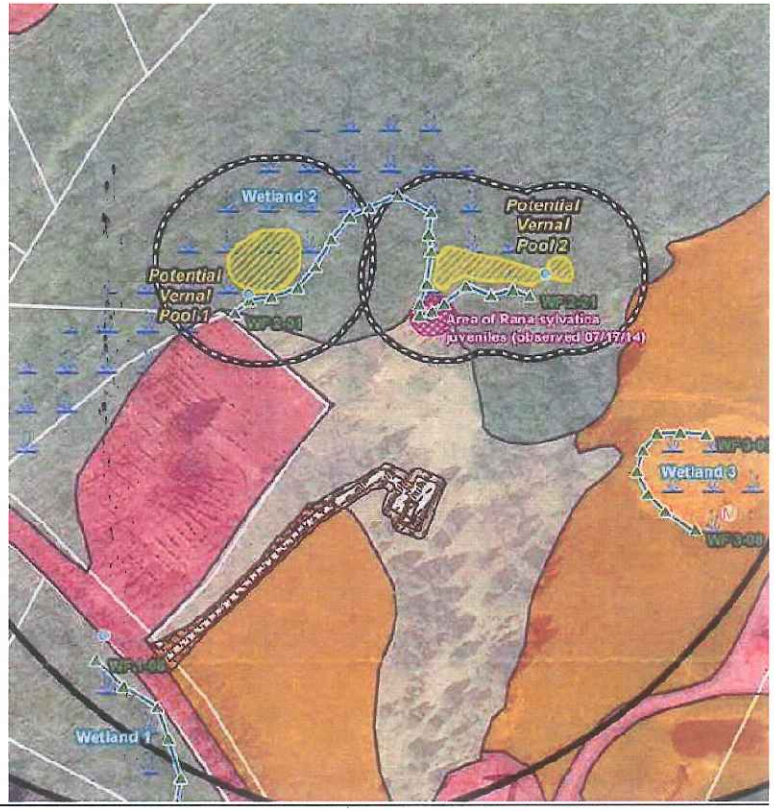


(Cellco 1, Tab 1 – Sheet C-1A)

Figure 7 – Location of Wetland Resources



Proposed Site



Alternate Site

LEGEND

- Vernal Pool
- 100' Vernal Pool Envelope
- 100'-750' Critical Terrestrial Habitat Area

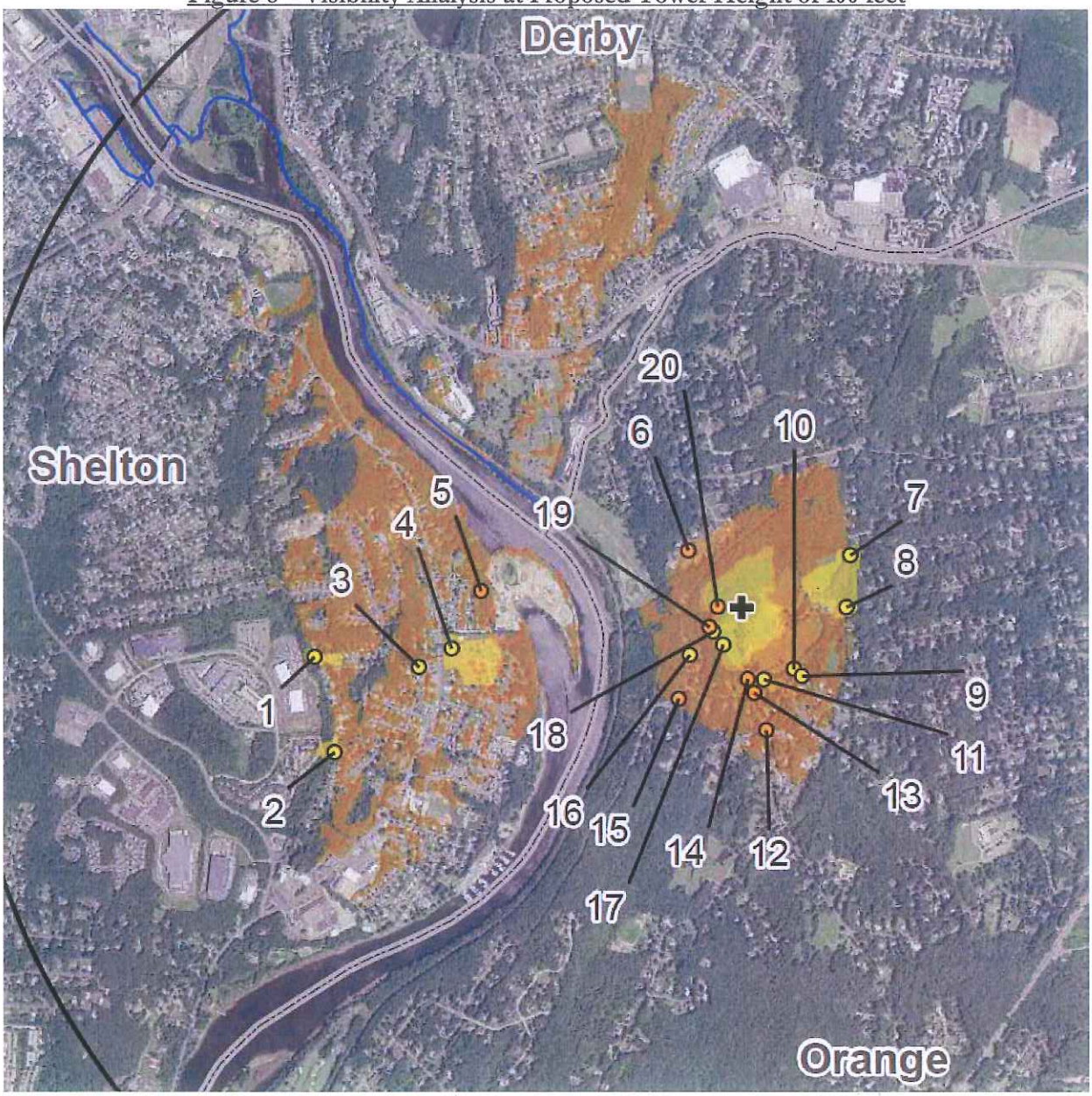
Critical Terrestrial Habitat Type

- Developed
- Forested
- Hayfield / Mowed
- Pasture / Old Field

- Delineated Wetland Boundary
- Wetland Area
- Proposed Cellco Gravel Access Road and Compound Area
- Proposed Limits of Grading

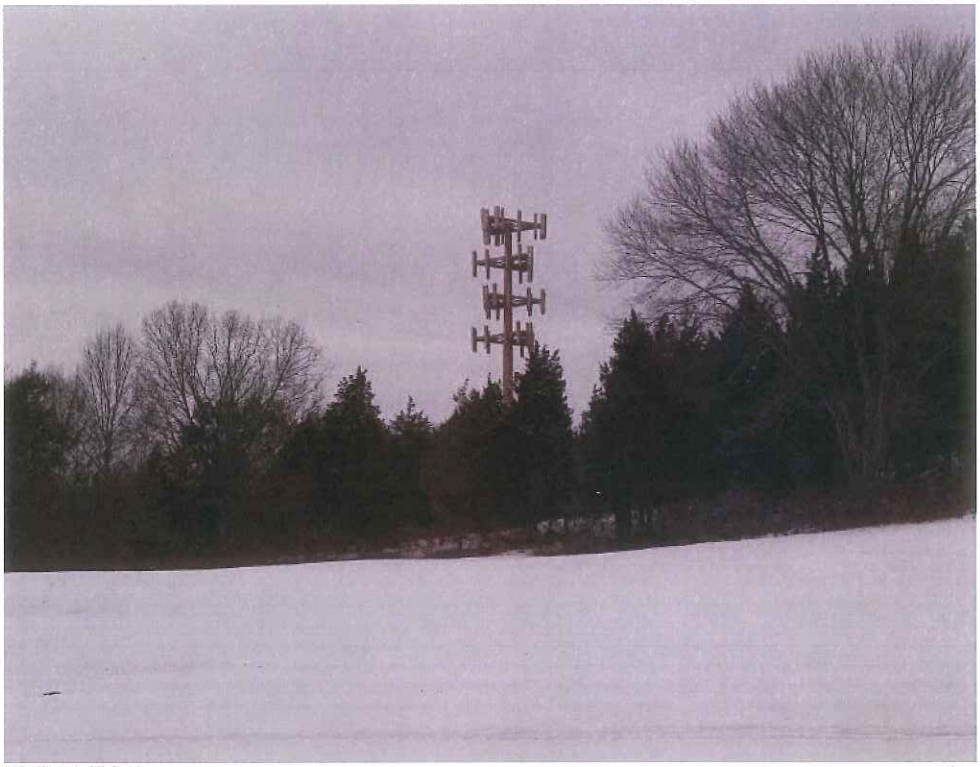
(Cellco 14, Attachment 1)

