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REPORT ON THE PROPOSED AMENDMENT TO THE COMPREHENSIVE PLAN FOR PCS COMMUNICATIONS FACILITIES IN THE PINELANDS ON BEHALF OF T-MOBILE NORTHEAST LLC (DOING BUSINESS AS T-MOBILE)

October 28, 2011

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I. INTRODUCTION

a. Background

Since 1981, when the Pinelands Comprehensive Management Plan (CMP) went into effect, a 35-foot height limit has prevented the construction of tall structures throughout much of the Pinelands Area. The CMP's height restrictions are intended to prevent the proliferation of structures that significantly detract from the scenic qualities of the Pinelands Area, which federal and state legislation have directed the Pinelands Commission to protect. Of course, there have always been exceptions to the CMP's 35-foot height limit. Within Regional Growth Areas, Pinelands Towns, and portions of Military and Federal Installation Areas, there are no height restrictions at all; and, within the remainder of the Pinelands Area, certain structures are permitted to exceed 35 feet in height.

In 1995, the Pinelands Commission amended the CMP's height restrictions in recognition of what had, at that time, already become a legitimate need: the provision of wireless communications services throughout the United States and within the Pinelands Area. Accordingly, local communications facilities, which provide wireless communication services, were permitted to exceed the 35-foot height limit where a comprehensive plan for the installation of such facilities throughout the entire Pinelands Area has been approved by the Pinelands Commission. The CMP's amended restrictions recognize that well designed and integrated wireless communications networks can greatly reduce the unnecessary proliferation of wireless communications structures throughout the Pinelands Area, and, most importantly, in its most conservation-oriented areas.

www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

Application Specific Information: AppInfo@njpines.state.nj.us

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The Commission approved the Comprehensive Plan for Cellular Telephone Facilities (the Cell Plan) in September 1998. The first amendment to the Cell Plan, entitled the Comprehensive Plan for PCS Communications Facilities in the Pinelands (the PCS Plan), was approved by the Commission in January 2000. In December 2003, the second amendment to the Cell Plan, entitled the Amendment to the Comprehensive Plans for Cellular and Personal Communications Service to include AT&T Wireless PCS of Philadelphia, LLC and its affiliates for Wireless Communications Facilities in the Pinelands (the AT&T Plan), was approved by the Commission.

In 2006, the CMP's height restrictions were again amended, in part, to recognize that altering certain aspects of wireless communications structures themselves can reduce their visual impact upon the scenic resources of the Pinelands Area. T-Mobile's proposed Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast LLC Doing Business as T-Mobile (the T-Mobile Plan) is subject to review under these amended height restrictions.

b. Appendices to this Report

The following documents are attached hereto:

Appendix A – Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast, LLC (Doing Business as T-Mobile)

Appendix B – Map of Sites Proposed in the Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast, LLC (Doing Business as T-Mobile)

Appendix C – Alion Science and Technology's Analysis of the T-Mobile PCS Plan for the New Jersey Pinelands

Appendix D – Hierarchical policy for siting individual wireless communications facilities;

Appendix E – Written comments from Pinelands Preservation Alliance concerning T-Mobile's proposed amendment (dated September 29, 2011)

Appendix F – Written comments from Joint Base McGuire-Dix-Lakehurst concerning T-Mobile's proposed amendment (dated September 30, 2011)

Appendix G – Chart of Sites Proposed in the Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast, LLC (Doing Business as T-Mobile)

c. Submission of this Amendment

In May 2006, T-Mobile first submitted its proposed amendment for the Commission's review. During the course of the following five years, T-Mobile worked cooperatively with the

Commission's staff to develop and refine its proposed amendment, the third such amendment proposed to the original Cell Plan. T-Mobile's Plan is a cumulative plan that, in addition to incorporating each of the Commission's three prior approvals, proposes the installation or construction of 36 local communications facilities. After years of patient cooperation, T-Mobile's Plan was deemed complete for purposes of Commission review on August 9, 2011¹. A summary of the most recent version of the T-Mobile Plan was presented to the Policy and Implementation Committee on September 23, 2011. A public hearing to receive testimony concerning the consistency of the T-Mobile Plan with the standards and provisions of the CMP was duly advertised, noticed and held on September 27, 2011.

