

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**In Re:**

APPLICATION OF SBA TOWERS III (SBA)  
AND NEW CINGULAR WIRELESS PCS, LLC  
(AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS TOWER FACILITY  
AT WEWAKA BROOK ROAD IN THE TOWN  
OF BRIDGEWATER

DOCKET NO. 412

January 5, 2010

**SBA TOWERS III ("SBA") AND NEW CINGULAR WIRELESS PCS, LLC ("AT&T")  
MOTION IN OPPOSITION TO TOWN OF BRIDGEWATER REQUEST TO  
INTERVENE UNDER CONNECTICUT GENERAL STATUTE SECTION 22a-19  
("CEPA")**

SBA Towers III ("SBA") and New Cingular Wireless, PCS, LLC ("AT&T") by its attorneys, Cuddy & Feder LLP, the Applicants in the above captioned Docket, respectfully submit this opposition to the Town of Bridgewater's request to intervene under Connecticut General Statute Section 22a-19. The Town's motion fails to satisfy the statutory predicates necessary for establishing standing to intervene. The motion does not adequately allege facts or conduct reasonably likely to have "the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." C.G.S. Section 22a-19. A request such as this "must set forth facts constituting the intervenor's claim". Nizzardo v. State Traffic Commission, 259 Conn. 131, 163 (Conn. 2002). The pleading provided is instead a broad recitation of opinions and lacks sufficient factual specificity required under C.G.S. Section 22a-19.

In addition, the Supreme Court of Connecticut has stated that the requirement of verification "evinces the legislature's determination that the intervention petition set forth the

factual basis for the intervention because only facts can be sworn to by affidavit or verification.” Nizzardo v. State Traffic Commission, 259 Conn. 131, 163 (Conn. 2002). The verification provided by the Town is from Ronald Graiff, P.E., a known radio frequency engineer. However, the pleading broadly claims harm to natural resources, scenic vistas and sensitive visual receptors in addition to alleging certain radio frequency issues related to alternatives. Even if these were specific factual allegations regarding natural resources, which they are not, they are not claims which are directly related to radio frequency engineering. Nor are they within the specific knowledge of Mr. Graiff who is known to reside outside of Bridgewater. Accordingly, it is unclear how Mr. Graiff could “confirm or substantiate” or “swear to the truth of” those claims regarding natural resources. Nizzardo v. State Traffic Commission, 259 Conn. 131, 162-163 (Conn. 2002) citing Black’s Law Dictionary (7<sup>th</sup> Ed.1999). As such, the provided verification fails to apply to the alleged harm to natural resources and does not comport to the requirements of Section 22a-19 as per the decision in Nizzardo v. State Traffic Commission.

As part of this opposition to the Town's motion under CEPA, the Applicants acknowledge the Town’s right to intervene as a party under the Council's enabling legislation as set forth in Section 16-50n of the Connecticut General Statutes (the "Public Utility Environmental Standards Act" or "PUESA"). Of note though, Mr. Graiff and Attorney Ainsworth are in fact new to these proceedings and were not retained by the Town during the technical consultation time period. Further, the Town of Bridgewater did not present the Applicants with any evidence regarding any purported technical alternatives during the technical consultation period which commenced by letter on July 16, 2010. As such, to the extent Mr. Graiff has provided the Town of Bridgewater with any information on alternative heights, locations or technologies, we respectfully request that the Town of Bridgewater provide that

information to the Council and the Applicants as a condition of being granted party status under PUESA.

Dated: January 5, 2011

SBA Towers III and  
New Cingular Wireless PCS, LLC  
Applicants

By:

A handwritten signature in black ink, appearing to read 'D. M. Laub', written over a horizontal line.

Daniel M. Laub, Esq.  
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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and twenty copies of the foregoing were sent to the Connecticut Siting Council electronically and by overnight mail with copy to:

Town of Bridgewater  
Represented by:  
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Dated: January 5, 2011



Daniel M. Laub