Figure 8 – Visibility Analysis at Proposed Tower Height of 100 feet



(Cellco 1, Tab 9 – Viewshed Map)

Figure 9 –Photo-simulation of proposed tower from map location 17



(Cellco 1, Tab 9)

Figure 10 – Photo-simulation of proposed tower from map location 9

(Cellco 1, Tab 9)

Figure 11 – Photo-simulation of proposed tower from map location 8

(Cellco 1, Tab 9)

Figure 12 - Photo-simulation of proposed tower from map location 16

(Cellco 1, Tab 9)

Figure 13 – View of balloon fly indicating top of proposed tower from map location 6

(Cellco 9)

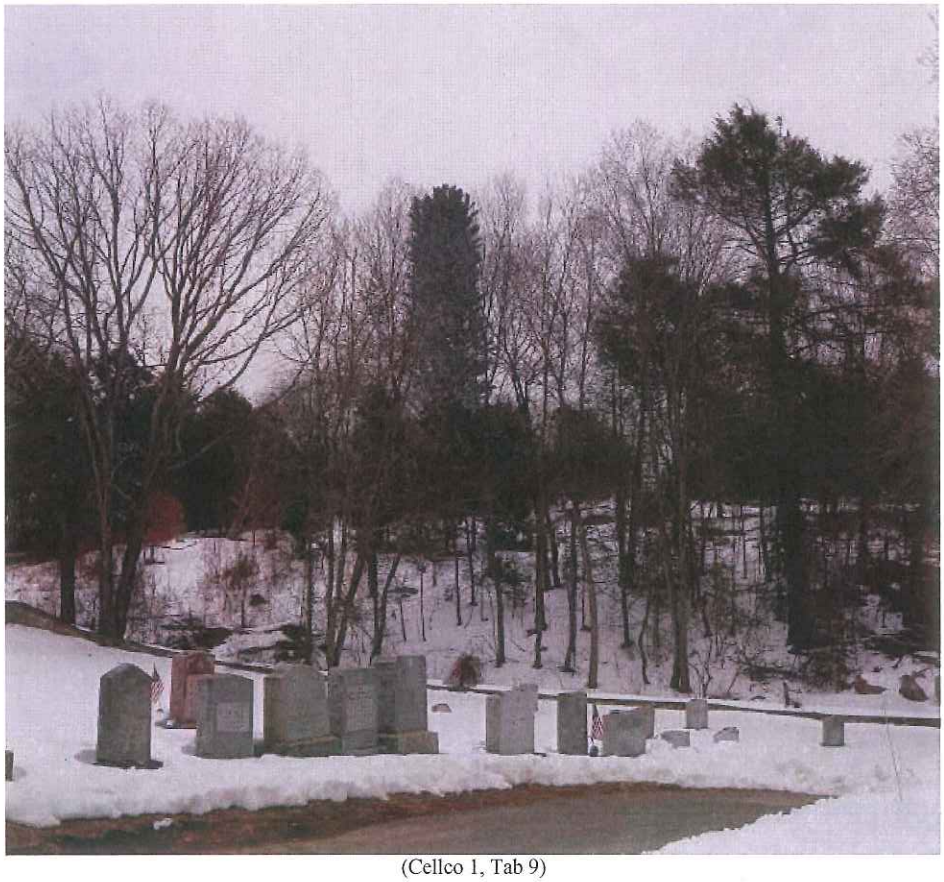
Figure 14 – View of balloon fly indicating top of proposed tower from 905 Rainbow Trail rear window

(Intervenors 11)

Figure 15 – Photo-simulation of a proposed tree tower design from Glenbrook Road - map location 10

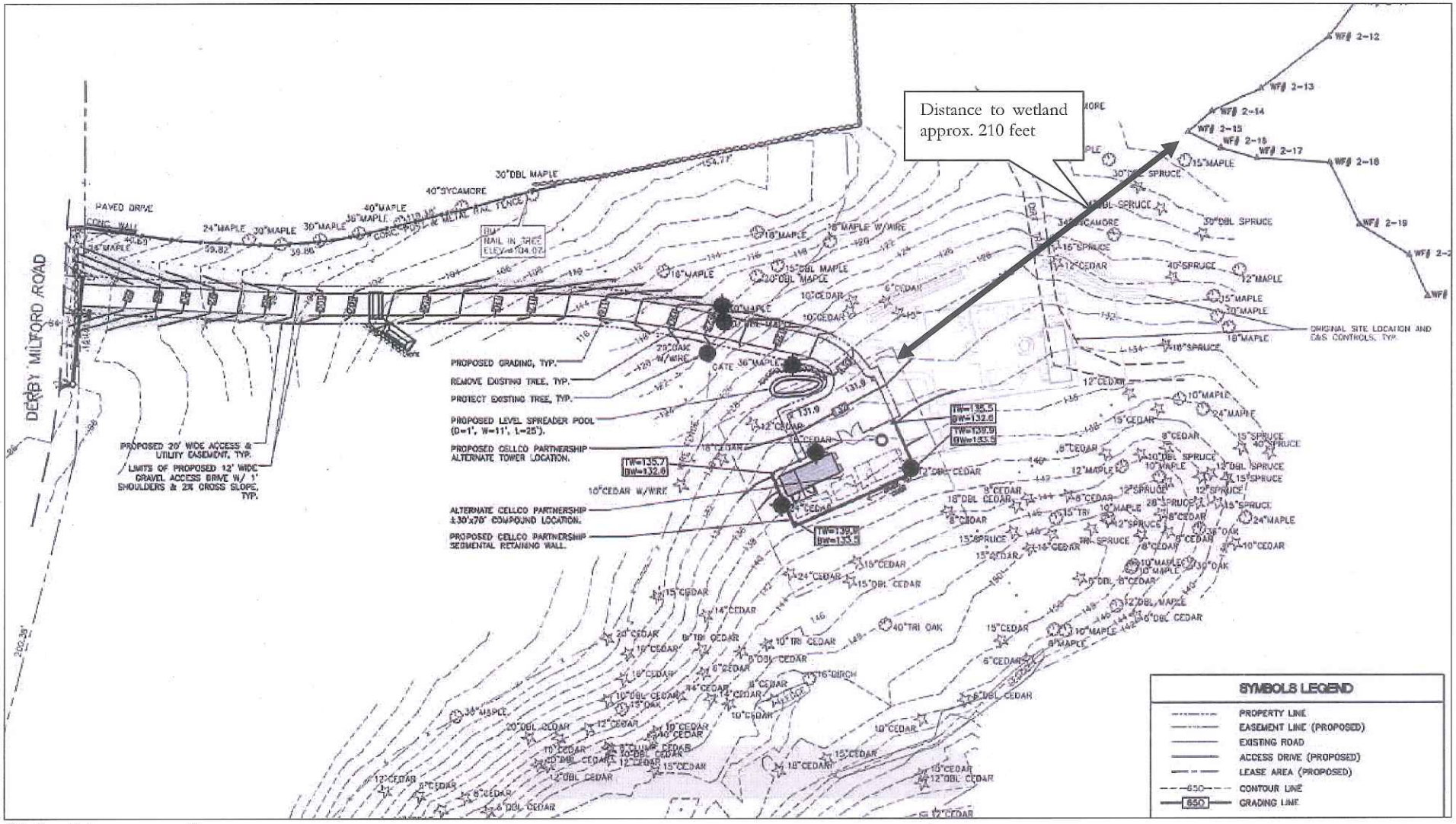
(Cellco 1, Tab 9

Figure 16 – Photo-simulation of a proposed tree tower design from cemetery - map location 20



(Cellco 1, Tab 9)

Figure 17 – Alternate Site Plan



(Cellco 14, response 4)

DOCKET NO. 448 – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.	}	Connecticut
	}	Siting
	}	Council
		January 8, 2015

Opinion

On May 13, 2014, Cellco Partnership d/b/a Verizon Wireless (Cellco) applied to the Connecticut Siting Council (Council) for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a wireless telecommunications facility to be located on a property identified as 831 Derby Milford Road in Orange, Connecticut. The intervenors in this proceeding are Albert Subbloie, Jacqueline Barbara, Glenn MacInnes, Jill MacInnes, Gayle Slossberg, Senator 14th District, James Maroney, State Representative 119th District, Themis Klarides, State Representative 114th District, and Paul Davis, State Representative 117th District, grouped as intervenors with the same interests in accordance with C.G.S. § 16-50n(c), and herein after referred to collectively as the Intervenors.