d. Summary of this Amendment's Facility Siting Proposal

T-Mobile's Plan proposes a total of 36 local communications facilities within the Pinelands Area. A local communications facility consists of an antenna or antennas and any support structure together with any accessory facilities. For example, a local communications facility could be an antenna installed on a lattice tower (its support structure) together with its ground station (typically, small shed-sized buildings or cabinets); an antenna installed on a monopole (its support structure) together with its ground station; or, an antenna installed on a water tower (its support structure) together with its ground station. Of the 36 facilities included within the T-Mobile Plan, five are to be located at sites previously approved by the Commission. T-Mobile also proposes to use six existing structures as facility platforms. The remaining 25 facilities included within T-Mobile's Plan will require the construction of new support structures (towers or otherwise). Five of the remaining 25 facilities are proposed in Regional Growth Areas where the CMP's height limits are inapplicable. The other 20 new facilities proposed in the T-Mobile Plan are within the CMP's height-restricted management areas.

To demonstrate whether these 20 facilities can likely be sited consistent with the standards of N.J.A.C. 7:50-5.4(c), T-Mobile analyzed a one-mile-radius area surrounding the coordinates for each proposed facility. Based on T-Mobile's analysis, which has been verified and confirmed by the Commission's staff in part, and on staff's own independent analysis, it does not appear likely that seven of the 20 proposed new facilities can, in fact, be sited consistent with the standards of N.J.A.C. 7:50-5.4(c). As a result, at the time an application for development is submitted for any of these seven facilities, the facility will be subject to a heightened standard of review pursuant to N.J.A.C. 7:50-5.4(c)6. The Commission's staff has attempted to estimate the anticipated visual impact of these seven new facilities using a GIS-based methodology. The results of the staff's viewshed analysis indicate that the potential visual impact of some of these seven proposed facilities could be quite dramatic. Therefore, it is recommended that great care be taken during the application process to ensure that T-Mobile's alternatives analyses for these facilities are as accurate and robust as possible. It is further recommended that any method T-Mobile proposes for avoiding or minimizing the visual impacts of these seven facilities (whether it be multiple shorter towers or stealthing) be subject to the strictest scrutiny possible to ensure that the proposed method will achieve the desired outcome.

¹ A completeness determination simply acknowledges that T-Mobile has provided sufficient information upon which to begin the formal review process. It does not *per se* imply that T-Mobile's Plan is consistent with the CMP.

II. CONFORMANCE WITH THE COMPREHENSIVE MANAGEMENT PLAN

a. Introduction

N.J.A.C. 7:50-5.4 sets forth the standards by which the T-Mobile Plan must be reviewed. If these standards are met, the Commission must approve T-Mobile's proposed amendment. If the standards are not met, the Commission may conditionally approve or disapprove T-Mobile's Plan, depending on the extent and severity of the amendment's deficiencies. The Commission has historically interpreted its regulations to require that, wherever technically feasible, the T-Mobile Plan incorporate, amend, and expand upon the facility array and all other applicable provisions contained in the previously approved comprehensive local communications facility siting plan as well as the amendments thereto. T-Mobile's Plan does just that by expressly incorporating each of the Commission's three prior approvals in its proposal to install or construct its own 36 local communications facilities.

For purposes of this report, N.J.A.C. 7:50-5.4's standards have been separated into ten criteria. A discussion of each criterion and the amendment's conformance therewith follows. To aid in the staff's review of the amendment, the Commission retained Alion Science & Technology Corporation (Alion), a world-renowned radio frequency expert, to evaluate T-Mobile's signal propagation maps. Alion's review is appended to this report as Appendix C and is reflected, as appropriate, in the findings which follow.

b. Standards

1. The amendment must be agreed to and submitted jointly by all providers of the same type of service, where feasible. N.J.A.C. 7:50-5.4(c)6.

This requirement is intended to ensure that the greatest possible degree of coordinated planning occurs so as to minimize the number of new structures within the Pinelands Area. T-Mobile notified all known providers of wireless communication services of its proposed amendment by way of certified mailing. Its notice included a full copy of the T-Mobile Plan; invited other providers to participate in its proposed amendment; and, requested comments from any provider believing that their previously approved sites would be negatively impacted by its proposed amendment. Moreover, the September 27, 2011 public hearing to receive testimony concerning the consistency of the T-Mobile Plan with the CMP was duly advertised and noticed by the Commission. Thus, other providers of wireless communication services were given adequate notice of the T-Mobile Plan. Only Sprint Spectrum L.P. and Nextel of New York, Inc. (Sprint/Nextel) indicated it wished to become a participant in the T-Mobile Plan. Other than Sprint/Nextel, no comments or objections were received from any other provider of wireless communication services. To deny the proposed amendment based on a lack of participation by a greater number of wireless communication providers would be inappropriate.

