



**JOINT STATEMENT  
OF  
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS,  
AT&T MOBILITY, T-MOBILE AND  
SPRINT NEXTEL**

**Regarding Raised House Bill No. 6250  
An Act Concerning the Siting Council  
Before the Committee on Energy and Technology  
February 3, 2011**

**Proposal:**

Raised House Bill No. 6250 ("HB 6250" or the "Bill") would, among other things: (1) prohibit the Connecticut Siting Council ("Council") from permitting the siting of a wireless telecommunications tower within 750 feet of a school, day care center, place of worship or private residence unless the Council finds that there are no other technically, legally, environmentally or economically feasible alternative sites within the municipality; (2) require an applicant to utilize the latest technological options designed to minimize aesthetic and environmental impacts; (3) allow the Council to request that a civil action be brought against any party that has intentionally omitted or misrepresented a material fact during a proceeding; and (4) provide for the further consideration of alternative sites proposed by a municipality.

**Background:**

As the Energy and Technology Committee is aware, the Council was established nearly forty (40) years ago and is charged with reviewing and making decisions on applications for the siting of certain "facilities" defined in Section 16-50i(a) of the General Statutes. Generally, the "facilities" over which the Council has jurisdiction are limited to electric transmission lines, fuel transmission facilities, electric generating facilities, electric substations, CATV head-end facilities and telecommunications towers. The Council maintains exclusive jurisdiction over the siting of these facilities and its authority pre-empts local land use (e.g., zoning and inland wetlands) authority. Left to a municipalities' local zoning and wetland authority, many of these important "facilities" of regional and state-wide significance might otherwise never be developed. Recognizing this, the legislature established the Council as the single State agency with the experience and skill set to facilitate local, regional, statewide and interstate planning for the appropriate siting of these important facilities. Although often making controversial decisions, the Council has done a remarkable job of balancing the public's need for these facilities against the environmental effects development of such facilities may have on our communities.

**Comments:**

Cellco Partnership d/b/a Verizon Wireless, AT&T Mobility, T-Mobile and Sprint Nextel (the "Wireless Carriers") respectfully oppose certain sections of this bill because they are preempted by federal law, conflict with federal telecommunications policy, would undermine the Council's preemptive authority, and hinder deployment of advanced technologies that are in the interest of consumers and businesses.

First, the Wireless Carriers oppose the language proposed to be added at lines 82 through 90 of the Bill, which would prohibit the Council from permitting the siting of a wireless telecommunications tower within 750 feet of a school, day care center, place of worship or private residence unless the Council finds that there are no other technically, legally, environmentally or economically feasible alternative sites within the municipality.

The basis for this siting restriction has not been provided. Nevertheless, proposed legislation prohibiting the siting of wireless telecommunications facilities within a particular distance from a specified use or set of uses is frequently based on the perceived health effects of radio frequency (“RF”) emissions. Federal law, as established in the Telecommunications Act of 1996, (“Telecommunications Act”) pre-empts such legislation. In particular, Section 704 of the Telecommunications Act provides, in relevant part: “No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s [FCC] regulations concerning such emissions.”

When seeking approval for telecommunications towers, applicants must provide the Council with the information necessary to determine whether or not a proposed facility will comply with the FCC’s standards regarding RF emissions. To the extent the proposed facility complies with those standards, the Council does not have the authority to deny an application on the basis of the putative effects of RF emissions. Similarly, because the Telecommunications Act bars states from regulating the placement of wireless service facilities on the basis of RF emissions, the legislature is pre-empted by federal law from instituting a blanket ban on the siting of wireless telecommunications towers within a defined area based on the perceived effects of RF emissions.

To the extent the proposed legislation is intended to serve another purpose (e.g., to address aesthetic concerns), it still may be pre-empted by the Telecommunications Act. Specifically, Section 704 of the Telecommunications Act provides, in relevant part: “The regulation of the placement, construction and modification of personal wireless service facilities by any state or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” The proposed legislation could prohibit the Council from permitting the siting of a wireless telecommunications tower within 750 feet of a school, day care center, place of worship or private residence.

The term “school” is defined very broadly in Connecticut General Statutes Section 10-154 to include almost every public and private elementary, middle and high school within the State of Connecticut. In addition, the term “day care center” is also defined very broadly in Connecticut General Statutes Section 19a-79a to include any facility in which as few as one child is cared for outside of his/her own home. Moreover, neither the terms “place of worship” nor “private residence” are defined and also could be construed very broadly. As a consequence, the proposed legislation is likely to have the effect of entirely prohibiting the siting of a telecommunications tower within a large geographic

area, an entire municipality or portions of several adjoining municipalities depending on the distance of each school, day care center, place of worship and private residence from the next. Such a prohibition on service is pre-empted by the Telecommunications Act.

The proposed legislation also conflicts with federal policies regarding the development of a robust and reliable wireless network nationwide. For instance, in 2010, President Obama identified wireless telecommunications facilities as “critical national infrastructure” in part for the continuous service that can be provided during times of natural and manmade disasters. Often, during these times, schools and places of worship are used as shelters or outposts to provide needed services to an affected area. By prohibiting the siting of telecommunications towers within 750 feet of a school, day care center, place of worship or private residence, the proposed legislation could thwart the siting of this “critical national infrastructure” and impact the ability of those living in or stationed at these locations during times of disaster from communicating with emergency service providers and family members.