Cellco's objective for this facility is to provide wireless telecommunications services to the west-central portion of Orange, eastern Shelton and southeast Derby. The proposed 100-foot monopole facility is designed to provide capacity relief for six Cellco facilities adjacent to the proposed site and to cover existing wireless service gaps in this area.

An exponential increase in the use of data services by wireless customers is causing capacity issues surrounding the proposed site, as well as nationwide. In particular, considering Cellco's six adjacent facilities, four of their service sectors are nearing capacity limits on the 700 MHz system, which is Cellco's main network supporting wireless data services. To help alleviate capacity demands, Cellco has deployed 2100 MHz equipment and is offloading some of the data usage from the 700 MHz system. Cellco's information indicates that even with this deployment, however, the four sectors at issue would reach exhaustion by June 2016, compromising network reliability. Cellco's proposed site would offload further wireless data traffic from these four sectors, as well as four additional sectors, thus providing significant capacity relief.

The Intervenors argued the proposed site cannot provide the relief claimed. Their expert presented his own server mapping to show that the proposed site would not offload significant capacity from all of the eight sectors Cellco identified. While Cellco found the Intervenors' mapping was generally consistent with theirs, they countered that an in-house analysis of the network showed signal strength from several existing sectors nearby extending into the proposed service area more robustly than the Intervenors' models indicated; thus, they stated, their claim of significant capacity relief is justified.

Cellco also stated it has identified wireless service gaps totaling 1.2 square miles at 700 MHz and 2.0 square miles at 2100 MHz within its proposed service area. The service-deficient areas include portions of Route 34, Route 110, and Route 12. Overall, the proposed 100-foot facility would provide 700 MHz service to a 12.7

The proposed tower site is in the central portion of a 34.6-acre parcel that is partially used for agriculture. The property contains active hayfields, farm buildings, woodlands, wetlands and old field areas. The proposed tower site is located in an old field area, approximately 460 feet from Derby Milford Road. Access to the

tower site would be from a new gravel driveway extending northeast from Derby Milford Road through an active hayfield before reaching the site.

Cellco would lease a 100-foot by 100-foot parcel, within which it would install a 50-foot by 50-foot gravel compound. The compound would include the tower designed to support four levels of antennas, a 12-foot by 30-foot shelter for Cellco's ground equipment and emergency power generator. Antennas would be installed on a low-profile antenna platform to provide 700 MHz and 2100 MHz services. Cellco intends to install 850 MHz and 1900 MHz antennas on the platform at a later date. The tower and foundation would be designed to accommodate a 20-foot tower extension if another carrier demonstrates a need for a height beyond 100 feet.

The emergency generator would use diesel fuel and could run for four days under normal operating conditions before refueling. To prevent any leaks to the environment, the generator and its fuel tank would be housed inside a room in the equipment shelter; also, the tank would be double-walled. For tertiary protection, the floor of the room would be designed as a basin to contain the full capacity of the tank.

The proposed site is located at the interface of a wetland/old field area, offering a diversity of habitat for wildlife. The proposed compound is approximately 108 feet from a forested wetland that extends to the west and north ends of the parcel. South of the proposed site is a narrow ridge, and below the crest at a moderate grade, an active hayfield. Vernal pools that support wood frogs were identified in the forested wetland. The old field area provides suitable habitat for the Eastern Box Turtle, a State Species of Special Concern. Although no turtles were identified on site, Cellco would incorporate an Eastern Box Turtle Protection Program as part of site construction practices. Approximately five trees would be removed to develop the site and provisions would be made to protect two large-diameter trees adjacent to the access drive.

The area around the site is characterized by wooded, rolling terrain, limiting year-round visibility of the site to areas proximate to the host property, generally adjacent to open fields, and a few areas lower in elevation than the site across the Housatonic River in Shelton. Given the relatively short height of the tower and the mature tree canopy in the surrounding area, the tower will mostly be seen through vegetation rather than above the tree canopy.

Although there is an open view of the facility along the Derby Milford Road adjacent to the site, the small ridge southeast of the compound would shield views of the compound and lower section of tower from the road. Leaf-off views of the facility within a half-mile of the site would mainly occur from residential areas to the south and along Rainbow Trail to the north. Although there is a forest buffer between the site and Rainbow Trail, a small intervening valley decreases the buffering effect to the extent that several houses along Rainbow Trail would have leaf-off views. The residence at 905 Rainbow Trail (MacInnes residence) may have limited year-round views of a portion of the tower through the trees. Cellco would plant evergreens on the northwest side of the compound area to provide screening of the compound and lower portion of the tower from an adjacent cemetery. The Council considered a tree tower in this location, but concluded that although a tree tower would mitigate views through the trees, it would appear out of place from areas with year-round views and would be more visually prominent if it were extended by 20 feet. To help the tower blend in with its surroundings, the Council will examine a two-tone as well as a brown color scheme as part of the Development and Management Plan for this project.

During the proceeding, several locations were mentioned as alternatives to the proposed site, including preserved open space, a cemetery, a small parcel near the host property, and different locations on the host property. None of the off-parcel locations were determined to be viable. As for the host property, the property owner was not amenable to relocating the tower near existing buildings on the property or in other areas that could impede agricultural operations. The property owner did agree to an alternate location approximately 90 feet to the south of the proposed site. This alternate location would increase the buffer to the nearby forested wetland from approximately 100 feet to 218 feet. It would also be more protective of the old field habitat than the proposed site. Visual impacts of the alternate site are comparable to the proposed site because the tower height would remain at 100 feet and the ground elevation is a few feet lower. The tower would appear more prominent when viewed from Derby Milford Road across the hayfield, but when viewed from other areas, the visibility would be similar. Based on a review of the environmental conditions and visibility of the tower, the Council finds the alternate site preferable to the original proposed site.

According to a methodology prescribed by the Federal Communications Commission (FCC) Office of Engineering and Technology Bulletin No. 65E, Edition 97-01 (August 1997), the combined worst-case radio frequency power density levels of Cellco's antennas proposed for the facility, assuming LTE, AWS, PCS and cellular equipment, have been calculated to amount to 37.8 percent of the FCC's General Public/Uncontrolled Maximum Permissible Exposure, as measured at the base of the tower. This percentage is well below federal standards established for the frequencies used by wireless companies. If federal standards change, the Council will require that the tower be brought into compliance with such standards. The Council will require that the power densities be recalculated in the event other carriers add antennas to the tower. The Telecommunications Act of 1996 prohibits any state or local agency from regulating telecommunications towers on the basis of the environmental effects of radio frequency emissions to the extent that such towers and equipment comply with FCC's regulations concerning such emissions. Regarding potential harm to wildlife from radio frequency emissions: this, like the matter of potential hazard to human health, is a matter of federal jurisdiction. The Council's role is to ensure that the tower meets federal permissible exposure limits.

The Council first notes the evidence shows that there is no substantial adverse environmental effect from the proposed facility. Secondly, in determining the public need for a facility, the Council notes that the FCC preempts state or local regulation on matters that are exclusively within the jurisdiction and authority of the FCC, including, but not limited to, network operations. Notwithstanding this pre-emption, and on the basis of extensive experience with the rapid increase in public demand for wireless services and the evidence in this record, the Council finds that the proposed site would provide necessary capacity relief in Cellco's network and would provide coverage to identified service-deficient areas.

