



Written Testimony of the Connecticut Siting Council

Submitted to the Energy and Technology Committee

**In Reference to Raised Bill No. 568
An Act Concerning Telecommunications Towers
February 19, 2015**

Good afternoon Senator Doyle, Representative Reed, ranking and distinguished members of the Energy and Technology Committee.

Thank you for the opportunity to provide testimony in connection with Raised Bill No. 568, An Act Concerning Telecommunications Towers. The Connecticut Siting Council (Council) is the state agency with jurisdiction over the construction, operation and maintenance of telecommunications towers in the state subject to Federal Communications Commission (FCC) limitations of state authority under the provisions of the federal Telecommunications Act of 1996. Regrettably, the Council has one of its two regular monthly meetings scheduled at the same time as your committee's public hearing; otherwise, we would be able to provide you with oral testimony.

First, this bill proposes to amend subsection (f) of Conn. Gen. Stat. §16-50l to require a public hearing for the siting of a *new* telecommunications facility (emphasis added). The Council notes that existing provisions of law already make that requirement. Specifically, the Public Utility Environmental Standards Act, Conn. Gen. Stat. §§16-50k and 16-50m, as well as sections of the Uniform Administrative Procedure Act require a public hearing for the siting and certification of new telecommunications facilities in the state.

This bill further proposes to amend subsection (f) of Conn. Gen. Stat. §16-50l to require a public hearing for a "proposed change, improvement or replacement of an *existing* facility" (emphasis added). For background, the Council's authority as to the types of changes it can review for telecommunications facilities has always been limited. Since the passage of the federal Telecommunications Act of 1996, state and federal case law has well established that the FCC preempts state and local review on matters within the exclusive jurisdiction of the FCC, including, but not limited to, public need, health effects and network operations; thus, state and local review of a proposed site is limited only to impacts that are environmental. Moreover, federal preemption is becoming more restrictive. Under new regulations adopted this year pursuant to an FCC Order, state and local agencies are required to approve certain proposed changes, improvements or replacements of existing facilities promptly—within 60 days—and without discretionary review. More specifically, the approvals mandated cover: a) modifications to existing wireless carrier equipment at a facility; b) co-location of additional equipment at an existing facility; and c) extensions of an existing tower height by 10% or 20 feet, whichever is greater. Considering both long-standing and recent restrictions on Council authority, a blanket requirement for a public hearing on unspecified changes, improvements, or replacements to existing telecommunications facilities would be in direct conflict with federal law.

Here, it is important to interject that, notwithstanding federal preemption, and pursuant to regulations adopted in 2012 to facilitate greater notice and public participation, the Council does require notice be provided to the host municipality and abutting property owners for proposed changes, improvements or replacement of an existing facility.¹

A second problem with requiring a public hearing for a “proposed change, improvement or replacement of an existing facility” is that it would be in direct conflict with the State Tower Sharing Policy. This policy, adopted with wide support by the legislature, prioritizes tower sharing over the construction of new towers, assuring expedited review. Under Conn. Gen. Stat. §16-50aa, “the General Assembly finds that the sharing of towers for fair consideration whenever technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest.” The policy of tower sharing, also known as co-location, is specific in applying to towers owned or operated for a commercial or public purpose by a person, firm, corporation or public agency that uses such towers pursuant to a FCC license. Since the proposed bill is not similarly specific, it would apply to tower-sharing requests from non-wireless carriers and public entities including, but not limited to, emergency communications providers, municipalities and state agencies. In other words, it would apply to requests that the legislature has agreed have priority and should be expedited. Thus, a requirement for a public hearing regarding co-locations on existing tower facilities would be in direct conflict with the State Tower Sharing Policy.

Finally, the bill requires the Council to evaluate at least three alternative sites prior to granting an applicant’s Certificate of Environmental Compatibility and Public Need. As it happens, pursuant to Public Act 12-165, the legislature added subsection (f) of Conn. Gen. Stat. §16-50l to require that applicants provide the host municipality with a description of the proposed and any alternate sites under consideration and a listing of other sites or areas considered and rejected. Furthermore, that same subsection requires the host municipality to present an applicant with proposed alternative sites, which the applicant must evaluate and present to the Council in the application for formal consideration. Often, applicants submit several more than three alternative sites.

In summary, the Council finds this proposed legislation duplicates existing statutory requirements at some points, and otherwise opposes the passage of Raised Bill No. 568 to the extent that it is in direct conflict with federal law and the State Tower Sharing Policy.

Thank you again for the opportunity to provide testimony on this proposal. Should you have any questions or seek additional information, please feel free to contact me at 860-827-2951 or Melanie.bachman@ct.gov.

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¹ See Regulations of Connecticut State Agencies §16-50j-40 (2012) (“Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility, each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located and the appropriate municipal officials and government agencies.”)