The Executive Director concludes that this standard has been met.

2. The amendment must review alternative technologies that may become available for use in the near future. N.J.A.C. 7:50-5.4(c)6.

The purpose of this standard is to identify other technologies that should, at the very least, be considered as the pending amendment is reviewed. The T-Mobile Plan incorporates the treatment of alternate technologies as set forth in the Cell Plan and the amendments thereto and also expressly addresses a technology known as Distributed Antenna Systems (DAS). DAS employs a series of low-mounted antennas, generally attached to telephone poles and connected by fiber-optic cable, in lieu of tall towers. The proposed amendment concludes that DAS is not an economically or technically feasible alternative to the use of antennas mounted on tall structures. Alion's review of DAS also concluded that its use within the Pinelands Area was neither technically nor economically feasible. T-Mobile argues further that to require it to use DAS would not only infringe upon its responsibility to provide seamless, reliable, and ubiquitous service within the Pinelands Area but also violate its rights under various federal acts and regulations. The Commission's staff concurs with T-Mobile's legal analysis of its ability to require the use of DAS or any other specific technology. However, the Commission reaffirms its right to require plan participants to meet the CMP's height requirements, visual impact requirements, and siting requirements. While it is not the Commission's intent to require the use of any specific technology, the Commission does recognize that in order to meet the CMP's height requirements, visual impact requirements, or siting requirements, a plan participant may need to use a technology other than its preferred or customary technology.

Although DAS is not a feasible alternative for purposes of this proposed amendment, T-Mobile does acknowledge that certain siting and camouflaging techniques may be used to reduce the visual impacts of its proposed antenna support structures. Where it does not seem likely that a proposed tower can be sited consistent with the CMP's standards, T-Mobile has expressly agreed to work with the Commission's staff to develop those sites using such techniques (as is required per the CMP).

The Executive Director concludes that this standard has been met.

3. The amendment must show the approximate location of all proposed facilities. N.J.A.C. 7:50-5.4(c)6.

In order to evaluate the consistency of the T-Mobile Plan with various CMP standards, the proposed amendment must identify the approximate locations of all facilities identified therein, including those which will utilize existing structures and those which will require new ones. T-Mobile's proposed amendment provides a narrative for each proposed facility that identifies the county in which each facility will be located; the municipality in which each facility will be located; the management area in which each facility will be located; and, whether each facility requires a new structure or will use an existing structure. T-Mobile's narrative also notes if a facility has been previously approved by the Commission and, where applicable, whether the facility can be sited consistent with the CMP's siting and visual impact standards. In addition, the proposed amendment provides precise geographic coordinates (i.e., latitude and longitude coordinates) for each facility included therein. T-Mobile has agreed to locate each of the facilities in its proposed amendment within a one-mile-radius area surrounding these coordinates.

The Executive Director concludes that this standard has been met.

4. The amendment must include five- and ten-year horizons. N.J.A.C. 7:50-5.4(c)6.

T-Mobile's Plan states that it intends to build all of the sites within its proposed amendment within five years or as quickly as possible.

The Executive Director concludes that this standard has been met.

5. The amendment must demonstrate that it is likely that every facility proposed in the Pinelands Area is necessary to provide adequate service within the Pinelands Area and that it is likely that all such facilities must be located within the Pinelands Area in order to provide adequate service. N.J.A.C. 7:50-5.4(c)1.

To demonstrate the necessity for every local communications facility proposed in the T-Mobile Plan, T-Mobile provided signal propagation maps depicting both the existing coverage within the area of each proposed facility as well as the expected level of coverage post-installation. These signal propagation maps were then reviewed by Alion, the Commission's radio frequency expert. Alion's review of the proposed T-Mobile Plan concluded that it "constitute[d] an accurate representation of the existing and proposed communication facilities necessary to provide adequate, reliable [wireless communication] service to the [Pinelands Area] now and for the near future." Alion's review further noted that none of the proposed facilities could be eliminated, combined, or relocated "without negatively affecting coverage."