Based on the record in this proceeding, the Council finds that the effects associated with the construction, maintenance and operation of the proposed telecommunications facility, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to need, are not in conflict with policies of the State concerning such effects, and are not sufficient reason to deny this application. Therefore, the Council will issue a Certificate for the construction, maintenance, and operation of a 100-foot monopole telecommunications facility at the Alternate Site at 831 Derby Milford Road in Orange, Connecticut.

DOCKET NO. 448 – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.	} } }	Connecticut Siting Council

January 8, 2015

Decision and Order

Pursuant to Connecticut General Statutes §16-50p and the foregoing Findings of Fact and Opinion, the Connecticut Siting Council (Council) finds that the effects associated with the construction, maintenance, and operation of a telecommunications facility, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate, either alone or cumulatively with other effects, when compared to need, are not in conflict with the policies of the State concerning such effects, and are not sufficient reason to deny the application, and therefore directs that a Certificate of Environmental Compatibility and Public Need, as provided by General Statutes § 16-50k, be issued to Cellco Partnership d/b/a Verizon Wireless, hereinafter referred to as the Certificate Holder, for a telecommunications facility at the Alternate Site at 831 Derby Milford Road in Orange, Connecticut. The Council denies certification of the original proposed site located at 831 Derby Milford Road in Orange, Connecticut.

Unless otherwise approved by the Council, the facility shall be constructed, operated, and maintained substantially as specified in the Council's record in this matter, and subject to the following conditions:

1. The tower shall be constructed as a monopole, at a height of 100 feet above ground level to provide the proposed wireless services, sufficient to accommodate the antennas of Cellco Partnership and other entities, both public and private. The height of the tower may be extended after the date of the Decision and Order pursuant to regulations of the Federal Communications Commission.

2. The Certificate Holder shall prepare a Development and Management (D&M) Plan for this site in compliance with Sections 16-50j-75 through 16-50j-77 of the Regulations of Connecticut State Agencies. The D&M Plan shall be served on the Towns of Shelton and Orange for comment, and all parties and intervenors as listed in the service list, and submitted to and approved by the Council prior to the commencement of facility construction and shall include:
    a) final site plan(s) for development of the alternate site facility to include specifications for the tower, tower foundation, antennas, equipment compound including, but not limited to, fence with less than two inch mesh, radio equipment, access road, landscaping, utility line, and emergency backup generator that employ the governing standard in the State of Connecticut for tower design in accordance with the currently adopted International Building Code; and
    b) construction plans for site clearing, grading, water drainage, and erosion and sedimentation controls consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, as amended;
    c) provisions for wetland/vernal pool protection plan and an Eastern Box Turtle Protection Program incorporating Department of Energy and Environmental Protection recommended best construction management practices; and
    d) photo-simulations of the tower from adjacent areas depicting the tower in a brown-white color scheme and 100 percent brown color scheme.

3. Prior to the commencement of operation, the Certificate Holder shall provide the Council worst-case modeling of the electromagnetic radio frequency power density of all proposed entities' antennas at the closest point of uncontrolled access to the tower base, consistent with Federal Communications Commission, Office of Engineering and Technology, Bulletin No. 65, August 1997. The Certificate Holder shall ensure a recalculated report of the electromagnetic radio frequency power density be submitted to the Council if and when circumstances in operation cause a change in power density above the levels calculated and provided pursuant to this Decision and Order.

4. Upon the establishment of any new federal radio frequency standards applicable to frequencies of this facility, the facility granted herein shall be brought into compliance with such standards.

5. The Certificate Holder shall permit public or private entities to share space on the proposed tower for fair consideration, or shall provide any requesting entity with specific legal, technical, environmental, or economic reasons precluding such tower sharing.

6. Unless otherwise approved by the Council, if the facility authorized herein is not fully constructed with at least one fully operational wireless telecommunications carrier providing wireless service within eighteen months from the date of the mailing of the Council's Findings of Fact, Opinion, and Decision and Order (collectively called "Final Decision"), this Decision and Order shall be void, and the Certificate Holder shall dismantle the tower and remove all associated equipment or reapply for any continued or new use to the Council before any such use is made. The time between the filing and resolution of any appeals of the Council's Final Decision shall not be counted in calculating this deadline. Authority to monitor and modify this schedule, as necessary, is delegated to the Executive Director. The Certificate Holder shall provide written notice to the Executive Director of any schedule changes as soon as is practicable.

7. Any request for extension of the time period referred to in Condition 6 shall be filed with the Council not later than 60 days prior to the expiration date of this Certificate and shall be served on all parties and intervenors, as listed in the service list, and the Towns of Shelton and Orange. Any proposed modifications to this Decision and Order shall likewise be so served.

8. If the facility ceases to provide wireless services for a period of one year, this Decision and Order shall be void, and the Certificate Holder shall dismantle the tower and remove all associated equipment or reapply for any continued or new use to the Council within 90 days from the one year period of cessation of service. The Certificate Holder may submit a written request to the Council for an extension of the 90 day period not later than 60 days prior to the expiration of the 90 day period.

9. Any nonfunctioning antenna, and associated antenna mounting equipment, on this facility shall be removed within 60 days of the date the antenna ceased to function.

10. In accordance with Section 16-50j-77 of the Regulations of Connecticut State Agencies, the Certificate Holder shall provide the Council with written notice two weeks prior to the commencement of site construction activities. In addition, the Certificate Holder shall provide the Council with written notice of the completion of site construction, and the commencement of site operation.

11. The Certificate Holder shall remit timely payments associated with annual assessments and invoices submitted by the Council for expenses attributable to the facility under Conn. Gen. Stat. §16-50v.

12. This Certificate may be transferred in accordance with Conn. Gen. Stat. §16-50k(b), provided both the Certificate Holder/transferor and the transferee are current with payments to the Council for their respective annual assessments and invoices under Conn. Gen. Stat. §16-50v. In addition, both the Certificate Holder/transferor and the transferee shall provide the Council a written agreement as to the entity responsible for any quarterly assessment charges under Conn. Gen. Stat. §16-50v(b)(2) that may be associated with this facility.

13. The Certificate Holder shall maintain the facility and associated equipment, including but not limited to, the tower, tower foundation, antennas, equipment compound, radio equipment, access road, utility line and landscaping in a reasonable physical and operational condition that is consistent with this Decision and Order and a Development and Management Plan to be approved by the Council.

14. If the Certificate Holder is a wholly-owned subsidiary of a corporation or other entity and is sold/transferred to another corporation or other entity, the Council shall be notified of such sale and/or transfer and of any change in contact information for the individual or representative responsible for management and operations of the Certificate Holder within 30 days of the sale and/or transfer.

15. This Certificate may be surrendered by the Certificate Holder upon written notification and approval by the Council.

We hereby direct that a copy of the Findings of Fact, Opinion, and Decision and Order be served on each person listed in the Service List, dated July 30, 2014 and notice of issuance published in the *New Haven Register*.

By this Decision and Order, the Council disposes of the legal rights, duties, and privileges of each party named or admitted to the proceeding in accordance with Section 16-50j-17 of the Regulations of Connecticut State Agencies.

CERTIFICATION

The undersigned members of the Connecticut Siting Council (Council) hereby certify that they have heard this case, or read the record thereof, in **DOCKET NO. 448** – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 831 Derby Milford Road, Orange, Connecticut, and voted as follows to approve the proposed facility at the alternate site location:

Council Members	Vote Cast
Robert Stein, Chairman	Yes
James J. Murphy, Jr., Vice Chairman	Yes
Chairman Arthur House Designee: Michael Caron	Yes
Commissioner Robert Klee Designee: Robert Hannon	Yes
Philip T. Ashton	Yes
Daniel P. Lynch, Jr.	Yes
Dr. Barbara Currier Bell	Yes
Dr. Michael W. Klemens	Yes

Dated at New Britain, Connecticut, January 8, 2015.

