

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

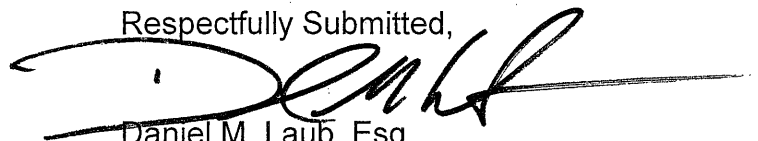
MESSAGE CENTER MANAGEMENT INC.  
("MCM") AND NEW CINGULAR WIRELESS  
PCS, LLC ("AT&T") APPLICATION FOR  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY  
AND PUBLIC NEED FOR A  
TELECOMMUNICATIONS TOWER FACILITY  
IN REDDING, CONNECTICUT

DOCKET NO. 449

October 9, 2014

APPLICANTS'  
POST HEARING BRIEF

Respectfully Submitted,



Daniel M. Laub, Esq.  
Christopher B. Fisher, Esq.  
Cuddy & Feder LLP  
445 Hamilton Avenue  
14<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 761-1300

## PRELIMINARY STATEMENT

Message Center Management Inc. ("MCM") and New Cingular Wireless PCS, LLC ("AT&T") (together the "Applicants"), by their attorneys Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of their application ("Application") for a Certificate of Environmental Compatibility and Public Need ("Certificate") in Docket No. 449. The Application addresses the long standing public need for a new tower facility in Redding so that FCC licensed wireless carriers and the Town of Redding first responders may also have reliable communications service to residents and visitors at homes, schools, recreational facilities and along state and local roads in the Town of Redding. As set forth in detail in the Application, MCM proposes to construct a wireless telecommunications tower facility on a 0.62 acre parcel of land owned by Redding Ridge Fire District 1 and located at 186 Black Rock Turnpike, Redding Connecticut. The tower component is a proposed 150' monopole which would replace the existing 80' tall lattice tower currently used by the volunteer fire department. In 1999 the Town of Redding reviewed and approved the shared use of the tower by Nextel. In Docket 334 the Siting Council approved Sprint's application for a replacement 120' monopole with associated equipment compound. That approved facility was never built and the Certificate granted in that proceeding subsequently expired. Throughout the proceedings in this Docket, MCM, AT&T and intervenor Cello Partnership d/b/a Verizon Wireless ("Verizon") provided data, testimony and otherwise responded to questions from the Siting Council and staff that address the public need for reliable wireless services and new tower infrastructure in this part of the state. The Applicants respectfully submit that a replacement tower at the existing tower location is a viable

technical solution needed to serve the public, there are no known practical or feasible alternatives and that there are no significant adverse environmental impacts associated with the project which outweigh the public need for improved wireless services in eastern Redding. As such, the Applicants submit that the project as filed meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes for approval and are requesting a Certificate for the proposed tower facility to meet the public need for wireless services in this area of the state.

### **STATEMENT OF FACTS**

#### **I. AT&T's Service Objectives & Site Search**

AT&T's radio frequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, AT&T experiences gaps in coverage in Redding along Black Rock Turnpike and local roads and areas in eastern Redding. Applicants' Ex. 1. pp. 5-14.; Attachment 1. AT&T's RF engineers established a site search area (S2033) for Redding based on its documented gaps in reliable coverage. Applicants' Ex. 1. pp. 5-14, Attachment 1. The proposed facility in eastern Redding will provide reliable services in AT&T's network in the Redding Ridge Area including local roads, homes, businesses, schools, and a state park in the surrounding area. Applicants' Ex. 1., Attachments 1, Applicants' Ex. 8. Additionally, it will support the antennas and equipment of other carriers such as Verizon for the provision of that company's service as well as the antennas of Redding Ridge Fire District 1.

AT&T's network lacks reliable radio frequency coverage in this area of Redding. From the outset, both MCM and AT&T were aware of the existing facility at the property of Redding Ridge Fire District 1. Applicants' Exhibit 1, Attachment 2. As an existing

site, and one which was subject of a prior Siting Council approval in Docket , this was the clear preference to serve the area. Ultimately it was determined that at this location AT&T would require antennas located at 150' AGL. MCM then developed a proposal in conjunction with AT&T to develop a replacement tower Facility at the Redding Ridge Fire District 1 property.