Since the Commission's expert has determined that all of the facilities proposed within the Pinelands Area are needed to provide adequate service, **the Executive Director concludes that this standard has been met.**

6. The amendment must demonstrate that the facilities to be located in the Preservation Area District, the Forest Area, the Special Agricultural Production Area and 17 specific Pinelands Villages are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands. N.J.A.C. 7:50-5.4(c)6.

The purpose of this standard is to provide a heightened level of scrutiny for the 16 facilities proposed in conservation-oriented management areas. As was the case with the Commission's previous approvals, T-Mobile's system of local communications facilities represents a network of facilities, each of which may affect the locations of other facilities in the system. Thus, the location of facilities outside conservation-oriented management areas may be relevant when evaluating the need for new facilities within conservation-oriented management areas. In order to demonstrate consistency with this standard, T-Mobile again relied upon its signal propagation maps. As noted above, the Commission relied upon its radio frequency expert, Alion, to determine whether T-Mobile's signal propagation maps do, in fact, demonstrate that the number of facilities proposed in conservation-oriented management areas is the least number necessary to provide adequate service. In this regard, Alion's review noted both that "it is not feasible to relocate the proposed sites outside of [conservation-oriented management] areas without

negatively affecting coverage” and that none of the proposed sites can “be combined without negatively affecting coverage.”

The Executive Director concludes that this standard has been met.

7. The amendment must demonstrate that it is likely that, to the extent practicable, existing communications or other structures have been used. N.J.A.C. 7:50-5.4(c)3.

The purpose of this standard is to ensure that the fewest possible number of new towers are constructed throughout the Pinelands Area. The T-Mobile Plan notes that its consultants and employees were sent into the field to identify existing structures in the area of its proposed facilities that might be suitable for its use. Wherever a suitable structure was found within the vicinity of a proposed facility, the proposed amendment is noted accordingly. And, in fact, up to nine of T-Mobile’s proposed facilities will use existing structures. Alion’s review of the T-Mobile Plan indicated that as many as six more proposed facilities may be able to use existing structures. Although T-Mobile and Alion seem to disagree, at the moment, over the precise number of existing structures that may be suitable for its use, the T-Mobile Plan explicitly acknowledges that if, and when, an application for development is submitted for any proposed facility, T-Mobile will again have to show that there are no existing suitable structures available within the vicinity of the proposed facility. Because T-Mobile has accepted affirmative responsibility to resolve any disagreement concerning the suitability of existing structures during this latter review, **the Executive Director concludes that this standard, insofar as it applies to this amendment, has been met.**

8. The amendment must demonstrate, or note the need to demonstrate when the actual siting of facilities is proposed, that, if a new support structure is to be constructed, it can likely be sited consistent with the six criteria in N.J.A.C. 7:50-5.4(c)4. These criteria deal with satisfying technical operating requirements; minimizing visual impacts from public areas, wild and scenic rivers and special scenic corridors, the Pine Plains, the Forked River Mountains and residential areas; and, if proposed in the Preservation Area District, Forest Area, Special Agricultural Area, or Rural Development Area, locating the facility in nonresidential zones, unreserved public lands, mines, first aid or fire stations, and landfills.

While, at a minimum, the CMP only requires the proposed amendment to note the need to demonstrate likely consistency with N.J.A.C. 7:50-5.4(c)4’s criteria, T-Mobile has done a great deal more than it is minimally required to do for the 20 new facilities proposed in height-restricted areas. Using a series of GIS-based maps, T-Mobile analyzed a one-mile-radius area surrounding the coordinates for each of its proposed facilities. It has thus attempted to graphically demonstrate which of its proposed facilities can likely be sited consistent with the CMP’s visual and siting criteria. As a result of its own analysis, T-Mobile identified five proposed facilities that cannot likely be sited consistent with the CMP’s criteria (proposed facilities 77, 83, 88, 90, and 98). Staff’s own analysis of the one-mile-radius area surrounding each of T-Mobile’s proposed facilities concurs with four of the five sites identified by T-Mobile (proposed facilities 77, 83, 88, and 98). However, according to the best information available to staff, it seems likely that proposed facility 90 can, in fact, be sited consistent with the CMP’s