DOCKET NO. 448 – Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at Orange Tax Assessor Map 77, Block 3, Lot 1, 831 Derby Milford Road, Orange, Connecticut.	}	Connecticut Siting Council

January 8, 2015

Conclusions of Law

A. The public hearing procedure was consistent with due process requirements.

On May 13, 2014, Cellco Partnership d/b/a Verizon Wireless (Applicant) submitted to the Connecticut Siting Council (Council) an application for a Certificate of Environmental Compatibility and Public Need (Certificate) for the construction, maintenance and operation of a telecommunications facility located at 831 Derby Milford Road in Orange, Connecticut. Proceedings held on applications for Certificates are subject to the provisions of the Uniform Administrative Procedure Act (UAPA) and the Public Utility Environmental Standards Act (PUESA). Under the UAPA, each party and the agency conducting the public hearing shall be afforded the opportunity to respond, to cross examine other parties, intervenors and witnesses, and to present evidence and argument on all issues involved.[1] According to the state Supreme Court, an agency is not required to use the evidence and materials presented to it in any particular fashion as long as the conduct of the hearings is fundamentally fair and due process requires not only that there be due notice of a hearing, but at the hearing parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, to cross examine witnesses and to offer rebuttal evidence.[2] Public hearings were held on July 17, 2014, August 12, 2014, September 16, 2014 and October 23, 2014.

During a pre-hearing teleconference held by the Council on June 24, 2014, the Applicant and interested persons were afforded an opportunity to discuss procedures for before, during and after the public hearings. The Council announced dates for submission of requests for party or intervenor status, pre-filed testimony, issuance of pre-hearing interrogatories and responses to pre-hearing interrogatories.[3] On July 11, 2014, Albert Subbloie, Jacqueline Barbara, Glenn MacInnes and Jill MacInnes (Subbloie, et al) filed a request to intervene.[4] During the public hearing held on July 17, 2014, the Council granted the Subbloie, et al request for intervenor status. On July 24, 2014, Senator Slossberg, Representative Davis, Representative Klarides and Representative Maroney (Slossberg, et al) filed a request to intervene.[5] During a special meeting of the Council held on July 29, 2014, the Council granted the Slossberg, et al request for intervenor status and exercised its discretion under Conn. Gen. Stat. §16-50n(c) to group Subbloie, et al and Slossberg, et al (hereinafter, Intervenors) based on their identical interests evidenced in their respective requests for intervenor status.[6] On July 18, 2014, July 30, 2014, August 13, 2014 and September 17, 2014, the Council issued memoranda addressing how continued evidentiary hearings in this matter would proceed. In each memo, the Council indicated deadline dates for the submission of additional interrogatories and pre-filed testimony.[7]

It is well settled that parties to quasi-judicial proceedings are not entitled to pre-trial discovery as a matter of constitutional right.[8] According to the state Supreme Court, "Pre-trial discovery may be expressly authorized

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[1] Conn. Gen. Stat. §4-177c (2013).

[2] *Grimes v. Conservation Commission,* 243 Conn. 266 (1997); *Connecticut Fund for the Environment v. Stamford,* 192 Conn. 247 (1984); *Palmisano v. Conservation Commission,* 27 Conn. App. 543 (Conn. App. 1992).

[3] Pre-Hearing Teleconference Memo, June 17, 2014 and Hearing Procedure Memo, June 24, 2014.

[4] Intervenors' 1 (Request to Intervene, July 11, 2014); Findings of Fact ¶3.

[5] Intervenors' 2 (Request to Intervene, July 24, 2014); Findings of Fact ¶3.

[6] Evidentiary Hearing Continuation Memorandum, July 30, 2014; Findings of Fact ¶3.

[7] Evidentiary Hearing Continuation Memoranda, July 18, 2014, July 30, 2014, August 13, 2014, September 17, 2014.

[8] *Pet v. Department of Health Services,* 228 Conn. 651 (1994).

by statute, but, absent an express provision the extent to which a party to an administrative proceeding is entitled to discovery is determined by the rules of the particular agency" and "constitutional principles permit an administrative agency to organize its hearing schedule so as to balance its interest in reasonable, orderly and non-repetitive proceedings against the erroneous deprivation of a private interest."[9] It is therefore not unconstitutional for the Council, in good faith, to balance its statutory time constraints against a party's desire for more time to present their objections to a proposal.[10] On July 21, 2014, Intervenors filed a motion for a continuance, which was denied in part as it related to the postponement of the August 12, 2014 continued evidentiary hearing and granted in part as it related to limiting the scope of the August 12, 2014 hearing to continued cross examination of the Applicant and to schedule an additional evidentiary hearing date for September 16, 2014.[11] On August 5, 2014, Intervenors filed a second motion for a continuance to postpone the August 12, 2014 continued evidentiary hearing, which was rendered moot on the basis that Intervenors were in attendance at the August 12, 2014 hearing.[12] Consistent with the Council's disposition of Intervenors' first motion for a continuance dated July 21, 2014, the Council limited the scope of the August 12, 2014 hearing to continued cross examination of the Applicant by the Council and Intervenors.

Intervenors were afforded the opportunity to conduct cross examination required for a full and true disclosure of the facts. Intervenors issued two sets of pre-hearing interrogatories to the Applicant totaling 146 questions and cross examined the Applicant during the public hearings held on August 12, 2014, September 16, 2014 and October 23, 2014.[13] Intervenors were also afforded the opportunity to fully and fairly present evidence in opposition to the application. On September 12, 2014, Intervenors submitted pre-filed testimony and a report authored by their expert witness, Mr. David Maxson (Maxson).[14] Intervenors presented their case during the September 16, 2014 and October 23, 2014 hearings, including an opportunity to present direct testimony.[15] On October 21, 2014, two days before the final evidentiary hearing, Intervenors submitted a written request to submit a supplemental 36-page report authored by Maxson.[16] Despite the timing, during the final evidentiary hearing held on October 23, 2014, the Council voted to grant Intervenors' request to submit the supplemental report over the objection of the Applicant.[17] Therefore, the public hearing procedure was consistent with due process requirements.

1. Intervenors' substantial rights were not prejudiced by holding the public hearing in the City of Shelton.

Under Conn. Gen. Stat. §16-50*l*, applicants are required to submit an application to the Council accompanied by proof of service of such application on "each municipality in which any portion of such facility is to be located, ...and any adjoining municipality having a boundary not more than two thousand five hundred feet

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[9] *Id.; FairwindCT, Inc. v. Connecticut Siting Council,* 313 Conn. 669 (2014); *Concerned Citizens of Sterling v. Connecticut Siting Council,* 215 Conn. 474 (1990).

[10] *Id.*

[11] Evidentiary Hearing Continuation Memorandum, July 30, 2014; Findings of Fact ¶14.

[12] Transcript 3 at page 169.

[13] Applicant 11, 12, 15 (Responses to Intervenors' Interrogatories Set I, Part I; Set I, Part II; and Set II).

[14] Intervenors 3-10 (Intervenors' Pre-Filed Testimony; Report of David Maxson, dated September 8, 2014).

[15] Evidentiary Hearing Continuation Memoranda July 18, 2014, July 30, 2014, August 13, 2014, September 17, 2014; Transcript 4 at pages 334-440; Direct Testimony of Senator Gayle Slossberg, Transcript 4 at pages 429-434; Transcript 5 at pages 572-620.

[16] Intervenors' Request to Submit Additional Information, dated October 21, 2014; Intervenors 12 (Supplemental Report of David Maxson, dated October 20, 2014).