## **II. Technical Consultation with Redding Ridge Fire District**

MCM entered into a long term lease with Redding Fire District 1 for development of a new replacement tower facility on the Site. AT&T has also entered into a lease agreement with MCM for its proposed use of the tower Facility. A lease with intervenor Verizon has also been finalized. Gelinias, Tr. 9/9/14, p. 193. As this is a replacement tower MCM has also reserved space on the new tower and in the compound for Redding Fire District 1 for emergency/municipal communications equipment. Applicants' Ex. 1, Attachment 3. MCM would own, maintain and operate the tower facility subject to any Certificate the State Siting Council may issue for the project. MCM and AT&T are not aware of any alternative location which is technically viable, can be leased and would meet radio frequency objectives and state environmental criteria for new tower sites as set forth in Section 16-50p of the General Statutes. Applicants' Ex. 1., p. 2, Attachment 2.

MCM and AT&T consulted with the Town of Redding as part of a formal process conducted in furtherance of Section 16-50/ of the Connecticut General Statutes. The municipal consultation process included a public information session which was held in March of 2014. No further consultation or information was requested from the public or the Town of Redding. As noted by First Selectman Pemberton the Redding Board of

Selectmen are of the opinion that the proposed location in Docket 449 “is the most appropriate location for the tower at this time.” Tr. 7/29/14, Vol 2, p. 154.

### **III. Certificate Application, Parties & Intervenors & Pre-Hearing Filings**

The proposed Facility is designed as a self-supporting 150’ AGL monopole tower to accommodate emergency/municipal communications antennas as well as those belonging to federally licensed wireless carriers. Applicants’ Ex. 1., Attachment 3. AT&T would install up to twelve (12) panel antennas at a centerline height of approximately 150’ AGL along with some additional equipment on the tower. Applicants’ Ex. 1., Attachment 3. The tower will accommodate emergency/municipal communications antennas as well as those belonging to federally licensed wireless carriers. Applicants’ Ex. 1., Attachment 3.

An associated AT&T equipment shelter would be installed at the tower base on a concrete pad within a compound. Applicants’ Ex. 1., Attachment 3. The compound will include space for equipment of other carriers as well as the Fire District’s emergency/municipal communications equipment. The compound will be enclosed by an eight (8) foot tall chain link fence. Applicants’ Ex. 1., Attachment 3.

Vehicle access to the Facility would extend from Black Rock Turnpike over an existing parking area to the tower compound. Applicants’ Ex 1., Attachment 3. Utility connections would extend from the south underground from a proposed new utility pole to a multimeter center adjacent to the compound. Applicants’ Ex 1., Attachment 3.

In response to a submitted petition, the Siting Council granted intervenor status to Verizon. The Applicants submitted responses to Siting Council pre-hearing interrogatories Set I on July 3, 2014. Applicants’ Ex. 2. Representatives for the

Applicants posted a sign by the roadway at the host site noticing the public of the application and hearing date with instructions on obtaining more information. Applicants' Ex. 5, Affidavit of Sign Posting. The Applicants filed responses to Siting Council Set II Interrogatories and hearing information on July 22, 2014. Applicants' Ex. 3. The Applicants filed Pre-filed Statement of Facts in Lieu of Direct Testimony on July 22, 2014. Applicants' Ex. 4. A field visit, balloon float and public hearing were scheduled by the Council and held at the Redding Community Center, Community Room, 37 Lonetown Road in the Town of Redding on July 29, 2014.

#### **IV. Public Hearings**

On July 29, 2014, the Applicants raised a balloon at the Site and the Siting Council conducted a viewing of the Site and surrounding area. Wind conditions were generally not favorable and while the balloon was tethered to the proposed height and often rose to same, winds regularly pushed it down and away from the proposed location. Libertine, Tr. 7/29/14, Vol. 1, pp. 13-14. At the July 29, 2014 evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicants' panel of witnesses on the need for the facility, lack of other reasonable alternative sites and any environmental effects associated with construction of a replacement tower at the site.

A presentation of the proposed facility was provided to a modestly attended 7:00pm public hearing evening session with approximately a dozen speakers, after which the Siting Council closed the public hearing and continued the evidentiary hearing for a date certain at the Council's chambers in New Britain, Connecticut. The Applicants thereafter responded to additional Council interrogatories and submitted responses on August 29, 2014. Applicants' Ex. 8. The Siting Council held a continued

evidentiary hearing on September 9, 2014 at Hearing Room 2, 10 Franklin Square in New Britain. The evidentiary hearing was closed on September 9, 2014 after all parties and intervenors were given the opportunity to present evidence and cross-examine witnesses.

**POINT I**  
**A PUBLIC NEED CLEARLY EXISTS**  
**FOR A NEW TOWER FACILITY IN EASTERN REDDING**

Pursuant to Connecticut General Statutes (“CGS”) Section 16-50p, the Council is required to find and determine as part of any Certificate application, “a public need for the proposed facility and the basis for that need”. CGS §16-50p(a)(1). In this Docket, AT&T provided coverage analyses and expert testimony that clearly demonstrates the need for a new tower facility to provide reliable commercial wireless services to homes, schools, a state park, and the traveling public in this area of Redding. Applicants’ Ex. 1, Attachment 1.

