

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

IN RE:

A PETITION OF EXTENET SYSTEMS, INC.  
FOR A DECLARATORY RULING ON THE  
NEED TO OBTAIN CONNECTICUT SITING  
COUNCIL APPROVAL TO DEVELOP A  
DISTRIBUTED ANTENNA SYSTEMS IN  
LOWER FAIRFIELD COUNTY,  
CONNECTICUT

PETITION NO. 809

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CONNECTICUT  
SITING COUNCIL  
AUGUST 3, 2007

**BRIEF SUPPORTING EXTENET SYSTEMS, INC. POSITION THAT  
SITING COUNCIL HAS NO JURISDICTION OVER MERRITT PARKWAY  
DISTRIBUTED ANTENNA SYSTEM PROJECT**

ExteNet Systems, Inc. ("Petitioner" or "ExteNet") submits that the Connecticut Siting Council ("Council") does not have jurisdiction over the Petitioner's proposed installation of a stealth Distributed Antenna System ("DAS") along the Merritt Parkway corridor ("Project") because 1) the Project falls exclusively within the jurisdiction of the Department of Public Utility Control ("DPUC"), and 2) the Project does not constitute a "facility" within the meaning of Connecticut General Statutes 16-50i(a)(6).

**1. The Project falls exclusively within the jurisdiction of the Department of Public Utility Control**

Petitioner submits that the Project falls exclusively within the jurisdiction of the DPUC because the proposed DAS installation primarily utilizes existing utility infrastructure to locate its node antenna, fiber optic cable and appurtenant equipment. Petitioner submits that this aspect of the installation is exclusively within the jurisdiction of the DPUC pursuant to Connecticut General Statutes Section 16-247h, which provides in relevant part:

The department shall authorize any certified telecommunications provider to install, maintain, operate, manage or control poles, wires, conduits or other fixtures under or over any public highway or street for the provision of telecommunications service authorized by section 16-247c if such installation, maintenance, operation, management or control is in the public interest, which includes but is not limited to, facilitating the efficient development and deployment of an advanced telecommunications infrastructure, facilitating maximum network interoperability and interconnectivity, and encouraging shared use of existing facilities and cooperative development of new facilities where legally possible and technically and economically feasible.

ExteNet is within this statute as a "certified telecommunications provider" because the DPUC granted Extenet a Certificate of Public Convenience and Necessity ("CPCN") (DPUC Docket No. 05-12-05 March 15, 2006).

The DPUC requires that Extenet submit its construction plans to the DPUC for approval, which ensures project suitability and provides oversight. "No certificate granted herein shall be deemed to grant approval to install, maintain, operate, manage, or control facilities which occupy any public right of way." Approval to utilize the public right of way shall be obtained pursuant to Section 16-247c-5 of the Regulations of Connecticut State Agencies. ExteNet will file for DPUC approval of its construction design and implementation plans.

Based on the foregoing, ExteNet submits that once the DPUC approves its construction and implementation plans, it will be able to proceed with the portion of the installation of the Project that utilizes existing utility right-of-way without further approval because this portion of the proposed DAS installation is within the exclusive jurisdiction of the DPUC.

**2. The Council Does Not Have Jurisdiction Over This Project Because The Installation proposed By ExteNet is Not A “Facility” Within The Meaning Of Connecticut General Statutes Section 16-50i(a)(6)**

Petitioner submits that the Council does not have jurisdiction over this Project because the installation proposed by ExteNet is not a “Facility” within the meaning of C.G.S. Section 16-50i(a)(6) inasmuch as a) it does not propose a “tower”, and b) will not have a substantial adverse environmental effect.

The Council’s exclusive jurisdiction extends to only those facilities set forth in C.G.S. Section 16-50i(a)(6) which defines “facility” as:

such telecommunication towers, including associated telecommunications equipment, owned or operated by the state, a public service company or a certified telecommunications provider or used in a cellular system, as defined in the Code of Federal Regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe . . .

a. The Project Does Not Propose a “Tower”

Petitioner submits that the Project does not propose a “Tower” because State regulations define “tower” as:

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 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.

