



**STATEMENT OF AT&T CONNECTICUT
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**Regarding Raised Senate Bill No. 888
AN ACT CONCERNING WIRELESS BROADBAND
Before the Committee on Energy and Technology
February 21, 2013**

Proposal:

Section One would conform existing statutory timelines for decisions on tower applications before the Connecticut Siting Council with the FCC's mandate on such timeframes and make clear that the Council's consideration of the public need for a wireless tower site shall be limited to the need for a tower facility itself to provide wireless service to the public. Section Two would expand the existing list of wireless facilities (antennas on water tanks with at grade equipment) which are currently allowed on water company watershed lands to potentially allow new telecommunications tower sites on any watershed lands owned by water companies. Section Three would require the state to make its lands and facilities available for lease for wireless equipment and create uniform agreements for such purposes.

Comments:

AT&T strongly supports Sections One and Two of Raised Senate Bill No. 888, thanks the Committee for introducing the legislation, and urges its adoption. With respect to Section Three of the bill, it has come to our attention that Governor Malloy's administration, through its Office of Policy and Management, is already undertaking a uniform process by which carriers can enter into agreements with the state for the use of state property for the siting of wireless facilities. Therefore, this section is unnecessary; and, as such, we would respectfully request that Section Three of the bill be struck should the committee seek to move the legislation.

Section One: FCC Shot Clock and Public Need Analysis

In November 2009, the FCC issued its so-called "shot clock order" which interpreted Section 332(c)(7) of the Communications Act to require state and municipal applications for wireless tower sites to be decided by agencies within five months.¹ While this order is now a federal requirement, Connecticut's statutory deadlines for Siting Council decisions on tower applications actually exceed this requirement by one month. While AT&T does not believe that this proposed legislative change will represent a seminal change when it comes to streamlining the application process before the Siting Council, we do believe it is important for state law to conform to applicable federal requirements. We would note for the

¹ *FCC Declaratory Ruling*, 25 FCC Rcd. 11157 (2010), *pet. for review denied sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2010), *cert. granted, review pending* 113 S.Ct. 524 (2012).

Committee that under existing law the Council may extend the time period for a decision up to an additional 180 days, with the consent of the applicant, and that provision is not being changed as part of this legislation.

The language in lines 125 through 129 of the Bill would clarify that the public need analysis undertaken by the Siting Council as part of any application for a new tower site is related to the need for any specific tower proposal by an applicant, not the need for wireless service in and of itself. This properly confines the Siting Council, as an administrative agency, to its infrastructure task on applications for tower sites proposed for the provision of wireless services to the public. The Council today generally adheres to these principles of law (i.e., federal and FCC versus state and CSC jurisdiction). The amendment to Section 16-50p(b) would codify these principles of law and provide important clarity and administrative efficiency for all parties and intervenors in tower proceedings before the Siting Council.

Section Two: Water Company Lands for Possible Use as Tower Facility Sites

Under existing state law, water companies may allow antennas and towers to be affixed to their existing structures (e.g. on top of water tanks) with related cabling, equipment at grade and site access, subject to Siting Council, municipal zoning and/or Department of Public Health (“DPH”) review and approvals. Water companies may also freely lease class III lands (water company lands outside of public drinking watershed areas) for use as new wireless tower sites, with any specific tower site proposal subject to Siting Council review and approval. Water companies are, nevertheless, currently prohibited by Section 25-32 from leasing class I and II watershed lands (water company lands inside a public drinking watershed area) for use as new tower sites. Of note, private property owners in any public drinking watershed area, as opposed to water companies, may allow their property to be used for the construction of a new tower site, subject to review and approval by the Siting Council.

The outright prohibition on use of water company owned class I and II lands for new wireless tower sites exists because of an assumed adverse environmental impact to public drinking water supplies. AT&T appreciates that a higher level of regulatory scrutiny should be applied to development in public drinking watershed areas to protect water quality. The tower site prohibitions, however, forsake from consideration the building of any new tower in vast parts of the state (there are more than 100,000 acres of water company watershed lands in the state) even where a tower might be needed to provide wireless services to the public and water company lands may be less impactful environmentally as compared with private property alternatives. The public, on balance, would be well served by allowing water companies, like private property owners, to potentially lease their class I and II lands for use as new wireless tower sites.

A wireless tower site is largely composed of a gravel compound with very few impervious surfaces (i.e., equipment sheds and tower foundation areas). There is no human effluent produced from tower sites because these are unoccupied facilities. Construction of tower

compounds and unpaved access drives typically involve few if any impacts all of which are controlled through the use of erosion and control measures. Once constructed, tower sites are not publicly accessible and vehicle trips are limited to routine monthly inspections by a service technician in a light truck or van. Maintaining a tower site typically involves no chemicals or other potential water pollutants. AT&T respectfully submits that construction and operation of a tower site is a low intensive use for purposes of potential impacts on drinking water supplies, particularly relative to other development such as residences and active recreational uses like golf courses and public parks with sanitary facilities.

Section Two would lift the outright prohibition on potential use of water company class I and II lands for new tower sites by including such uses within the list of other existing exceptions and as set forth in Section 25-32(f) which exceptions already include development of non-intensive recreational facilities, construction of water supply facilities, leases of existing structures, or the development of towers or antennas on existing structures. If the prohibition is lifted, proposals for tower sites on water company class I or II watershed lands would still have to obtain DPH approval, the agency that regulates water companies and has primary responsibility for protecting public drinking water sources and supplies. The DPH currently has a permit application process pursuant to Chapter 474 that AT&T submits would appropriately allow for consideration of site specific tower site applications, to the extent they may be submitted in the future, and any impacts on public drinking water supplies. Development of tower sites on water company lands would also continue to be subject to Siting Council review, the state agency which considers potential environmental impacts pursuant to Section 16-50p(b).

We understand that the Committee may have some concerns about the potential impact that specific back-up power fuel sources may have on public drinking water supplies, i.e., fuel stored at a tower facility and used for generation of back-up power. AT&T and the wireless industry are aggressively moving to add additional back-up power at cell sites, which are typically supplied by diesel fuel stored in limited quantities at a site. In instances where wetland, watercourse or other environmental resources are in proximity to tower sites, including development of tower sites on private properties in drinking water supply watersheds, the industry will often incorporate tertiary containment systems or utilize a gaseous fuel source, like natural or propane gas, as an alternative. These measures are reviewed by the Siting Council on a case-by-case basis and could also be readily incorporated into DPH applications for tower sites on water company class I or II lands. This as needed to minimize the potential for any significant adverse environmental effects associated with on-site fuel storage at tower sites. The DPH would ultimately retain significant discretion on back-up power fuel sources as part of tower sites in close proximity to a water supply resource such as a reservoir or watercourse.

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Conclusion:

AT&T thanks the Committee for raising Raised Senate Bill No. 888 and urges adoption of Sections One and Two of the Bill.