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**BEFORE THE SNOHOMISH COUNTY
HEARING EXAMINER**

IN RE: CINGULAR WIRELESS
APPLICATION FOR 150' MONOPOLE

File No. CUP 02-104238

AND

**POST-HEARING BRIEF OF
MOUNT FOREST HOMEOWNERS
ASSOCIATION
(MFHA)**

APPEAL OF DETERMINATION OF
NONSIGNIFICANCE

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I. INTRODUCTION

8 Under Snohomish County Code, Conditional Uses are defined as “those which require special
9 review in order to insure compatibility with permitted uses in the same zone.” SCC 18.32.020. The
10 burden of proof is on the applicant to show this compatibility. They have not done so with this permit
11 application. On the contrary, we have shown many types of incompatibility with existing permitted
12 uses on neighboring properties.

13 Wireless Telecommunications companies are granted additional rights by the
14 Telecommunications Act of 1996 for the construction of Personal Wireless Facilities (PWFs). This
15 Act and the subsequent case law mandate that permits for such facilities must be granted if they are the
16 least intrusive means of providing service to an area¹. We have demonstrated that this proposed PWF

¹ Sprint vs. Willoth: Exhibit #74. “the Act’s ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user’s ability to reach a cell site that provides access to land-lines”.

AND

“mandating approval of all wireless facilities would act as a disincentive for wireless service providers to develop and deploy new technology that will provide better transmission and reception with less intrusive towers, effectively undermining the TCA’s goal of increased innovation.”

17 would be residentially much more intrusive than any of the existing wireless facilities in the area.
18 There are many other options available that would provide better service using much less intrusive
19 means².

20 We have shown that the applicant did not attempt to co-locate on existing structures before
21 applying for the permit. We have also shown that the site selection information submitted with the
22 permit was manufactured to give the appearance that a search for better sites was done³.

23 The site for the proposed PWF is in an extremely sensitive location with Category 1 wetlands
24 only 100' away. Our wetlands are home to hundreds of species of wildlife, some of which are listed as
25 threatened or endangered. The buffer areas surrounding the wetlands ensure the quality of our water.
26 These wetlands and wildlife are protected by SEPA and we have shown that this PWF would have
27 multiple probable significant impacts if approved.

28 II. ARGUMENT

29 SEPA

30 The SEPA process failed from the beginning. Both versions of the environmental checklists⁴
31 submitted with the application stated there were no birds and only squirrels and domestic dogs and
32 cats in the area. As stated in the Myhre Forest Stewardship Plan⁵, "Approximately 275 wildlife species
33 use [this area] for feeding". It was testified by Mr. Myhre that some of the wildlife found on
34 neighboring properties to the proposed tower site are Federally Threatened or Endangered species.
35 These species include Bald Eagles, Peregrine Falcons, Western Gray Squirrel and the Western Pond
36 Turtle.

² Existing water towers (Exhibit #132), power lines and microcells

³ Exhibits # 96 (Alternate Site Analysis), 122, 123 (Lack of contact Affidavits)

⁴ Environmental Checklists: Exhibits #10 & #23

⁵ Forest Stewardship Plan: Exhibit # 93

37 We have submitted a letter from Dr Henry Lai from the University of Washington⁶ explaining
38 the cumulative effects of microwave frequency radiation and how mice become sterile after 5
39 generations of exposure (a matter of months). We have also submitted calculations⁷ showing that a
40 465' radius around the tower location (with a single PCS provider) would exceed this exposure level.
41 Our expert testimony in the letter from Dr. Lai and calculations of the sterile ring remain undisputed.
42 Neither the Applicant nor the County Planning Department have done anything to ensure this wildlife
43 will be unaffected by this project.

