

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

IN RE:

APPLICATION OF OPTASITE TOWERS LLC  
AND OMNIPOINT COMMUNICATIONS, INC.  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE AND  
OPERATION OF A TELECOMMUNICATIONS  
FACILITY AT 425 LITCHFIELD ROAD,  
NEW MILFORD, CONNECTICUT

DOCKET NO. 342

APPLICATION OF CELLCO PARTNERSHIP  
D/B/A VERIZON WIRELESS FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE  
AND OPERATION OF A WIRELESS  
TELECOMMUNICATIONS FACILITY AT 359  
LITCHFIELD ROAD IN NEW MILFORD,  
CONNECTICUT

DOCKET NO. 355

Date: MARCH 3, 2008

**CO-APPLICANTS OPTASITE TOWERS LLC AND OMNIPOINT COMMUNICATION,  
INC.'S OBJECTION RE BALLOON FLOAT**

Co-Applicants Optasite Towers LLC ("Optasite") and Omnipoint Communications, Inc. ("T-Mobile") (collectively the "Co-Applicants") submit the following objection to the request from Cellco Partnership d/b/a Verizon Wireless ("Verizon") that the Co-Applicants be required to fly a balloon during the continued hearing for this docket. Verizon's request should be denied because it seeks to unfairly shift the burden of its own failure to act in a timely manner to Optasite and because it is unprecedented to require an applicant to conduct a second balloon float on the day of a continued hearing.

## **I. Factual Background**

The Co-Applicants filed this application with the Council on or about June 22, 2007. The Council, through its staff, sent notice of this pending application to all carriers, including Verizon on August 6, 2007. At various points prior to and during the application process, Optasite had also independently been in communication with Verizon regarding the proposed Optasite facility. On September 10, 2007, the Council held a public hearing on this application. On the day of the hearing, as required by Council procedure, the Co-Applicants flew a balloon from 8 a.m. until 6 p.m. at the height of the proposed facility (140 feet) at the proposed site. Subsequent to the close of the hearing and close of the record in this docket, Verizon forwarded correspondence to the Council indicating that Verizon was pursuing a site located at 359 Litchfield Road approximately a ½ mile away from the facility proposed in the Optasite docket, which proposed facility was awaiting decision by the Council. That Verizon site is now proposed in Docket 355. The Co-Applicants voluntarily agreed, at the request of the Council, to keep this docket open and to permit the public hearing to be re-opened and continued to consider additional information submitted in Docket 355. The two pending dockets have not been consolidated

## **II. Argument**

### **A. There is no statutory, regulatory or “common practice” basis for requiring an applicant to fly a balloon on the date of a continued hearing.**

There is simply no statutory, regulatory or “common practice” basis by which Verizon can argue that the Co-Applicants should be required to fly a balloon on the date of this continued hearing. As stated, the Co-Applicants flew a balloon on the date of the original

hearing in this docket. The Council members were present during the field review and able to observe the balloon float. Despite the fact that there are numerous telecommunications dockets which have required continued public hearings, Verizon cannot point to a single docket where an applicant was required to fly a balloon on the date of a continued hearing. Even in dockets that have been contentious, the Council has never required an applicant to conduct a second balloon float or field review. Verizon contends that it will be "virtually impossible" for the Council to remember the visual impact of the proposed Optasite facility, and cites the length of time that has passed since the balloon float/site visit (and hearing) and the number of intervening hearings the Council was required to adjudicate. It is not unusual for a hearing to be continued, or even in the ordinary course of a docket, for the Council make judgments about the environmental impact and render decisions about these facilities for many months after the site hearing (when the balloon float is conducted). Optasite is confident that the Council has the expertise and capability to recall the aesthetic aspects (as well as the option to refresh their memory with the use of the photosimulations and viewshed documentation that are already part of the record, as well as their own post-hearing notes) of the proposed facility.

**B. Verizon has not established that these two applications are competitive.**

Verizon has not yet established that these two applications are comparable or competitive with each other. While it is Verizon's contention that these two sites are competitive and it has informed the Zoning Commission that only one will be approved, there is no evidence in the record that exists in Docket 342 or in Docket 355 to support that

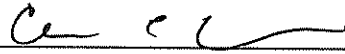
argument. Therefore, any argument claiming that a second balloon float is required in this docket because the two applications are competitive is simply speculative.

**C. Verizon's request is untimely**

Finally, and perhaps most importantly if Verizon had wanted to ensure that the Council reviewed both sites simultaneously, Verizon had ample opportunity to intervene in Docket 342 and make such a request prior to the public hearing on that application, or in the alternative, file its own application during the period the Optasite application was pending. It failed to do so and, in fact, waited more than three months after the record closed in this docket to file its application in Docket 355. Now, Verizon is seeking to impose an unprecedented burden on the Co-Applicants in this docket based entirely on its own failure to timely respond to the Council's docket. This request is untimely and therefore should be denied.

**WHEREFORE**, for the reasons discussed herein, the Co-Applicants respectfully request that Verizon's motion to require the Co-Applicants conduct a second balloon float in this docket be denied.

Respectfully Submitted,

By:   
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**Certification**

This is to certify that a copy of the foregoing has been mailed, this date to all parties and intervenors of record.

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