

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**Petition No. 809** - Extenet Systems, Inc. :  
petition of a declaratory ruling that the :  
Connecticut Siting Council does not have :  
jurisdiction or, in the alternative, that no :  
Certificate of Environmental :  
Compatibility and Public Need is required :  
for the proposed construction of a :  
Distributed Antenna system along the :  
Merritt Parkway from the New York state :  
line to Westport, Connecticut : September 7, 2007

**POST HEARING BRIEF OF  
INTERVENOR NATIONAL GRID COMMUNICATIONS, INC.  
(Now Known as LIGHT TOWER WIRELESS LLC)**

**A. Introduction**

National Grid Communications, Inc., now known as Lighttower (hereafter referred to as “Lighttower”),<sup>1</sup> respectfully submits this post-hearing brief to address the novel jurisdictional questions presented by the above-referenced Petition No. 809 (the “Petition”) of Extenet Systems, Inc. (the “Applicant” or “Extenet”). As noted in its pre-filed testimony and petition to intervene and as the record supports, Lighttower respectfully submits that the Connecticut Siting Council (the “Siting Council”) should find that (i) it has jurisdiction over the facilities proposed in the Petition; and (ii) based on the facts of this case, the facilities proposed can be and are approved by Petition for Declaratory Ruling, without the need for a full Certificate of Environmental

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<sup>1</sup> Since the hearing was concluded in this matter on August 8, 2007, National Grid Communications, Inc. was renamed to Light Tower Wireless LLC (a/k/a Lighttower). In August 2007, M/C Venture Partners and Wachovia Capital Partners purchased the business from National Grid plc.

Compatibility and Public Need, because the facilities will not cause a substantial adverse environmental effect.

**B. Factual Discussion**

The Applicant has proposed an outdoor Distributed Antenna System (“DAS”) along the Merritt Parkway corridor in Fairfield County, originating east of the New York State Line and continuing into Westport. The project involves the installation of twenty-seven DAS “nodes” consisting of small antennas mounted either on standard utility pole structures within the public right of way, suspended on cables between utility poles at select locations or mounted on new pole structures within the Connecticut Department of Transportation right of way. The testimony confirmed that the Applicant proposes, among other new poles, a new pole installation at the Den Road Exit Ramp within the DOT property. The Applicant also proposed to install base station hub facilities at or near existing cellular tower compound facilities along the Merritt Parkway. The Applicant proposes approximately 37 miles of fiber optic cable to connect each of the nodes.

As indicated in the pre-filed testimony of Lighttower witness Chris Fagas, a DAS network, similar to telecommunications tower systems used in a cellular system, can span multiple jurisdictions providing coverage over a specified geographic region which often does not conform to individual municipal boundaries. Because of the geographically broad nature of DAS networks, siting typically requires gaining municipal regulatory approvals in multiple jurisdictions before such networks can be deployed. From a public policy perspective, this approach often results in delayed deployments denying

consumers the ability to use their wireless devices and negatively affects public safety due to the lack of mobile E-911 coverage. In fact, in this proceeding, the deputy fire chief of the Town of Westport spoke in favor of the Extenet project and emphasized the need for enhanced public safety communications along the Merritt Parkway corridor. (Tr. 8/9/07-7 PM, at pp. 9-12).

**C. Legal Argument**

**1. The Siting Council Has Jurisdiction Over the DAS Network Because the Project Meets the Definition of C.G.S. § 16-50i(a) (6) and Applicable Regulations.**

Pursuant to Section 16-50i(a)(6) of the Connecticut General Statutes, the Siting Council has jurisdiction over “telecommunications towers,” including associated telecommunications equipment, owned or operated by a certified telecommunications provider or “used in a cellular system.” Even when telecommunications towers are used by non-cellular telecommunications companies, the Siting Council has exclusive jurisdiction over the location and type of telecommunications tower. C.G.S. § 16-50x; Town of Westport v. Connecticut Siting Council, 47 Conn.Supp. 382, aff’d, 260 Conn. 266. (2001). “Used in a cellular system” applies to both cellular and non-cellular wireless telecommunications carriers, which precludes towns from enforcing its own zoning laws with respect to a “tower.” Id.