44 We have calculated the total impervious surface for this project as 6,060 sq ft. This exceeds the
45 5,000 sq ft threshold for a project, requiring a full detailed drainage plan. When this was questioned, a
46 new map showing a different "end of existing driveway" location was submitted by Cingular,
47 implying a new impervious surface total less than 5,000 sq ft. The testimony from two of the
48 neighbors⁸ agreed with the original map establishing the end of the existing driveway where the
49 propane tank is located. The total impervious surface exceeds the threshold and a full drainage plan
50 should be required for this project. The SEPA determination should be reversed.

51 A key concern with this much impervious surface traversing over 300 feet of the property is
52 that it will act as a dike and significantly reduce water flow into the wetland. Our report from Dr. Sara
53 Cooke described a 'clay horizon' 12 inches below the surface. With the absence of surface water flow,
54 all water flowing to the wetland is confined to this narrow 12 inches of topsoil. It was explained in the
55 PDS Staff Recommendation report that the driveway would compact the upper 6 inches of topsoil. Our
56 expert Dr. Cooke explained that she believed it would be a significant impact in the following email⁹:

57

⁶ Biological Effects of Radio Frequency Radiation from Wireless Transmission Towers: Exhibit # 79

⁷ FCC Exposure Calculations: Exhibit # 106

⁸ Ray Opfer and Brad Hansen's testimony

⁹ Email from Dr. Sara Cooke: Report Exhibit # 72, Email exhibit # 100

58 “The road could indeed have a very large impact on the water supply to the
59 wetland corridor. There is no way that Mr. Olsen can state that 6" of compaction will
60 make no difference without a thorough groundwater evaluation. It is the charge of
61 Snohomish County staff to require a thorough evaluation of possible effects to critical
62 areas. Mr. Olsen is not following the ‘no net loss’ and protection of critical areas
63 mandates of the County if he allows this road without an evaluation of the potential
64 impacts to the water supply of the wetlands to the West. Especially when there is so
65 much evidence suggesting there may be impacts and that these impacts may result in a
66 direct alteration of the water regime to Category 1 wetland corridor.”
67

68 It is clear from this testimony that a thorough groundwater evaluation needs to be done to
69 evaluate the impacts this project could have on the environment. The county planner should have
70 required this evaluation early in the process. As another attempt to avoid doing a full drainage plan,
71 the applicant submitted a letter¹⁰ from a land developer firm that claims this sort of caution is
72 “unwarranted and unprecedented”. This document makes several guesses varying from 10 to 100 feet
73 as to when the projects effect would be attenuated. A scientific conclusion based on fact would arrive
74 at a precise value, not a range of guesses. This letter does nothing to minimize Dr. Cooke’s statement
75 that a full evaluation is required. SEPA requires that the wetlands be protected and a ground water
76 evaluation needs to be done.

77 In determining whether a project's impacts are "significant," the responsible official must take
78 into account that "the same proposal may have a significant adverse impact in one location but not in
79 another location." WAC 197-11-330(3)(a). Maybe a cell tower in some or even many other locations
80 would not cause significant impacts. But the facts of this case establish that this neighborhood is
81 unique in its combination of underground wiring, rural character, an airstrip, wildlife, wetlands and so
82 much more. Taking into account this community's unique attributes and the effect this tower would
83 have on this community, an EIS should have been required.

84 The rules also direct the responsible official to recognize that the "significance" threshold may
85 be crossed not because of any single factor but because "several marginal impacts when considered

¹⁰ Letter from Duncanson Company: Exhibit 111

86 together may result in a significant adverse impact." WAC 197-11-(3)(c). This factor also comes into
87 play here and supports our request for an EIS.