The record in Docket 449 demonstrates that the existing 80’ lattice tower at this Site lacks the height necessary to meet AT&T’s objective of providing reliable service to the area. Applicants’ Ex. 1, Attachment 1. The proposed 150’ replacement tower would allow the provision of reliable wireless service to extend into the Redding Ridge area of Town. Further that a 150’ AGL tower is needed to reasonably serve the public from the Site for AT&T and other wireless carriers like Verizon who is an intervenor in this docket and also accommodate the emergency service antennas. Applicants’ Ex. 1, Attachment 1.

The Applicants submit that the public need for a new tower facility in this area to provide both commercial wireless and public safety communication coverage where

adequate and reliable coverage does not exist today is simply not contested in this Docket.

## POINT II

### **THERE ARE NO EXISTING STRUCTURES OR OTHER VIABLE ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY**

The Applicants submitted evidence that there are no other existing structures for providing reliable service to this area of Redding. Of note, the search for a site included an investigation of replacing the existing tower given the prior approval for a similar replacement. Applicants' Ex.1, Attachment 2. Yet, as demonstrated by the evidence and testimony in this Docket, as well as Docket 334, no other viable alternatives for wireless facility siting were identified by the Applicants or the Town. Applicants' Ex.1, Attachment 2.

## POINT III

### **THE TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

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



## **I. Potential Visual Effects**

The Applicants respectfully submit that the evidence and testimony in this proceeding demonstrates that visibility of the proposed facility will not result in an overall significant adverse visual impact. It is anticipated that approximately only 38 acres of the 8,042-acre study area will have visibility of the proposed Facility above the tree canopy year round. Applicants' Ex.1, Attachment 5 (Visibility Analysis). Moreover only approximately 264 acres (or approximately 3.2% of the study area) will experience seasonal views revealed through intervening branches and tree trunks during leaf-off conditions. Topography, vegetation and existing buildings would obscure, partially or totally, views of the 150' tower from several locations. It is also anticipated that visibility of the structure will be principally limited to areas located within a one-half mile radius of the proposed Facility, some of which already have views of the existing tower facility. Applicants' Ex.1, Attachment 5. The proposed Facility is not located within 250 feet of a school or commercial day-care center. Applicants' Ex. 1, Attachment 5.

## **II. Potential Impacts to the Natural Environment**

As clearly established in this Docket, impacts to the natural environment from the proposed facility are not significant.

### **a. Wetlands, Watercourses, and Floodplains**

A review of available information regarding the site indicates a delineated wetland to be approximately 50' to the east of the proposed compound with erosion controls approximately 45 feet from the nearest wetland (identified as "Wetland 1" in the Wetland Investigation included in Applicants' Ex. 1, Attachment 4). Wetland 1 is a hillside seep system located at the base of the fill slope east of the existing fire station

development. An interior intermittent watercourse conveys surface and seasonal groundwater discharges from this wetland and surrounding uplands to the south. An intermittent watercourse was also identified north of the host parcel originating from a stormwater outfall from Black Rock Turnpike. It should also be noted that the existing facility and proposed replacement are located within the Hemlocks Reservoir System Watershed Area of the Aspetuck and Saugatuck Reservoirs public drinking water supply system. A new retaining wall will be a permanent feature between the proposed compound and delineated wetland will minimize necessary grading. Pending final arrangements with the property owner, the current backup power plan is for a permanent propane-fired unit which can be shared by carriers using the tower and which will tie into the existing 2,000 gallon underground propane tank requiring no diesel fuel for telecommunications purposes. Gelinas, Tr. 9/9/14, p. 181. Accordingly, no direct, indirect or potential future impacts to wetlands and watercourses are associated with the proposed development. Applicants' Ex. 1, Attachment 4.

**b. Habitat Assessment and Wildlife**

As demonstrated in the record, the Applicants consultants have conducted numerous and thorough evaluations of the Site and have consulted with the Connecticut Department of Energy and Environmental Protection ("DEEP"). Upon review of the Site in relation to the Natural Diversity Database, the DEEP determined that there are no federal or state threatened, endangered or special concern species known to occur within the project area or vicinity. Applicants' Ex. 1, Attachment 4, and Applicants' Ex. 2, Attachment 8 (DEEP concurrence letter). No impact to species of note or concern

was identified as part of the application process, and the Applicants' consultants are of the opinion the project has no significant adverse impacts to habitat or wildlife.