criteria at an existing fire department site within the Presidential Lakes neighborhood. Staff's own analysis also identified three additional sites that cannot likely be sited consistent with the CMP's criteria (proposed facilities 81, 91, and 107). T-Mobile has proposed to site facility 81 at an existing junkyard on the basis that a junkyard is a landfill. The Commission disagrees. Junkyards are not landfills under the CMP. As a result, it does not appear likely that proposed facility 81 can be sited consistent with the CMP's standards. T-Mobile has proposed to site facility 91 at a New Jersey State facility. While there may have been a New Jersey State facility within one mile of proposed facility 91 when T-Mobile initially filed its proposed amendment, there no longer seems to be one there now. As a result, it does not appear likely that proposed facility 91 can be sited consistent with the CMP's standards. T-Mobile has proposed to site facility 107 at a nearby resource extraction site. Our analysis of the area revealed the presence of some cleared areas within one mile of proposed facility 107 but no resource extraction sites. As a result, it does not appear likely that proposed facility 107 can be sited consistent with the CMP's standards.

Although it seems unlikely that these seven proposed facilities (77, 81, 83, 88, 91, 98, and 107) can be sited consistent with the CMP's criteria, the CMP does not require that the proposed amendment be denied as a result nor does it even require that these proposed facilities be removed from the proposed amendment. Rather, the CMP requires that, at the time an application for development is submitted for any of these seven facilities, the facility will be subject to a heightened standard of review pursuant to N.J.A.C. 7:50-5.4(c)6. To wit, T-Mobile will be required to specify how the use of alternatives could reduce the anticipated visual impact of these seven facilities. T-Mobile has agreed to explore the use of multiple shorter towers and stealthing for those sites that cannot likely be sited consistent with the CMP's criteria. The Commission's staff's GIS-based viewshed analysis for these seven facilities indicates that the potential visual impact of some of these seven proposed facilities could be quite dramatic. It is, therefore, recommended that great care be taken during the application process for these seven facilities (77, 81, 83, 88, 91, 98, and 107) to ensure that T-Mobile's alternatives analyses for these facilities are as accurate and robust as possible. It is further recommended that any method T-Mobile proposes for avoiding or minimizing the visual impacts of these seven facilities (whether it be multiple shorter towers or stealthing) be subject to the strictest scrutiny possible to ensure that the proposed method will achieve the desired outcome (i.e., a reduced visual impact).

The Executive Director concludes that this standard has been met.

9. The amendment must demonstrate, or note the need to demonstrate when the actual siting of facilities is proposed, that support structures are designed to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area. N.J.A.C. 7:50-5.4(c)2. A closely related CMP standard also requires that the plan must demonstrate, or note the need to demonstrate when the actual siting of facilities is proposed, that the support structure, if initially constructed at a height less than 200 feet, can be increased to 200 feet to accommodate other local communications facilities in the future. N.J.A.C. 7:50-5.4(c)5. Another closely related standard in N.J.A.C. 7:50-5.4(c)6 requires that the plan must provide for joint construction and use of the support structures.

Each of these three standards is intended to facilitate, to the greatest extent practicable, collocation amongst wireless communications providers. The T-Mobile Plan expressly affirms the shared services and collocation policies incorporated into the Commission's prior approvals. In so doing, T-Mobile has agreed to joint construction and use of any support structure built pursuant to its proposed amendment; to accommodate the needs of any other local communications provider which has identified a need to locate a facility within an overlapping service area; and, to design the support structure of its proposed facilities such that, if initially constructed at a height less than 200 feet, they can be increased to 200 feet to accommodate other local communications facilities in the future.

Therefore, the Executive Director concludes that these standards have been met.

10. If it reduces the number of facilities to be developed, shared service shall be part of the plan unless precluded by federal law. N.J.A.C. 7:50-5.4(c)6.

The purpose of this standard is to encourage wireless communications providers to consider the possibility of single server coverage. T-Mobile's proposed amendment and the plans previously approved by the Commission note that this standard is at odds with federal statutes and regulations. Indeed, the Federal Communications Commission itself has indicated that this standard may be inconsistent with its rules. While T-Mobile has not agreed to "shared services" as originally contemplated by the Commission, T-Mobile, like all of the previous plan participants, has agreed to a common collocation policy. Since T-Mobile has probably agreed to do all that it can legally be required to do with respect to this standard, **the Executive Director concludes that this standard has been met.**

III. PUBLIC HEARING AND REVIEW PROCESS

A public hearing to receive testimony on the T-Mobile Plan was duly advertised, noticed and held on September 27, 2011 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Mr. Tyshchenko conducted the hearing at which no testimony was received.