More recently, in his State of the Union address President Obama pledged to expand access to mobile broadband services to nearly all U.S. citizens. Specifically, the President said, “[w]ithin the next five years, we’ll make it possible for businesses to deploy the next generation of high-speed wireless coverage to 98 percent of all Americans .... This isn’t about faster Internet or fewer dropped calls. It’s about connecting every part of America to the digital age.” In addition, other states have recognized the importance of wireless broadband networks to their underlying economies and the quality of life of their citizens. The newly elected Governor of Vermont, for example, has made it a priority for his state and its citizens to have universal access to wireless networks. This goal is not achievable if wireless carriers are prohibited from installing critical national wireless infrastructure in large geographic areas simply because those areas are proximate to schools, day care centers, places of worship or private residences.

Rather than restricting possible areas where towers can be constructed, we would urge the committee to consider adding language to their bill which would allow for construction of towers in areas where they are prohibited today, including state forests and watershed lands. Allowing construction in such locales would open up areas for construction that could serve as an alternative to building in a more residential zone. In addition, while towers are allowed under the law on state property, in practice many state agencies have not been willing partners in such efforts. Building on state property might likewise lessen the need to build in residential areas, and the state would no doubt receive needed revenue for leasing such sites.

This legislation would have unintended negative consequences for municipalities, private schools and churches by depriving those entities and others who choose to host towers on their property from the monies received in rent from the wireless carriers. In many cases, this revenue is significant to their annual budgets.

Next, the Wireless Carriers oppose the language proposed to be added at lines 111 through 113 of the Bill, which would require the Council to consider “the latest technological options designed to minimize aesthetic and environmental impacts” when issuing a Certificate of

Environmental Compatibility and Public Need ("Certificate") for a wireless telecommunications tower, because its intent is unclear and, as a consequence, it may be pre-empted by federal law.

When the Wireless Carriers submit applications to the Council for telecommunications towers, various alternatives are often discussed and considered, including technological modifications to the tower structure (e.g., proposing a "monopine" tree tower) or to the antenna mounting system (e.g., proposing the use of low profile platforms or T-Arms), in an effort to reduce the potential aesthetic impacts of a proposed facility. In addition, as part of its review of an application for a Certificate, the Council also considers these design alternatives (whether or not they are proposed by the Wireless Carriers) in carrying out its statutory responsibility to consider the nature of the probable environmental impacts of a proposed facility. Since the Council's review is *limited* to determining if there is a way to mitigate the potential impacts *without* changing the essential nature of the proposed facility (i.e., a telecommunications tower), the Wireless Carriers have no objection to such a review or to a statutory provision intended to affirmatively require the Council to consider these types of technological design options.

However, as currently written, the proposed legislation could be read to broaden the Council's current review of alternatives to include the consideration of entirely different wireless technologies, such as distributed antenna systems ("DAS"), micro-cells and/or repeaters, *as an alternative to a telecommunications tower*. To the extent the proposed legislation requires such a consideration, it is pre-empted by the Supremacy Clause of the United States Constitution because it would intrude into a field occupied exclusively by the federal government.

On February 1, 1996, the United States Congress enacted the Telecommunications Act in order to facilitate the rapid deployment of advanced wireless telecommunications services nationwide. In recognition of the inherently interstate and mobile nature of wireless service, Congress sought to provide for a uniform, national scheme of regulation and to pre-empt piecemeal regulation by state and local governments. As part of the Telecommunications Act, Congress occupied the field of regulation concerning the technical and operational aspects of wireless service. Specifically, Congress has vested the FCC with *exclusive* authority to establish technical standards for wireless service. Accordingly, *only* the FCC may establish regulatory schemes aimed at the review and/or deployment of wireless service technologies. Thus, state legislation that seeks to legislate or require a state agency to regulate technological alternatives usurps the FCC's regulatory authority over the technical parameters for the provision of wireless service and is, therefore, pre-empted.

Finally, to ensure fairness and clarity, the Wireless Carriers also propose revisions to several provisions of the Bill. First, the Wireless Carriers request that line 214 of the Bill be revised to include intervenors within the scope of those who are prohibited from intentionally omitting or misrepresenting a material fact in the course of a Council proceeding. As written, the proposed legislation only imposes penalties on parties to a proceeding and does nothing to prevent intervenors before the Council from making misrepresentations or omissions. However, intervenors also are subject to discovery and cross-examination and

given the opportunity to submit pre-filed testimony in a Council proceeding. Accordingly, the Wireless Carriers request that line 214 of the Bill be revised by inserting the phrase “or intervenor” between the words “any party” and “has intentionally.”

Next, for purposes of clarity and to avoid confusion, the Wireless Carriers request that lines 365 and 366 and lines 370 through 374 of the Bill be revised (proposed additions shown as double underlined and proposed deletions shown in [brackets]) as follows:

365 “recommendations to the applicant. Such recommendations may  
366 include an alternative site(s)[selection].”

370 recommendations issued by the municipality, including any proposed  
371 alternative site(s)[selection]. If the municipality proposes an alternative  
372 tower site(s)[selection], the siting council shall consider such [proposal in]  
373 alternative(s) in conjunction with the application as part of its regular approval  
374 process.

**Conclusion:**

Because lines 82 through 90 and lines 111 through 113 of HB 6250 are pre-empted by federal law, the Wireless Carriers oppose those provisions and urge the Committee to reject them. In addition, to ensure fairness and clarity, the Wireless Carriers also request that the Committee revise line 214, lines 365 and 366 and lines 370 through 374 of the Bill.