[17] Transcript 5 at pages 584-586 (Baldwin: "As the Council stated at the beginning of this proceeding, this is the fourth hearing on this docket... We've submitted more than 150 interrogatories and responses... Now, on the eve, literally two days before this last hearing, additional evidence is submitted to the Council... That report was distributed to our witness panel yesterday. And I can tell you that that is simply not enough time to digest, to review, and to put ourselves in a position to rebut and produce cross-examination of Mr. Maxson's report.")

from such facility…" The location of the proposed telecommunications facility is within 2,500 feet of the City of Shelton. The applicant provided proof of service of the application on the City of Shelton, as well as proof of service of the application on other entities required to receive a copy of the application under Conn. Gen. Stat. §16-50*l*.[18] Pursuant to Conn. Gen. Stat. §16-50m, "At least one session of such hearing shall be held at a location selected by the council in the county in which the facility or any part thereof is to be located after six-thirty p.m. **for the convenience of the general public**…" (Emphasis added). Due to summer camps and other programs, the Town of Orange did not have a venue available to accommodate the Council's public hearing, which requires reservation of a venue between the hours of 1 PM and 10 PM for setup and breakdown of equipment.[19] Given the City of Shelton is within 2,500 feet of the proposed telecommunications facility, the availability of Shelton City Hall and the possibility of effects of the proposed facility on residents of Shelton, during a regular meeting held on June 12, 2014, the Council selected Shelton City Hall, which is within 3 miles of the proposed telecommunications facility site, as a suitable public hearing venue.[20] Pursuant to Conn. Gen. Stat. §16-50m, on June 17, 2014, the Council published general public notice of the July 17, 2014 public hearing in the New Haven Register and mailed notice of the public hearing to each person entitled under Conn. Gen. Stat. §16-50*l* to receive a copy of the application, including abutting property owners and state legislators in whose district the facility listed in the application is to be located.[21] On June 24, 2014, the Council held a pre-hearing teleconference during which the Council staff, Applicant and interested persons discussed procedural matters for the public hearing.[22]

The purpose of the hearing requirement after 6:30 PM under Conn. Gen. Stat. §16-50m is clearly "for the convenience of the general public." The Town of Orange is in New Haven County. The City of Shelton is in Fairfield County. Due to the unavailability of a suitable hearing venue in the Town of Orange and due to the fact that the City of Shelton is within 2,500 feet of the proposed telecommunications facility, the availability of Shelton City Hall and the possibility of effects of the proposal on Shelton residents, the Council determined that Shelton City Hall was a suitable hearing venue for the convenience of the general public, consistent with the purpose of the statute. Pursuant to Conn. Gen. Stat. §4-183(j) and under the Supreme Court decision in *Tele Tech v. Department of Public Utility Control,* a court may only overturn an agency decision if the court finds that the substantial rights of the person appealing the agency's final decision had been prejudiced.[23] If the appellant fails to show that their substantial rights have been prejudiced, even if procedural irregularities can be demonstrated, the argument fails.[24] Intervenors were provided personal notice of the public hearing by mail and general public notice by publication in the New Haven Register on June 17, 2014, wrote correspondence to the Council on June 17, 2014 specific to this point for which a detailed response was provided on June 24, 2014, participated in the pre-hearing teleconference held on June 24, 2014 and appeared at the public hearing that was held at the Shelton City Hall on July 17, 2014. Therefore, the Intervenors' substantial rights were not prejudiced by holding the public hearing in the City of Shelton.

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[18] Applicant 1 (Application); Findings of Fact ¶7.

[19] Correspondence from Senator Slossberg to Acting Executive Director Bachman, dated June 17, 2014 and Correspondence from Acting Executive Director Bachman to Senator Slossberg dated June 24, 2014; Transcript 2 at page 152 (First Selectman of the Town of Orange, James Zeoli, stated, "…I have to say, first, next time you need a hearing involving something in the Town of Orange, I ask that you please call the first selectman's office if you're told there's no room for you …, because we will find room for you in Orange. I don't know how that happened, but a couple of us do have a pretty good idea of what transpired there."); Findings of Fact ¶9.

[20] Council Meeting Minutes, June 12, 2014; Correspondence from Senator Slossberg to Acting Executive Director Bachman, dated June 17, 2014 and Correspondence from Acting Executive Director Bachman to Senator Slossberg dated June 24, 2014; Findings of Fact ¶9.

[21] Findings of Fact ¶10 and ¶13.

[22] Council June 17, 2014 Pre-Hearing Teleconference Memo and Council June 24, 2014 Hearing Procedure Memo.

[23] Conn. Gen. Stat. §4-183(j) (2013); *Tele Tech of Connecticut Corporation v. Dept. of Public Utility Control,* 270 Conn. 778 (2004); *Goldfisher v. Connecticut Siting Council,* 95 Conn. App. 193 (Conn. App. 2006).

[24] *Id.*

2. **Intervenors' substantial rights were not prejudiced by the Council's denial of Intervenors' request of the Council to subpoena the property owner of the proposed telecommunications facility site.**

During the public hearing held on August 12, 2014, Intervenors requested the Council to order the property owner of 831 Derby Milford Road to attend the next hearing due to questions that arose during the pendency of the proceeding as to whether or not the proposed telecommunications facility could be located elsewhere on the 34.6 acre property.[25] Pursuant to Conn. Gen. Stat. §16-50p(g), "in deciding whether to issue a certificate, the council shall in no way be limited by the applicant already having acquired land or an interest therein for the purpose of constructing the facility that is the subject of its application." In *Corcoran v. Connecticut Siting Council*, the Court interpreted this statute to be "an enlargement of the Council's discretion, not a limitation, permitting, but not obligating the Council to consider the likelihood of the applicant securing the proposed site."[26] In that case, the plaintiffs argued that the Council's approval of the application rested heavily on the fact that T-Mobile held a lease for the site and could not negotiate an alternate site on the property with the country club.[27] However, the Council has no power to compel a property owner to locate a facility elsewhere on its property.[28] As indicated by the Applicant's attorney during the August 12, 2014 public hearing, "any change from the leased parcel would require additional landlord approval."[29] If a property owner cannot reach an agreement with the Applicant as to an alternative location, the Council has no power to force the property owner to agree and the alternative location is therefore not a feasible alternative.[30]

During the hearing held on August 12, 2014, the Council inquired of the applicant as to whether the tower could be moved 90 feet south on the subject parcel to avoid impacts to vernal pools and Eastern Box Turtle habitat.[31] In responses to interrogatories and during cross examination during the September 16, 2014 hearing, the Applicant reported further discussions with the property owner regarding the feasibility of alternative locations on the subject property.[32] Notwithstanding the property owner's productive use of portions of the property for farming operations, the Applicant and the property owner were able to identify a location farther away from wetlands, closer to the property owner's house and further away from Rainbow Trail.[33] Additionally, during the pendency of the proceedings, the Applicant explored three additional alternative sites for the proposed facility that were suggested by the Intervenors, including property owned by the Town of Orange located at Tucker's Ravine, property owned by the Catholic Cemeteries Association located at 219 New Haven Avenue in Derby, and a residentially zoned parcel located at 803 Derby Milford Road in Orange, each of which were explored and deemed to be infeasible.[34] One additional site was suggested by Intervenors during the September 16, 2014 public hearing, but the precise location and availability of that site was not identified.[35]

Intervenors did not request the Council to subpoena the property owners of the three identified alternative sites nor did Intervenors call the property owner of the proposed site or the property owners of the three identified alternative sites as witnesses. Pursuant to Conn. Gen. Stat. §16-50o and Conn. Gen. Stat. §4-178, every party shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts. In *FairwindCT, Inc. v. Connecticut Siting Council*, the Court held that the plaintiffs were not

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[25] Transcript 3 at pages 302-306.
[26] *Corcoran v. Connecticut Siting Council*, 284 Conn. 455 (2007).
[27] *Id.*
[28] *Id.*
[29] Transcript 3 at page 304.
[30] *Corcoran, supra* note 26.
[31] Applicant 10 (Responses to Council Interrogatories); Transcript 3 at pages 209-218.
[32] Applicant 10 (Responses to Council Interrogatories); Transcript 4 at pages 471-476.
[33] *Id.*; Findings of Fact ¶55 and ¶¶139-144.
[34] Intervenors 3 (Pre-Filed Testimony of Gayle Slossberg); Applicant 9 (Response to Council request for Additional Information); Transcript 3 at pages 182-185; Findings of Fact ¶¶51-54.
[35] Transcript 4 at pages 435-438.

prejudiced by the Council's refusal to subpoena and allow the plaintiffs to cross examine an employee of the Department of Energy and Environmental Protection as the right to cross-examination was a matter of discretion for the Council and the Council reasonably could have determined, on the basis of the record before it, that cross examination was not required to allow the plaintiffs to present a full and true disclosure of the facts.[36] In this proceeding, on the basis of the Applicant's discussions with the property owner regarding the feasibility of alternative locations on the property for the proposed tower and the Applicant's responses to interrogatories on this point, cross examination of the property owner was not required to allow the Intervenors to present a full and true disclosure of the facts. Therefore, Intervenors' substantial rights were not prejudiced by the Council's denial of Intervenors' request of the Council to subpoena the property owner of the proposed telecommunications facility site.