Written comments on the T-Mobile Plan were accepted through September 30, 2011 and were received from the following parties:

Theresa Lettman, Director for Monitoring Programs, Pinelands Preservation Alliance
(see Appendix E)

Dennis Blazak, Deputy Asset Manager, 87th Civil Engineer Squadron, Department of the Air Force, Joint Base McGuire-Dix-Lakehurst (see Appendix F)

On behalf of the Pinelands Preservation Alliance, Ms. Lettman provides comments on 11 of T-Mobile's proposed facilities. She notes that proposed facility 69 should be removed from the proposed amendment because she believes that it will be constructed on deed-restricted portions of the former Heritage Mineral Tract. Ms. Lettman also states that proposed facilities 77, 83, and 88 should be removed from the plan because she does not believe that there are any sites within

the vicinity thereof that are consistent with the CMP's requirements. She argues that proposed facility 81 should be removed from the plan as well if it encroaches into the five-mile buffer zone around the Forked River Mountains. Ms. Lettman also argues that proposed facility 86 should be removed from the plan if it cannot be constructed at the firehouse in Warren Grove. With respect to proposed facility 107, Ms. Lettman argues that because she is unsure of "what the company's alternatives might be" for this proposed facility, it too should be removed from the plan.

She notes that no sites, within the vicinity of proposed facility 70, that are consistent with CMP requirements can be seen on aerial photographs and that the only areas of disturbance within the area occur on grounds of Joint Base McGuire-Dix-Lakehurst. Ms. Lettman questions whether T-Mobile can be required to use the First Energy Electric transmission towers that it proposes to use for facility 72; or, if, for some reason it cannot do so, will it be permitted to construct a new tower. With regard to proposed facility 76, Ms. Lettman opines that the existing structure T-Mobile proposes to use will be at a site with existing violations. She notes that if that is, in fact, the case, the violations will have to be addressed prior to any Commission approval of an application for development. Finally, Ms. Lettman observes that if proposed facility 108 is not located at the Atco Raceway, she would not support locating it within Wharton State Forest.

On behalf of Joint Base McGuire-Dix-Lakehurst (JB MDL), Mr. Blazak states that six of T-Mobile's proposed facilities are on, or close to, the Joint Base and may interfere with military aviation; and, that another three of the proposed facilities are along the flight path between JB MDL and the Warren Grove Aerial Gunnery Range and may interfere with flights between the two. Mr. Blazak notes that it is not possible to determine whether these proposed facilities will actually cause any interference without the exact location, site elevation, and tower height of the proposed facilities. Mr. Blazak also notes it is unknown whether the proposed facilities will require FAA concurrence or whether they will be equipped with navigational lights.

EXECUTIVE DIRECTOR'S RESPONSE

For various reasons, Ms. Lettman argues that proposed facilities 69, 77, 81, 83, 86, and 88 should be removed from the proposed amendment. Regardless of the merits of Ms. Lettman's objections to these proposed facilities, that is not the appropriate remedy under the CMP for a facility for which it has been demonstrated there is a need but which cannot likely be sited consistent with the CMP's visual or siting requirements. Rather, as noted above, the correct remedy is to subject those proposed facilities to a heightened level of scrutiny by requiring an alternatives analysis, which will demonstrate how T-Mobile can reduce the potential visual impact of the proposed facilities. T-Mobile will be required to do so for seven of its proposed facilities (facilities 77, 81, 83, 88, 91, 98, and 107) and has agreed to explore both the use of multiple shorter towers and stealthing to reduce potential visual impacts.

With respect to proposed facility 70, Ms. Lettman correctly notes that there do not appear to be any sites off JB MDL grounds that are consistent with CMP requirements. However, the CMP authorizes the siting of proposed facilities on substantially developed portions of Military and Federal Installation Areas. Thus, her comments with respect to this proposed facility do not represent a deficiency in the proposed amendment. With respect to proposed facility 72, Ms.