**c. Clearing, Grading and Drainage Assessment**

The access to the proposed Facility is along an existing bituminous parking area/driveway serving the existing fire station approximately 120 feet. Some modest grading and clearing is required for the Facility. A total area of disturbance is 4,150 SF.; no trees will need to be removed. The site shall require approximately 55 CY of cut for utility trenching and approximately 20 CY of fill and 80 CY of crushed stone for the compound. Applicants' Ex.1, Attachment 3. As noted, the Facility design will incorporate all appropriate sediment and erosion control measures in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Council of Soil and Water Conservation. A new retaining wall will be a permanent feature between the proposed compound and delineated wetland which will minimize necessary grading. The Applicants respectfully submit that the proposed improvements at the Site are largely in previously disturbed areas of the site and as such will not result in any significant adverse environmental on the surrounding area and will allow for safe access to and development of the facility.

**III. Other Environmental & Neighborhood Considerations**

A tower facility at the proposed location will comply with all public health and safety requirements. Applicants Ex. 1. Additionally, since the Facility will be unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste, or material impact on air emissions. As noted above and in the proceedings in this Docket, year-round visibility of the proposed facility will be fairly limited to the

immediate area of the host property. Properties within a 2 mile radius will mostly have seasonal views, with most being partially obstructed by trees and other vegetation.

Consultation with SHPO and correspondence from the Town of Redding Historic Commission indicated concern for potential historic resources in the area indicating a preference for a tower height of 120 feet; a height which would limit AT&T's reliable service in the area and significantly reduce the ability of the facility to accommodate all licensed carriers in the market. However, no impact to sensitive historic visual receptors is anticipated as predicted in the Visual Analysis. Applicants' Ex. 1, Attachment 5. A draft, unsigned communication from SHPO to the Applicants' consultant Mr. Libertine indicated concern for a nearby church which is not listed nor received nomination for historic designation and is not a state listed site nor inventoried. Libertine, Tr. 7/27/14, p. 66. To date no official comments from SHPO regarding historic resources were provided to the Applicants as part of the NEPA/Section 106 historic review process. Indeed the time period for submission of comments under federal regulatory procedure has long passed and the height of the tower is not constrained or controlled by anything in the NEPA/Section 106 process. It should also be noted that prior due diligence as part of Docket 334 and recent analysis both confirm that the host parcel itself has been substantially developed and reworked over time and as such holds very little potential for the presence of archeological resources. As such, the Council should find and determine that the Facility as proposed will not have any historic, cultural or adverse visual impacts on the neighborhood and resources therein.

## CONCLUSION

The Applicants and intervenor Verizon have all demonstrated a public need for the proposed tower Facility presented in this Docket. Similar need was previously established for another federally licensed carrier operating in Connecticut in Docket 334. The public need for the proposed facility is quite significant with commercial wireless service to be provided to residents, schools and public recreation areas. The facility as proposed will continue to support Town emergency communications for first responders. The public need for the tower Facility is not controverted by any party to the proceeding and there are no known practical or feasible alternatives to a tower at the Site in question. The Applicants and intervenor's evidence demonstrate the importance of this Site for a tower needed to serve the public which has experienced gaps in reliable services since the advent of modern day wireless communications.

While there are some limited environmental effects associated with the proposed Facility, principally visibility above the tree line and existing fire house, the Applicants respectfully submit that such effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services. Moreover, the Applicants have from the outset designed the tower facility on the Site of an existing lattice tower, a site which was also previously approved for a similar tower replacement. Further, it is respectfully submitted that the demonstrated need for a tower at the proposed height will not have an adverse impact on historic resources and no such potential impact has been established in this Docket.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed facility as required by statute, the Applicants

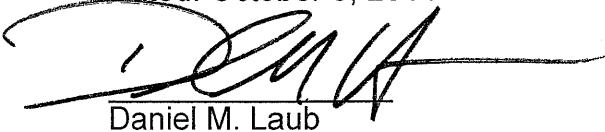
respectfully submit the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project the Council might deem significant. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicants submit that the standards and criteria set forth in Section 16-50p of the General Statutes for approval of tower facilities by the Council have been met and fully warrant issuance of a Certificate for the facility as proposed in Docket 449.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, an original and fifteen copies of the foregoing was sent electronically and delivered to the Connecticut Siting Council with copy to:

Kenneth C. Baldwin, Esq.  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103  
kbaldwin@rc.com

Dated: October 9, 2014

A handwritten signature in black ink, appearing to read 'D. Laub', is written over a horizontal line. The signature is stylized and cursive.

Daniel M. Laub