B. The Council is preempted by the federal Telecommunications Act on a determination of public need whether public need is based on coverage or capacity.

The legislative purpose of the federal Telecommunications Act of 1996 (TCA) is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and *encourage the rapid deployment of new telecommunications technologies.*" (Emphasis added.)[37] In 2010, the Federal Communications Commission (FCC) released the National Broadband Plan (NBP) "to ensure every American has access to broadband capability."[38] Section 706 of the TCA specifically relates to Broadband Data Improvement and states, "The Commission and each State commission with regulatory jurisdiction over telecommunications services *shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability* to all Americans." (Emphasis added.)[39] Through the TCA and the NBP, Congress clearly vested the FCC with the authority to promulgate regulations to meet the stated goals and established that the FCC preempts state or local regulation on matters that are exclusively within the jurisdiction and authority of the FCC. Preservation of state or local authority extends only to placement, construction and modifications of facilities based on matters not directly regulated by the FCC, such as environmental impacts.[40] On October 21, 2014, the FCC released a Wireless Infrastructure Report and Order that found regulatory review processes can slow deployment of wireless infrastructure substantially and adopted rules to reduce regulatory obstacles to wireless facility siting and construction.[41]

The legislative purpose of the state PUESA is "to provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state."[42] Under §16-50p of the PUESA, "a public need exists when a facility

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[36] *FairwindCT, Inc. v. Connecticut Siting Council,* 313 Conn. 669 (2014).
[37] Council Administrative Notice 4 (TCA); Findings of Fact ¶¶21-27.
[38] Council Administrative Notice 18 (NBP); Findings of Fact ¶¶26-31.
[39] Council Administrative Notice 4 (TCA); Findings of Fact ¶¶26-31.
[40] *Id.*; *Verizon v. FCC,* 740 F.3d 623 (D.C. Cir. 2014) ("We think it reasonable to believe that Congress contemplated that the Commission would regulate this industry, as the agency had in the past, and the scope of any authority granted to it… both by the boundaries of the Commission's subject matter jurisdiction and the requirement that any regulation be tailored to the specific statutory goal of accelerating broadband deployment is not so broad that we might hesitate to think that Congress could have intended such a delegation."); *New York SMSA Limited Partnership, et al v. Town of Clarkstown*, 612 F.3d 97 (2nd Cir. 2010)(Town provisions setting forth a preference for "alternate technologies" preempted because of interference with FCC's regulation of technical and operational aspects of wireless telecommunications technology, a field that is occupied by federal law.); *Cellular Phone Taskforce, et al v. FCC,* 205 F.3d 82 (2nd Cir. 2000) (State and local governments are preempted from regulating the operation and construction of a national telecommunications infrastructure, including construction and operation of personal wireless communications facilities.); Council Staff Report, dated October 17, 2014.
[41] Council Administrative Notice 20 (FCC Wireless Infrastructure Report and Order).
[42] Conn. Gen. Stat. §16-50g, *et seq.* (2013).

is necessary for the reliability of the electric power supply of the state."[43] In 2011, Governor Malloy vetoed Public Act 11-107 on the basis that "the language of the proposed bill would apply an illogical standard of review to applications for the siting of proposed cell towers."[44] Specifically, Public Act 11-107 proposed the following language, "The Council shall not grant a certificate for a [telecommunications] facility… unless it finds and determines a **public benefit** for the facility…" (Emphasis added.)[45] Under §16-50p of the PUESA, "a public benefit exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity."[46] Selection of the term "public benefit" over the term "public need" in Public Act 11-107 is telling despite the fact that both terms are equally inapplicable to telecommunications facilities. It is further evident in the passage of Public Act 12-165, the successor to Public Act 11-107, where new language included the phrase, "…the Council shall not render any decision pursuant to this subparagraph that is **inconsistent with federal law or regulations**" (Emphasis added).[47] Clearly, this language was inserted with the recognition that the Council is preempted by the FCC on a determination of public need and that the definition of "public need" under the state PUESA does not apply to telecommunications facilities.

In accordance with FCC regulations, Verizon holds FCC licenses to provide wireless services in the 700 MHz, 850 MHz, 1900 MHz and 2100 MHz frequency ranges and pursuant to these licenses, Verizon maintains and operates a network of cell sites to serve the demand for advanced wireless services, including telecommunications coverage and capacity.[48] Consistent with the purposes of the TCA and the NBP, Verizon's proposed facility would provide mobile wireless broadband services and personal wireless services.[49] The FCC reports that demand for wireless capacity is booming, but the ability to meet this demand depends on the infrastructure that supports the services.[50] In response, the FCC adopted rules to facilitate the deployment of the infrastructure necessary to support surging demand, expand broadband access, support innovation and wireless opportunity and enhance public safety.[51] Based on the provisions of the TCA related to rapid deployment of new telecommunications technologies, the interpretations of those provisions in federal case law, and the FCC rules adopted to reduce regulatory obstacles in the FCC Wireless Infrastructure Report and Order, Congress clearly intended for the FCC to have exclusive jurisdiction and preempt state or local regulation on these matters. Therefore, the Council is preempted by the federal TCA on a determination of public need whether public need is based on coverage or capacity.

C. The PUESA does not require public disclosure of proprietary information.

During the public hearing held on September 16, 2014, Intervenors requested submission of the Applicant's link budget, drive data analysis and traffic map analysis, which the Applicant represents to be confidential and proprietary, on the basis that the Applicant is relying upon that information to establish its claim that there is a public need for the tower.[52] After the Intervenors and Applicant were afforded an opportunity to be heard on the request and members of the Council were afforded an opportunity to comment on the request during the public hearing, the Council Chairman denied the request on the basis that the Council does not need the additional information to make a decision and will rely on the combination of experts before it.[53] On October 10, 2014, Intervenors submitted a renewed Motion for Order to Compel Production of Documents arguing

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[43] Conn. Gen. Stat. §16-50p(c)(3) (2014).
[44] Council Staff Report, dated October 17, 2014.
[45] *Id.*
[46] Conn. Gen. Stat. §16-50p(c)(3) (2014).
[47] Council Staff Report, dated October 17, 2014.
[48] Applicant 1 at page 8; Findings of Fact ¶¶35-40.
[49] Applicant 1 at page 9; Council Staff Report, dated October 17, 2014; Findings of Fact ¶¶34-40.
[50] Council Administrative Notice 20 (FCC Wireless Infrastructure Report and Order).
[51] *Id.*
[52] Transcript 4 at pages 553-562.
[53] *Id.*

that the Applicant cannot fairly and consistent with due process be permitted to pursue a contested application claiming that the proposed facility is needed in order to provide capacity relief, while simultaneously withholding from disclosure to the Council and the Intervenors opposing the application documents that may undermine Applicant's capacity claim relief.[54] In support of their argument, Intervenors refer to the Applicant's response to the Council's Interrogatory No. 10, regarding the tools/methodology used by Cellco to establish capacity need in the proposed service area. The Applicant's response states, "Cellco evaluates historic cell site performance and utilization data, together with cell site traffic growth data for each of its cell sites on a monthly basis. This data allows Cellco to forecast when any individual or combination of cell sites will reach their maximum capacity. The cell site performance and utilization data and traffic growth data is competitively sensitive information that Cellco cannot share publicly."[55] The Council accepted this response on the basis that cell site performance and utilization data are matters directly regulated by the FCC under the TCA and did not request the Applicant to provide further information. Additionally, in support of their argument, Intervenors refer to the Applicant's response to Intervenors' Interrogatory No. 57 [66] and Interrogatory No. 58 [67] regarding Intervenors' request for copies of any documents pertaining to traffic maps of the eight existing sectors that Verizon prepared and/or reviewed. The Applicant's responses state, "Cellco's RF Design Engineers use this customer specific data, along with other data, as part of its overall needs analysis. The customer specific information described in response to Question 58 [67] above is confidential information that Cellco cannot disclose."[56] It is well established that matters related to customer specific information are exclusively within the jurisdiction of the FCC in accordance with FCC regulations promulgated under the TCA.[57]

During the public hearing held on October 23, 2014, the Council denied the Intervenors' renewed Motion for Order to Compel Production of Documents on the basis that the Applicant has provided sufficient information to demonstrate need that the Intervenors have the opportunity to challenge and that Maxson's October 20, 2014 supplemental report "actually renders the motion to compel moot, since he… basically shows that he does not need the information to present his side of the argument."[58] Unlike courts, administrative agencies can act both as investigator and adjudicator without violating due process.[59] Factual determinations must be sustained if they are reasonably supported by substantial evidence in the record taken as a whole.[60] In making factual determinations an administrative agency is not required to believe a witness, even an expert, nor is it required to use in any particular fashion any of the materials presented to it so long as the conduct of the hearing is fundamentally fair.[61] In contested cases, the agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.[62] It is therefore well established that the Council has a right to evaluate the credibility of witnesses and to give the weight it finds appropriate to the evidence.