88 **Compatibility**

89 A requirement of the Conditional Use Permit is to ensure compatibility with the areas existing
90 permitted uses. The proposed tower is not compatible with the area in any way. As shown in the
91 neighborhood map¹¹, the nearest power pole or structure exceeding the zones height restriction is over
92 a mile away. It was testified by Mr. Myhre that interference with satellite Internet/TV reception would
93 be likely. This would directly impact multiple home businesses in the area as well as the only form of
94 entertainment (satellite TV¹²) for at least one of the homebound neighbors.¹³

95 Airplane runways are much more difficult to site than wireless communications facilities. It
96 was testified that interference with the flight path for Mr. Myhre's private runway would be definite
97 and create an unsafe condition. Our letter from the FAA¹⁴ confirms that the tower is not compatible
98 with the existing runway. A question of the legality of the existing runway was resolved when it was
99 explained that this Incidental Use is secondary in nature to the primary use (rural living) and is
100 therefore permitted. This runway has existed for 10 years and has been used without any complaints.
101 The over 76 properties in the MFHA¹⁵ and the overwhelming attendance at the hearing makes it clear
102 which use is compatible with the neighborhood and which one is not.

103 The proximity to the property line is another incompatibility. There are many impacts on
104 neighboring properties when a facility containing a 150' structure is placed 50' from the property line.

¹¹ Neighborhood Map Showing underground power locations in yellow: Exhibit 119

¹² Testimony by Nelda Gorman (homebound neighbor)

¹³ Mr. Myhre testified as to his qualifications based on his education and professional experience. He demonstrated during his testimony a command of the subject matter, both the physics and the local surroundings. Indeed, more than once during the hearing, Cingular's witnesses turned to Mr. Myhre for information about the area's roads, topography, vegetation, and other pertinent matters.

¹⁴ Letter from FAA: Exhibit # 94

¹⁵ Mount Forest Homeowners Association (Formed to oppose the proposed tower): Exhibit #73

105 Falling hazard, aesthetics and property values are a few of these impacts. The falling hazard radius for
106 monopole towers is usually defined as equal to the tower height¹⁶. All the neighboring counties have
107 rules specific to cell towers and their required setbacks. All of these counties agree on a setback
108 distance of at least the tower height. This permit would never have been accepted in any of the
109 counties surrounding Snohomish County for this reason.¹⁷

110 This hazard radius also plays a role in property values. HUD will not loan money on a home in
111 the fall radius of a tower. When this fall radius exists on a neighboring property, value was taken from
112 the potential use of that property. One of the potential uses of the neighboring Myhre property to the
113 east is that of Forest Resource lands. Mr. Myhre testified he was investigating the forestry option at the
114 time the permit application was submitted and was attending a class on the subject. A Forest
115 Stewardship Plan was also created for his property as a prelude to obtaining this classification¹⁸. This
116 classification requires a 100' setback of all structures on surrounding properties.

117 The aesthetics impact for this site is great due to the lack of vegetative screening surrounding
118 the tower location and the extreme height of the proposed tower. Several photos were submitted
119 showing this lack of screening and the potential unobstructed views of the tower¹⁹. It is appropriate to
120 consider potential views because the ordinance requires compatibility with "existing and potential
121 uses" in the general area. SCC § 18.72.060 (emphasis supplied). Mr. Myhre testified to several
122 logical development scenarios for his property that would result in the responsible clearing of some
123 trees on his property with the result that the towers would be very visible from his home and/or from
124 one or more of the additional building lots that might be created there. The Code's compatibility
125 criterion is explicitly written to protect Mr. Myhre's future potential uses, not just his present ones.

¹⁶ Neighboring County Codes: Exhibit #81 & HUD Appraisers Handbook Page on Hazards and Nuisances: Exhibit #74

¹⁷ We do not suggest that the adjacent county codes are directly applicable, but they do provide useful objective benchmarks for the Examiner confronted with this county's more subjective compatibility determination.

¹⁸ Forest Stewardship Plans are required for entry into the Forest Resource Land classification. Exhibit # 93

¹⁹ Photo Simulations (Dec. 9th): Exhibit # 108

126 Hours of testimony were given discussing the possible cutting of trees on the neighboring
127 properties as well as trees on the Jordan property not controlled by the Applicants lease. The only
128 reason the neighboring trees became an issue, was because the screening on the subject property is so
129 incredibly insufficient. It should not be left to adjacent property owners to provide the screening
130 necessary for an unsightly use proposed on their neighbor's property.