Reg. Conn. State Agencies Section 16-50j-2a.

In contrast, the Project includes the installation of seven (7) new utility poles, all of which will be of comparable height to the other wooden utility poles in the nearby existing utility infrastructure. These poles will be sited near two overpasses (one of which requires three poles to extend power to the Remote Node and two poles to span the overpass for antenna placement) and one exit ramp, but these structures will be no larger than the standard utility pole and certainly not extend above the tree canopy along the Merritt Parkway.

Since none of these new utility poles can be considered “high relative to its surroundings” the second criteria in the regulatory definition of a tower has not been satisfied. Because these utility poles do not fall within the definition of a tower, Petitioner submits that these poles cannot be considered or treated as a facility within the meaning of Section 16-50i(a)(6).

b. The Project Will Not Result In a Substantial Adverse Environmental Effect

Petitioner submits that the Project will not result in a substantial adverse environmental effect and that its interpretation of “facility” under Section 16-50i(a)(6) is consistent with the purpose behind the Public Utility Environmental Standards Act (“PUESA”). The legislature adopted PUESA because of the legislature's expressed concern that:

power generating plants and transmission lines for electricity and fuels, community antenna television towers and telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and

the ecological, scenic, historic and recreational values of the state.

C.G.S. Section 16-50g.

Standard utility poles, such as the ones that ExteNet proposes to use to implement the Project, simply do not impact the ecological, scenic, historic and recreational values of the state. Petitioner submits that this is the reason standard utility poles in the provision of electric and landline telephone service are not defined as facilities under Section 16-50i(a)(6). Accordingly, Petitioner submits that the utility poles involved in the Project should not be considered a facility within the meaning of the statute.

Further, if the Section 16-50i(a)(6) definition of "facility" is extended to include such utility poles, then the Council would have jurisdiction over the installation, operation and modification of any utility pole structure it approved. Entities like the Connecticut Light & Power Company, United Illuminating, and Cablevision could not even make routine upgrades to the utility pole structure without notice to the Council. Petitioner submits that the legislature did not intend such a result when it adopted PUESA.

The two petitions cited by New Cingular Wireless PCS, LLC ("AT&T") in its brief, petitions 626T and 633T are inapplicable to the DAS project proposed by the Petitioner. Unlike in this petition where the Petitioner has received a CPCN and is proposing to install the DAS project within the DOT right-of-way and primarily on existing utility poles, both of those petitions were filed by wireless service providers. Neither of those petitions involved an installation on a utility pole. Rather, they both involved the construction or location on a wooden pole

that would be used solely for wireless service. In petition 626T, AT&T proposed to construct a 55-foot tower that simply happened to be made of wood. It was not a utility pole, it was not owned by any utility company nor was it utilized by any company holding a CPCN. In petition 633T, again, AT&T proposed to replace an existing, privately-owned wooden pole with a wood laminate pole, 70 feet in height. Again, the existing and proposed pole were not utility poles, they were not owned by any utility company nor were they utilized by any company holding a CPCN. In contrast, the Petitioner has a CPCN issued by the DPUC. The proposed DAS installation will primarily utilize existing utility poles. The new utility poles proposed in this petition will be located in the existing utility right-of-way, will be owned by CL&P and will be used by other utilities. The Petitioner does not dispute the fact, in applications such as 626T and 633T where a wireless service provider is proposing to construct a telecommunications tower that simply happens to be made of wood, the Council clearly has jurisdiction. However, the DAS project is entirely different from that situation and therefore those petitions are irrelevant to the jurisdiction analysis in the present petition.

Wherefore, for the foregoing reasons, Petitioner respectfully requests the Council to make a finding that it does not have jurisdiction over the Project.

Respectfully Submitted,

By:  \_\_\_\_\_

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**Certification**

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

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