Furthermore, in Intervenors' Reply Brief to Cellco's Objection to Intervenors' Motion for Order to Compel Production of Documents, Intervenors cite to *Office of Consumer Counsel v. Department of Public Utility Control,* to support the argument that Applicant's link budget, drive data analysis and traffic map analysis are documents that are relevant to the proceeding.[63] Conn. Gen. Stat. §4-177c states, "In a contested case, each party and the

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[54] Intervenors Motion for Order to Compel Production of Documents, dated October 10, 2014.
[55] Applicant 3 (Responses to Council Interrogatories, Set I); Findings of Fact ¶41.
[56] Applicant 15 (Responses to Intervenors' Interrogatories, Set II); Findings of Fact ¶41.
[57] Council Administrative Notice 4 (TCA); Council Staff Report, dated October 17, 2014.
[58] Transcript 5 at pages 575-581; Intervenors 12 (Maxson Supplemental Report, dated October 20, 2014).
[59] *Grimes v. Conservation Commission*, 243 Conn. 266 (1997).
[60] *Office of Consumer Counsel v. Department of Public Utility Control*, 246 Conn. 18 (1998).
[61] *Huck v. Inland Wetlands and Watercourses Agency,* 203 Conn. 525 (1987); *Omnipoint Communications, Inc. v. City of White Plains*, 430 F.3d 529 (2nd Cir. 2005).
[62] Conn. Gen. Stat. §4-178 (2014); *FairwindCT, Inc. v. Connecticut Siting Council,* 313 Conn. 669 (2014).
[63] Intervenors' Reply Brief to Cellco's Objection to Intervenors' Motion for Order to Compel Production of Documents, dated October 17, 2014, citing *Office of Consumer Counsel v. Department of Public Utility Control,* 44 Conn. Supp. 21 (Conn. Super. Ct. 1994).

agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, **except as otherwise provided by federal law**…" (Emphasis added). Unlike the circumstances in *Office of Consumer Counsel v. Department of Public Utility Control,* the Applicant is not a public service company and the documents requested to be submitted regarding customer-specific data, technical and operational aspects of the Applicant's network are matters that are directly regulated by the FCC under the TCA.[64] Preservation of state authority extends only to placement, construction and modification of telecommunications facilities based on matters not directly regulated by the FCC, such as environmental impacts.[65] It is well established that the FCC directly regulates matters related to network operations and customer information.

Conn. Gen. Stat. §16-50o requires submission into the record "the terms of any agreement… entered into by the applicant and… any third party, in connection with the construction or operation of [a] facility," but does "not require the public disclosure of proprietary information or trade secrets."[66] The statute recognizes that the Council has the right to limit public disclosure of proprietary information and trade secrets. Furthermore, the Freedom of Information Act also provides an exception for trade secrets and financial information.[67] In *Rosa v. Connecticut Siting Council,* the court recognized the statute imposes a requirement on the applicant, does not impose a requirement on the Council and does not impose a penalty for non-compliance. [68] In that case, the court held that the Council did not abuse its discretion or act illegally by not requiring the applicant to submit agreements that the parties conceded did not contain relevant information.[69] During the evidentiary hearing held on September 16, 2014, Maxson was asked of his report, "Do you need Verizon's dominant server information to create any refinements to this map?"[70] Maxson replied, "I do not."[71] During the evidentiary hearing held on October 23, 2014, the Council admitted Maxson's supplemental report into the record over the objection of the Applicant and cited to language in the supplemental report when voting to deny the renewed Motion for Order to Compel Production of Documents. Maxson states, "The applicant's alternative is no alternative because it relies on a secret sauce of **irrelevant data analysis**. Contrary to the applicant's assertions, drive testing and link budget details are **not necessary to assess the potential benefits of a proposed facility** and traffic mapping is only useful in evaluating a proposed cell site if it shows a concentrated area of usage (not the case here) and is performed in conjunction with dominant server analysis to show how that usage will be redistributed to a new sector (not disclosed by the applicant) (Emphasis added).[72] Here, as in *Rosa*, Intervenors conceded that the requested link budget, drive data analysis and traffic map analysis do not contain relevant information. Therefore, given the PUESA does not require public disclosure of proprietary information, the FCC directly regulates matters related to network operations and customer information, and the UAPA requires submission of relevant information, Intervenors were not prejudiced by the absence of the concededly irrelevant link budget, drive data analysis and traffic map analysis from the record.

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[64] Council Administrative Notice 4 (TCA); Council Staff Report, dated October 17, 2014; Conn. Gen. Stat. §16-1 (4) (2014).

[65] *Id.;* See also *supra* note 40.

[66] Conn. Gen. Stat. §16-50o (2013).

[67] Conn. Gen. Stat. §1-210(b)(5)(2013).

[68] *Rosa v. Connecticut Siting Council*, 2007 Conn. Super. LEXIS 590 (Conn. Super. 2007)

[69] *Id.*

[70] Transcript 4 at pages 362-363.

[71] *Id.*

[72] Intervenors 7 (Maxson Supplemental Report, dated October 20, 2014).

STAFF MEETING AGENDA 1/13/15

I. **Items from last meeting (11/5/14):**

1. **Permanent Clerk Typist Position** - filled
2. **Exempt Mods –** cc property owner on decision letters, if available
3. **FCC Report and Order –** established preemption on capacity, rules take effect 1/21/15, impacts tower shares, petitions and EMs; use FCC criteria to evaluate submission for an eligible facility; shot clock clarification – deadline for decision 150 days from receipt
4. **Copies at Meetings –** Carriann is responsible for all copies, Draft FOF should not be black & white
5. **Copies to Council Members –** staff interrogatory questions, incomplete letters, procedural memos
6. **Requests for Transfer of Certificates –** copy to be distributed to Lisa F.

II. **New items:**

1. **Mileage Reimbursements** – the lesser of the round trip to work from home and round trip to conference/destination from work
2. **Comp and Overtime** – 2 hours for dinner not to be included and time ends when state vehicle parked in garage
3. **Copies to Council Members –** Lisa F. placed CM cc on all relevant documents in forms
4. **Exempt Mods – no holds,** if incomplete, draft letter and if questions, push off to next annotated, **no decision letters to go out prior to expiration of CM and town comment period** (if comment period ends Friday, date letter for Monday)
5. **Communications Policy –** 2008 SDP version revised for 2014
6. **Petition Posting –** after decision, petition filing should still be available by link (Dave)
7. **FOF Styleguide** – changed Proposed and Existing Coverage to Proposed and Existing Wireless Service (capacity issue prompted by D448), Fred and Christina working on revisions to styleguides for all decision documents
8. **Hearing Programs** – to be posted to webpage for each hearing held (post after the hearing, analyst to communicate exhibits filed during hearing & post with transcript)
9. **Service List** – most recent should be posted on webpage, earlier versions to be retained in S drive folder (post schedule with date updated in link)
10. **Revised Docket Schedules –** schedule revisions are to be posted to webpages (retain original schedule in S drive and retain original introductory language from initial schedule – "application is for a monopine tower...")
11. **Petitions –** some requests meet FCC criteria for Eligible Facilities Request (ex. requests to modify pre-existing installations that don't meet EM criteria) and don't require a field review, supervisor review prior to assignment determines field review status
12. **Eligible Facilities Requests under FCC Order** – Council make own motion to open petition for EFRs similar to P1000 and P1073 process, same analyst carrier assignments as EMs
13. **Website Audit** – FC and CW website auditors, DM to make changes, CM to upload forms, guides, etc. (LF question on fillable forms)