131 Mr. Myhre testified that he had eight options on what to do with his property (subdivide,
132 forestry, etc.). Of these options, the proposed tower would impact all of them to some degree and
133 many of them would cause the proposed tower to impact other neighboring properties as well.

134 The aesthetics also contribute to the decline in property values. Our letter from real estate
135 broker Kevin Hunt states that adding a cell tower to a neighborhood will cause a decrease in property
136 values by at least 20%²⁰. Our testimony and Affidavit from Dr. Kilpatrick²¹ described the errors in the
137 applicant's property value analysis and explained the loss in value was greatest when a negative
138 amenity is added to an otherwise high positive amenity site. The area of the proposed site currently
139 does not have any negative amenities. It was testified that most of the homes in the area are valued at
140 \$500,000 and up indicating huge losses in property values if the proposed tower were allowed.

141 One of the points resolved in testimony was the fact that the applicant's property value study²²
142 was unprofessional and misleading. The neighborhood used in the study was not even close to similar
143 to the subject neighborhood. The study referred to a neighborhood that was full of negative amenities
144 before the tower was added (busy streets, above ground power, etc.). This disparity between
145 neighborhoods was shown to be a deciding factor in the Nextel case before the Snohomish County
146 Council that we submitted as evidence²³. The council ruled that the examiner erred in ignoring the

²⁰ John L. Scott Letter: Exhibit # 74

²¹ Kilpatrick Affidavit: Exhibit # 92

²² Monroe Cell Site Study: Exhibit 36

²³ Official Notice of Council Decision: Exhibit # 77

147 difference in the neighborhoods (Nextel’s study and the subject property) and the applicant failed to
148 show they could not use alternate sites in an area that does have these “adverse external factors” to
149 provide the same service. The permit decision was reversed by the county council and denied.²⁴

150 Noise levels are also incompatible with the area. Even with the levels described in the
151 applicants noise study, they are hundreds of times higher than the current background sound levels.
152 The study also mentions that co-location may cause these noise levels to exceed the rural noise
153 limits²⁵.

154 The level of compatibility of the proposed tower with the area becomes more evident when
155 alternate locations are analyzed. All of the alternatives we suggested would use existing structures in
156 an area with above ground power lines. Using an existing structure in an above ground power area is
157 certainly more compatible than a 150’ tower in a zone that has no poles or towers. Several of these
158 alternate locations would also provide better coverage than the proposed tower.

160 Coverage

161 As admitted late in the applicant’s testimony (Ms. Lima), the proposed tower by itself will not
162 provide sufficient service to the area and would require additional tower(s) to fill in the coverage gaps.
163 The proposed tower is centered between three road networks and the service the proposed tower would
164 be providing, would be primarily to wetlands and dead end dirt roads.

165 Since the applicant believed at least two towers would be required to serve the area with the
166 coverage level they wanted, we requested that they try a couple scenarios that would be significantly
167 less intrusive. The first was on one of the two water towers in the area. The second was with a water

²⁴ A comparison of the Monroe neighborhood photographs attached to the Monroe Cell Site Study, and the photos of our neighborhood (exhibit # 108), instantly reveals the stark difference between these neighborhoods and the resulting inapplicability of the Monroe neighborhood study.