As used in the Siting Council’s regulations, “associated equipment” means any building, structure, antenna, satellite dish, or technological equipment . . . that is an integral part of the operation of a . . . telecommunications tower. R.C.S.A. § 16-50j-2a(a). Furthermore, a “tower” means a structure, whether free standing or attached to a

building or another structure, that has a height greater than its diameter and that is high relative to its surroundings, . . . which is or is to be: (1) used principally to support one or more antennas for receiving or sending radio frequency signals and (2) . . . used for public cellular radio communications service as defined in section 16-50i of the General Statutes of Connecticut. R.C.S.A. § 16-50j-2a(q).

During the public hearing in this matter, the Applicant acknowledged the following legally relevant facts:

- that it has received a certificate of public convenience and necessity (“CPCN”) from the Department of Public Utility Control, as required by C.G.S. § 16-247(g) (and therefore Extenet is clearly a “certified telecommunications provider” as used in C.G.S. § 16-50i(a)(6)) (Tr. 8/9/07 3 P.M., p. 10);
- that the proposed DAS network is intended to support the wireless telecommunications carriers operating in Connecticut, including intervenors AT&T, T-Mobile USA, Inc., Sprint Nextel, and Verizon Wireless (Tr. 8/9/07 3 P.M., p. 11) (and therefore the DAS network will be “used in a cellular system” as used in C.G.S. § 16-50i(a)(6));
- that the proposed DAS network is intended to be fully integrated into the existing telecommunications tower network in the area and, in fact, the base station hub equipment will be installed at or near an existing cellular tower compound facility (Application, p. 7);
- that not all of the DAS nodes are proposed for within the public utility right of way, as some installations are proposed for DOT property (Application p. 6);

- that the poles (regardless of whether they are wood or metal) are to be erected exclusively to support wireless telecommunications; and
- that the poles proposed to support the DAS nodes have a height greater than their diameters, within the meaning of R.C.S.A. § 16-50j-2a(q). (Tr. 8/9/07 3 P.M., p. 11).

The Applicant also did not deny that the poles proposed for its DAS network will be “used principally to support one or more antennas for receiving or sending radio frequency signals” and will be “used for public cellular radio communications service.” R.C.S.A. § 16-50j-2a(q).

Extenet’s primary argument for challenging the Siting Council’s jurisdiction over the DAS network is that the proposed poles are not going to be high relative to their surroundings, because they are proposed to be 25 feet in height, unlike some of the surrounding trees in the area. (Tr. 8/9/07 3 P.M., p. 11). Despite that argument, the Applicant is also proposing a new structure at the Den Road exit adjacent to the Merritt Parkway where there is no pole, tower or even trees in the immediate surroundings by the highway.

The facts presented clearly compel the legal conclusion that the Siting Council has jurisdiction over the proposed DAS network.

While not in itself dispositive, it is important when presented with a question of first impression, such as this case, that state agencies such as the Siting Council also look to how its discretionary interpretation of the statutes within its purview would impact public policy. Here, public policy interests are advanced by and support the Siting

Council arriving at the conclusion that it has jurisdiction over the proposed Extenet facilities. As the Applicant made clear at the hearing, Extenet believes that the project is exempt from local zoning jurisdiction and that this project can essentially fly below the radar screen of state or local government review. Extenet indicated that it needs only a DOT encroachment permit for land access to node sites on DOT property and that its CPCN requires that it make a “manner and method” filing of its construction plans with the DPUC. (Tr. 8/9/07 3 P.M., p. 10; 16-17). Extenet’s counsel acknowledged that the local municipalities would have no approval jurisdiction, like the local electric and telephone utilities. (Tr. 8/9/07 3 P.M., p. 16).

