

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NEW CINGULAR WIRELESS PCS, LLC

11cv1502 (WWE)

v.

THE CONNECTICUT SITING COUNCIL
et al.,

ORDER ON MOTION TO STRIKE

This is an action presenting a claim for effective prohibition of wireless services under the Communications Act of 1934, as amended by the Telecommunications Act of 1996. The parties have submitted cross motions for summary judgment. Defendants have moved to strike certain evidence submitted by plaintiff in support of its motion for summary judgment.

In evaluating an “effective prohibition” claim, “district courts are free to consider additional evidence” not in the administrative record. *Second Generation Props., L.P. v. Town of Pelham*, 313 F.3d 620, 629 (1st Cir.2002); see also *Nat'l Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14, 24 (1st Cir.2002) (“On the effective prohibition issue, district courts may take evidence beyond the record.”). Further, much of the evidence that defendants seek to strike are publicly filed documents of which the Court may take judicial notice. Accordingly, the motion to strike (doc. # 32) is DENIED.

Dated this 20th day of August, 2012 at Bridgeport, Connecticut.

_____/s/_____
Warren W. Eginton
Senior United States District Judge