²⁵ Applicants Noise Study: Exhibit # 13

168 tower and a location on the high-tension power lines as marked on the map by Ms Lima. The third
169 scenario was using microcells to serve just the roads. The documents we received show the applicant's
170 true intent was not what could provide the best coverage, but what would provide the worst coverage
171 and look the worst compared to the current proposal. Given a choice of two water towers²⁶, they chose
172 the shorter one with the most trees around it; then complained that there were too many trees that
173 would affect the signal. When selecting the location on the high-tension power lines, they did not do
174 the simulation from the highest ground near Lost Lake where they had placed an asterisk symbol (in
175 light blue pen) on the topographic map²⁷. Instead, they chose the only location that already had service
176 from the proposed water tower and then complained that this power line location did not provide
177 significant additional coverage. The microcells simulation was also an attempt to make the alternatives
178 look worse. They placed microcells on NE 200th to the west of 155th, where no roads exist. This single
179 lane, gravel road already has in-car service level from an existing Cingular cell site. The applicant also
180 placed the microcells far too close together, and then complained that it would take too many. We
181 requested that the microcell simulation be done with one on each end of 155th and one on the west end
182 of 228th.

183 The coverage map using the proposed Jordan tower²⁸ has an orange region (less than in-car
184 coverage) to the north and west of the proposed tower service area. This orange area shows where
185 calls may be dropped when people would be forced to drive through it when leaving the area since this
186 is the only route out to the next cell. With the integrated water tower coverage map²⁹, even using the
187 shortest tower (at a height of 80 feet), the coverage was better than the 150' tower proposed by the
188 permit application. The water tower location would serve an additional estimated 200 homes in the

²⁶ See Water Tower Photos: Exhibit #132 (2 pages)

²⁷ Topographical Map: Exhibit # 128

²⁸ Applicants 'After' Coverage Map: Exhibit # 33

²⁹ Integrated Water Tower Coverage Map: Exhibit #132 (Created by merging Exhibit 33-Before and 130-Water Tower)

189 Echo Lake area³⁰ and allow people to drive from the most remote areas of the Echo Lake road network
190 and continue out Echo Lake road without dropping below the in-car (yellow) coverage level. The
191 indoor (green) service area of the water tower is also symmetrical, providing service an equal distance
192 in all directions. In contrast, the proposed Jordan tower would be severely limited in providing service
193 to the east due to the topography. Therefore, an additional tower would not be needed in the area if the
194 water tower location were used.

195 Ms. Lima testified that they only had enough money in the budget for a single tower. The water
196 tower location can provide this service without the need to build a new tower (it would use an existing
197 structure). The applicant attempts to minimize the success of the water tower site by using words like
198 "generally," "typically" and "perhaps" to explain how sometimes the spacing between cell sites needs
199 to be closer and the simulation based on the actual topography should be ignored. There is no data to
200 support these claims. Instead they are using these claims to ignore the data.

201 Without the expected power line simulation it is difficult to show how successful it would be,
202 but due to the topography it is reasonable to assume that it would be just as successful if not more
203 successful than the water tower in providing seamless service to the area. Similarly, the microcell
204 simulation was not a realistic representation of what could be. The applicant's failure to produce the
205 correct simulations should in no way minimize the potential of these alternate methods of providing
206 service.

207 The coverage maps submitted by the applicant do not accurately show the roads in the area.
208 We submitted coverage maps with corrected streets³¹ and explained in testimony that the roads on
209 their coverage maps were wrong. It is apparent from the applicant's maps, statements and testimony

³⁰ These numbers were estimated by comparing the green area on the two coverage maps and the zoning map.

Jordan Tower Coverage Simulation: Exhibit # 33

Water Tower Coverage Simulation: Exhibit # 132

Zoning/Parcel Map: Exhibit # 101

³¹ Corrected Road Map: Exhibit # 132

210 that they are not aware of the true location of 165th. The December 19th coverage maps all show 161st
211 marked as 165th. But 161st, where it does exist, is actually mostly driveways, not a busy street³². Their
212 statements claim they need quality coverage on 165th but the proposed tower would only serve the end
213 2,000 feet of this street. Any attempt to leave the area would result in traveling through a no-service
214 area (red color on the coverage map).