Lettman questions whether T-Mobile can be required to use the First Energy Electric transmission towers that it proposes to use; or, if, for some reason it cannot do so, will it be permitted to construct a new tower. Since T-Mobile has not applied for authorization to construct a new tower or other support structure for proposed facility 72, neither it nor another wireless communications provider will be permitted to do so without first obtaining Commission approval of a plan amendment, unless it can be done in accordance with Appendix D. With respect to proposed facility 76, Ms. Lettman opines that the existing structure T-Mobile proposes to use will be at a site with existing violations. She correctly notes that if that is, in fact, the case, the violations will have to be addressed prior to any Commission approval of an application for development. Finally, Ms. Lettman observes that if proposed facility 108 is not located at the Atco Raceway, she would not support locating it within Wharton State Forest. The Commission also would not support locating proposed facility 108 within Wharton State Forest. However, since it appears likely that there are other sites within the vicinity of proposed facility 108 that are consistent with the CMP's visual and siting criteria, this does not seem like a scenario the Commission need concern itself with nor would it be likely to occur under any circumstances.

The Executive Director has no doubt that JB MDL's concerns, as expressed by Mr. Blazak, are valid and well-founded military and aviation concerns. However, they are not grounds upon which the Commission can validly deny T-Mobile's proposed amendment. Whether T-Mobile's proposed facilities require FAA concurrence and whether they will be equipped with navigational lights are not matters within the Commission's purview. Nor, would the Commission's approval of the proposed facilities obviate the need for FAA concurrence or navigational lights if required by other federal or state legislation or regulation. Similarly, whether T-Mobile's proposed facilities will interfere with military aviation on, or near, JB MDL or between it and the Warren Grove Aerial Gunnery Range are also not legitimately matters within the Commission's scope of review. The Commission has determined that all but one of the proposed facilities with which JB MDL has expressed concern can likely be sited consistent with the CMP's standards. That determination does not authorize those proposed facilities to be constructed on JB MDL grounds without its consent. Nor, does it express the Commission's endorsement of the construction of any proposed facility that would interfere with military aviation. To the extent that JB MDL's grounds provide the only site upon which a proposed facility can be sited consistent with the CMP's standards, T-Mobile will either have to construct it consistent with JB MDL's requirements or amend its plan accordingly. For better or for worse, the Commission's authority, limited as it is by federal and state legislation and by its own regulations, does not extend far enough to regulate T-Mobile's proposed facilities on any of the grounds expressed by Mr. Blazak. It is also possible that many, if not all, of JB MDL's concerns will be assuaged once T-Mobile provides it with additional information.

IV. CONCLUSION

The T-Mobile Plan proposes a total of 36 new facilities within the Pinelands Area and anticipates the construction of 25 new towers not previously approved by the Commission (five of which will be in Regional Growth Areas). Based on the foregoing analysis, the proposed amendment is consistent with the goals and standards of the CMP. Though consistent, the T-Mobile Plan is not without potential issues. Many new facilities are proposed within the most sensitive portions of

the Pinelands Area. Seven of which it does not seem likely can be sited consistent with the CMP's visual and siting criteria. Thus, even with the heightened scrutiny these seven facilities will be subject to, sensitive Pinelands viewsheds may be negatively impacted. Nevertheless, even with these potential issues, T-Mobile's amendment establishes a framework, which, if successfully implemented, will allow it to provide seamless, reliable, and ubiquitous wireless communications service within the Pinelands Area and will result in less visual pollution than is likely in other parts of the State and the nation and than would occur otherwise. Furthermore, even with approval of this amendment, individual facilities will have to be approved by the Commission in accordance with the provisions of N.J.A.C. 7:50-5.4 and other applicable CMP standards. In the review of such applications, the Commission will be guided by the hierarchical policy for siting individual wireless communications facilities, which is appended to this report as Appendix D.

The Executive Director has concluded that the “Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast LLC Doing Business as T-Mobile” is consistent with the goals and standards of the Comprehensive Management Plan. Accordingly, the Executive Director recommends that the Pinelands Commission approve the “Amendment to the Comprehensive Plan for PCS Communications Facilities in the Pinelands on Behalf of T-Mobile Northeast LLC Doing Business as T-Mobile.” The Executive Director further recommends that the Pinelands Commission expressly affirm that the review of any application for development for any facility included within the T-Mobile Plan shall be done in accordance with this report, including its appendices.

Attachments