The Public Utility Environmental Standards Act, C.G.S. 16-50g *et seq.*, provides a comprehensive statutory scheme that empowers the Siting Council to weigh the public need for telecommunications facilities against the environmental impacts, taking into consideration the various interests and constituencies involved, including municipal interests, environmental interests (such as the interests presented by intervenor Merritt Parkway Conservancy), and interests of other state agencies. It is also well known that the Siting Council’s vast experience in evaluating telecommunications facilities is comprehensive. Finding that the Siting Council has jurisdiction over the Extenet proposal ensures that the Siting Council’s experience and statutory framework would apply to the project, including requirements that take into consideration municipal and state agency interests and comments and the environmental interest. Such a finding protects the public interest and, quite frankly, protects the interests of the

telecommunications industry in general by applying a well established framework to this novel technology.

For the foregoing reasons, Lightower urges the Siting Council to find that it has jurisdiction over the Extenet project.

2. **The Siting Council Should Approve the Project by Declaratory Ruling Because there is No Evidence in the Record to Support that the Project Will Have a Substantial Adverse Environmental Effect.**

The Siting Council has routinely interpreted its statutes and regulations, including C.G.S. § 16-50k and R.C.S.A. 16-50j-38 *et seq.*, to allow for a petition for declaratory ruling to be granted where the proposed project will not have a substantial adverse environmental effect. See, e.g., Petition No. 506; Petition No. 512; Petition No. 526; and Petition No. 551. While the general practice of the Siting Council has been to approve modifications to existing structures, such as smokestacks, electric transmission towers and catenary structures adjacent to railroad rights of way by petition for declaratory ruling, the Siting Council has generally followed the policy that raw land tower facilities at conventional heights required full certificates of environmental compatibility and public need.

Extenet's Petition in this matter shows that none of the new poles will be more than 40 feet tall and many poles will be 25 feet tall. During the hearing, Timothy Asta, Jr. testified for Extenet that only the pole for Node No. 35 will be 40 feet tall. (Tr. 8/9/07 3 P.M., p. 63). The Applicant also presented the testimony of an environmental expert, Jeffrey Shamas, who supported the conclusion that there will not be any other adverse environmental impacts. (See Pre-Filed Testimony of J. Shamas, dated August 2, 2007).

No other party or intervenor presented evidence in this proceeding to suggest that there are any substantial adverse environmental effects from the Extenet project.

Based on the evidence in the record and the established statutory and regulatory procedure that allows for the Siting Council to approve by petition projects that do not have any substantial adverse environmental effects, the Siting Council should determine here that the Petition is approved.

**D. Conclusion**

The Siting Council has jurisdiction over towers, poles or structures used in a DAS network. Such facilities are “used in a cellular system,” proposed by a “certified telecommunications provider,” and are associated telecommunications equipment. The tower structures, furthermore, meet the definition of “tower” within the Siting Council’s regulations. Public policy interests, including municipal and state interests along with the interests of the wireless telecommunications industry, and as set forth in C.G.S. § 16-50g and elsewhere in the Public Utility Environmental Standards Act, will be served by the Siting Council concluding that it has jurisdiction over the Extenet project. Finally, the evidence presented in the Petition support a finding that the Siting Council can approve the Extenet project by Declaratory Ruling, rather than a full Certificate of Environmental Compatibility and Public Need.

Dated: September 7, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty-one copies were served on the Siting Council by first class mail with a copy served on the following:

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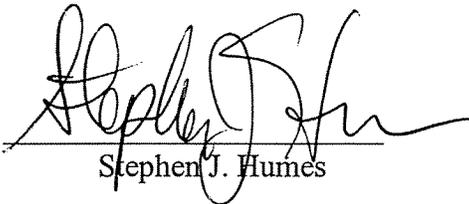
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