215 The applicants intended coverage goals are less than clear. The applicant testified that the
216 "streets"³³ they were trying to serve were NE 200th, 155th, 228th and 165th. However, NE 200th is a
217 dead end gravel road³⁴ that already has in-car coverage from another existing Cingular tower. This
218 street was not included in their first drive test so they couldn't have been too concerned with providing
219 it additional service. In addition, the proposed Jordan tower would not provide an increase in service
220 level on NE 200th. Two more streets, 155th and 228th, would not have any additional in home or in-car
221 coverage with the Jordan tower than the Water Tower simulation.

222 While existing coverage at the proposed tower location itself may currently result in dropped
223 calls, the coverage on many of the neighboring properties is already adequate. It was testified by Mr.
224 Myhre that 155th already has in-car coverage and the properties to the east have indoor coverage
225 levels. The antenna providing this indoor service is close to 2 miles away. The water tower would
226 provide excellent seamless service to all roads in the applicants target area with the exception of 165th.
227 Since the coverage to 165th with the proposed Jordan tower would be so limited, anyone leaving the
228 area in a car would have to drive through a no service area, the few homes on 165th that would lose
229 indoor coverage with the water tower location would be greatly outweighed by the close to 200 homes
230 gaining service in the Echo Lake area.

³² Exhibit #108-O & Exhibit # Photos R2-A, B & C

³³ As our photographs reveal, much of the area road "network" is not comprised of "streets" in the usual sense. Many of the so-called "streets" are nothing more than narrow, dirt and gravel lanes and driveways.

³⁴ Exhibit # 132, Photos R1-A, B & C

231 The applicant's belated acknowledgment of a need for additional towers also serves to further
232 undermine the environmental checklist and the threshold determination. The checklist asks the
233 applicant to divulge "plans for future additions, expansion, or further activity related to or connected
234 with this proposal." (Question A.7.) Cingular answered "No". If a more forthcoming answer had
235 been provided, the SEPA Responsible Official would have been alerted to consider all the impacts
236 associated not just with this tower, but the remainder of the Cingular network necessary to cover this
237 area. See WAC 197-11-060(4)(impacts include the project's direct, indirect and cumulative impacts).
238 The threshold determination must be remanded, at a minimum, for an evaluation of the project's entire
239 scope of related impacts.

240 **Application**

241 The applicant has misrepresented the facts from the start of the application. Cingular's site
242 selection group did not contact people they claimed were interested. Both correct and incorrect
243 coordinates were shown for candidate #1 on the February version of their candidate propagation maps,
244 yet the November 20th version (morning of the first hearing) has the correct location removed. Amidst
245 the several requests to get the color copies of documents submitted at the first hearing, Mr. Myhre
246 asked that the incorrect GPS coordinate be corrected. Ms. Carrasquero said she didn't have time and
247 she would not open any further emails³⁵.

248 Mr. Myhre testified that with the proposed tower, the applicant would provide premium service
249 to the wetlands and beaver ponds and poor service to the three largest and most populated
250 neighborhoods in the area. Other wireless companies co-locating on this proposed tower would have
251 even less coverage due to the lower elevation of each additional provider's antenna array.

³⁵ Email correspondence between parties: Exhibit # 103

252 The RF exposure calculations in the first two sets of documents³⁶ did not take into account the
253 greater than 30-foot rise in the hill to the east. The third set of calculations calculated the exposure
254 with the rise in the hill, but used a horizontal distance of 800 feet from the tower for their calculations,
255 rather than using the distance to the closest home at this higher elevation.³⁷ Mr. Myhre testified that
256 there is an existing house 550 feet away from the proposed tower location and the calculations should
257 be done using the location of the closest existing house since the exposure levels would be much
258 greater. We submitted corrected calculations³⁸ for the August scenario³⁹ and showed the actual
259 exposure limits to be hundreds of times higher than the applicant's original calculations (or most
260 typical cell towers). Even though the distances to homes were used in these calculations, people in this
261 rural neighborhood spend much of their time outdoors (often closer to the tower) where exposure
262 levels would be significantly higher.⁴⁰

