Chris Fisher.

PCIA

NEWA
New England Wireless Association

STATEMENT OF
PCIA—The Wireless Infrastructure Association (PCIA) and
The New England Wireless Association (NEWA)
Before the Energy and Technology Committee
Regarding Raised Bill No. 5271
An Act Concerning the Siting Council
March 1, 2012

On behalf of PCIA—The Wireless Infrastructure Association ("PCIA") and the New England Wireless Association ("NEWA") we are pleased to provide the following testimony regarding Raised House Bill No. 5271. We would like to start by thanking the Committee and in particular the bill's lead sponsor, Rep. Lonnie Reed, for the opportunity to provide comment and input.

PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of wireless telecommunication services. PCIA and its members partner with communities across the nation to affect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of each community.

NEWA is a non-profit, professional association whose members represent the wireless industry throughout New England and the State of Connecticut. NEWA provides a forum for the cultivation of relationships and exchange of ideas among wireless telecommunications professionals, government officials and the public and strives to educate the public about the benefits of wireless services and infrastructure.

Wireless infrastructure is essential to the provision of wireless service. Wireless services from basic voice communication to mobile broadband access require robust wireless infrastructure. These services enable communication, productivity, mobility, and public safety. By 2015, a majority of Americans will utilize a wireless device as their primary Internet access tool. Wireless service will therefore be essential to access the vast resources and benefits enabled by the Internet, from commerce to political inclusion.

Further, an increasing number of Connecticut residents rely on wireless services and devices as their primary means of voice communication. In fact, the number of adults and children who live in wireless-only Connecticut households has increased 142.8 percent and 240.5 percent, respectively, in only two and a half years. More than 70 percent of all emergency calls are placed with a wireless device—without wireless infrastructure, the ability to access fire, rescue, and police services is significantly hindered.

PCIA and NEWA's principal concern with HB 5271 is the language found in lines 82-90 which would prohibit the Connecticut Siting Council ("Council") from permitting the siting of a wireless telecommunications tower within 250 feet of a school or commercial day care center

unless the location is acceptable to the chief elected official or the Council finds that the facility will not have a substantial adverse effect on the aesthetics of the area where the schools or commercial day care facilities are located. To provide the services that residents demand and rely upon, institutions such as schools are often the most practical place to site wireless facilities, particularly in predominantly residential neighborhoods. In addition, deployment of wireless facilities on government property and schools generates revenue for the locality. Municipally-owned schools in the State of Connecticut have in fact been utilized to support wireless facilities for these very purposes. As a practical matter, the proposed legislation also divests owners of schools or commercial day care centers of valuable revenue should they wish to place wireless facilities on their property.

National leaders in telecommunications and education also recognize the vast benefits that wireless connectivity and the infrastructure that support it afford educators and students. At a recent town hall meeting, Federal Communications Commission Chairman Julius Genachowski and Secretary of Education Arnie Duncan challenged states to transition to digital textbooks within 5 years to "improve the quality and penetration of digital learning in K-12 public education." As part of this effort, they presented a *Digital Textbook Playbook* that provides recommendations and advice to educators to facilitate this transition. This Playbook notes that "[r]obust broadband connectivity is another prerequisite to implementing a rich digital learning environment" and "[t]he key to delivering sufficient connectivity is estimating current and future demand to ensure that schools have enough bandwidth capacity to serve their student body, faculty, and staff." As digital learning expands to classrooms, students' homes and beyond, we urge the Committee to carefully consider the impact of this bill on the classroom of the future and its connectivity needs.

Federal law, as established in the Telecommunications Act of 1996, ("Telecommunications Act") preempts legislation that attempts to prohibit the siting of wireless telecommunications facilities within a particular distance from a specified use or set of uses based on the perceived environmental effects of radio frequency ("RF") emissions. 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 regulations concerning such emissions." As such, there is no legal authority for the creation of state or local exclusion zones around certain uses, such as schools or daycare centers, as would be created by the bill in amending Section 16-50p(3)(G) of the Public Utility Environmental Standards Act.

The courts have consistently upheld federal preemption over various state or local regulatory efforts or considerations rooted in emissions. *Cellular Phone Taskforce v. F.C.C.*, 205 F.3d 82 (2d Cir. 2000); *Jaeger v. Cellco Partnership*, No. 3:09-cv-567, 2010 WL 965730 (D. Conn. Mar. 16, 2010), *aff'd*, 402 Fed. Appx. 645 (2d Cir. Dec. 7, 2010), *cert. denied*, 131 S. Ct. 3068 (June 27, 2011); *Jaeger v. Connecticut Siting Council*, 52 Conn. Supp. 14, 18 A.3d 693, *aff'd per curiam*, 128 Conn. App. 243, 17 A.3d 484, *cert. denied*, 301 Conn. 927, 22 A.3d 1276 (2011). This includes regulatory approval related to state oversight of the use of school properties for wireless facilities. *See Sprint Spectrum, LP v. Mills*, 283 F.3d 404 (2d Cir. 2002) (differentiating

between state regulatory actions and governmental proprietary actions). While the qualifying language contained in the bill would allow for the possible approval of an application under certain conditions, we believe the law and its effect will be construed as a ban by the public essentially prohibiting facilities on school properties in the State of Connecticut.

The draft language of HB5271 would comprehensively amend Section 16-501 and allow municipalities, on behalf of their constituents, to assert various specific tower siting preferences including, among other things, the siting of towers away from schools. Wireless infrastructure providers would be obligated to consider any such municipal preferences, to the extent based in aesthetics, prior to any filing of an application with the Council. The Council would be further obligated to consider these preferences as part of its decision on any specific wireless facility application. We believe this is an important consideration for the Committee within the context of our comments and suggests that there is no need for an actual prohibition on siting near schools as a State legislative priority.

PCIA and the NEWA urge you to continue with your proactive efforts to ensure that the citizens, businesses and first responders of Connecticut have access to the wireless services they demand and rely upon. Thank you for giving us the opportunity to offer our comments and we stand ready as a resource for you on wireless infrastructure issues.

Jonathan M. Campbell
Director, Government Affairs
PCIA—The Wireless Infrastructure Association
901 N. Washington St., Suite 600
Alexandria, VA 22314
(703) 535-7401

Jeffrey Previte
President
New England Wireless Association
21 B Street
Burlington, MA 01803
(617) 715 -1847