263 The photo simulations submitted with the original application were taken from locations that
264 could not possibly have a view of the tower. When this was questioned, the applicant did another
265 balloon test before the trees lost their leaves, and took pictures from neighboring properties that would
266 have a view of the tower. For many of these pictures though, they selected locations standing behind
267 tree trunks and then claimed they could not see the tower from those locations. At most of these
268 locations, people were not home to object to their photo locations. One of the photos on the Myhre
269 property was taken without his prior knowledge and a photo he requested be taken, was only submitted
270 after this fact was mentioned. During this second balloon test, Mr. Myhre took pictures from locations
271 that *would* be able to see the tower and submitted those as evidence. Some simulations were created
272 showing what the view of the tower would be if trees were removed from properties adjacent to the

³⁶ Non-Ionizing Electromagnetic Exposure Analysis: Exhibit #12 & #27

³⁷ Email from Hatfield and Dawson: Exhibit # 95

³⁸ FCC Exposure Calculations for the Jordan property: Exhibit # 106

³⁹ Non-Ionizing Electromagnetic Exposure Analysis: Exhibit # 27

⁴⁰ As testified by Laura Hartman: Exhibit # 102

273 Jordan property. These simulations were questioned in cross-examination of Mr. Myhre, but once the
274 original photos were shown with the balloon in the picture, the applicant accepted their accuracy.

275 The impervious surface values kept changing with successive maps in an attempt to show the
276 area to be less than 5,000 sq ft. The sound study specified the wrong equipment (a microcell unit, not a
277 macrocell⁴¹). The roads they are claiming to try to serve are all outside the applicants self-imposed ½
278 mile search area.⁴²

279 This application started with SBA, a tower leasing company, selecting a site and
280 submitting the permit for Cingular. It was explained at the hearing that experts we talked to expected
281 that this proposed tower would be sold to a tower company. This was evident because no co-location
282 options were even considered before the permit was applied for, and better locations were available. It
283 was also suggested at the hearing that a taller tower would be desired in the future in an attempt to
284 improve the poor service of the proposed tower. These assumptions may help explain why the
285 applicant is not doing what is best for Cingular, but only what is required to get a poorly placed tower
286 approved.

287 In sum, Cingular's application was marked by inaccurate and constantly changing information.
288 Cingular's shifting disclosures made it very difficult to prepare for and present cogent information in
289 response. The burden is on the applicant, Cingular, to demonstrate that it is entitled to the permit. Yet
290 Cingular was unable to address many of the most important factual issues in a consistent and
291 straightforward manner. Cingular has not met its burden of proof.

292

⁴¹ As testified by Mr. Myhre, the Ericsson RBS 2102 cabinet used in the sound study (Exhibit #13) is a second-generation microcell device that has a maximum capacity of six simultaneous conversations.

⁴² Even though these roads are all outside the self imposed ½ mile search ring, the applicant used this restriction to discount all of the 15 alternate sites listed in the environmental checklist: Exhibit # 23, Page 9, Section B. 8. 1.

293 **III. CONCLUSION**

294
295 The applicant has failed to make a case for need or compatibility. We have shown the applicant
296 did not search for alternate locations. We have also shown these alternate locations provide better
297 service than the proposed tower site. The impacts with this proposed tower are great, and the benefits
298 are few. We have shown alternatives that provide much better service with negligible impacts.

299 For the above reasons, the Examiner should grant the appellants appeal of the DNS for
300 Cingular’s PWF. The Examiner should also deny Cingular’s request for approval of a CUP.

301
302 Dated this 10th day of January 2003.

303 Respectfully submitted,

304
305 By: _____
306 Mike Myhre
307 President of the MFHA
308 DNS Appellants point of contact
309