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 FACIILITY AT 52 STADLEY ROUGH ROAD, DANBURY, CONNECTICUT	DOCKET NO. 366 December 1, 2008

BRIEF RESPONDING TO Brown Rudnick, LLP (November 24, 2008) and Optasite Filing (November 25, 2008) with Respect to the Protective Order filed by Optasite Dated October 6, 2008.

INTENT TO SHIELD:

The City of Danbury observes and suggests to this respected Council, that the vigor with which various parties and applicant(s) itself oppose the disclosure of basic lease information is notable, and itself validates the *need* for disclosure. If this Council chooses to protect itself from (its own) access to information quite relevant to these proceedings, in the face of the substantial benefit that would accrue from disclosure, there is little that Danbury can do about that during the course of these sessions. However, to argue, as these parties have, that interpreting statutory language of intent in ways that *limit* this Council in doing its due diligence is clearly counter productive as well as an appealable matter, given the inherent limitations on the Council's inquiry that such a decision would impose.

1. Brown Rudnick, LLP:

The City, as it does not wish to prolong this Council's important tasks in this matter and since many of the arguments have already been offered, responds, briefly, to the points made by counsel, as follows:

Ambiguity of CGS Sec. 16-500©. While the parties have been through this argument in oral session, Danbury posits that, in the end, a court will have to determine the "plain meaning" of this language. However, the City's view is, that it doesn't take (proverbial) rocket science to see that the words "...the **full** text of any agreement...**and** a statement of any consideration..." (bold added) means disclosure. Contrary to what Brown Rudnick asserts, it would have been even far easier for the Legislature to simply say that "*no rent amount or other financial data that would harm the interests of the various parties need be disclosed"* (or words to that effect), than to try and contort the present language to hide information, or to be intentionally and harmfully silent on it. Doing it that way would simply have made common sense.

Legislative History: The City, obviously, does not read the legislative history the way Brown Rudnick does, and has set forth its reasons in any earlier filing, or at argument. To say it succinctly, **nowhere** is there language, either directly or impliedly intending to restrict the Council's access to information relevant to its own proceedings. Nor does any cited or uncited case law say that either. It is, in the City's opinion, mistaken to read into it in the fashion Brown Rudnick suggests to this body.

CITY OF DANBURY
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CORPORATION
COUNSEL

Trade Secrets/Proprietary Information: The undersigned has used and advised upon the provisions of the FOIA to (municipal) clients for many years. The clear, broad and legislative intent of that law is **disclosure**, not the absence of it. Thousands of hearings before the FOIC attest to that. The exemptions drawn into the statutes on FOI are not only *exemptions* to this primary rule, but they are, further, to be narrowly interpreted in accordance with case law and history. As stated in the earlier (City) filing, trade secrets belong to a very narrow and defined class, one that does not exist here. The cases cited are inapposite to the point Brown Rudnick is trying to make. This is a **public** session, impacting hundreds of people and for a long time. It is quite inappropriate to try and impose secrecy when the only truly relevant interest affected is that of the Council's inability to fully and fairly examine the basis of the placement of the tower.

So far as "proprietary information" is concerned, all of these telecommunications companies know very well what the market prices are and what the competition is paying. If they don't, then the Council should wish to know why the pricing is off-market. That is the essence of the City's demand for disclosure. Besides, if the Applicant's argument for this site is to be believed, that it is the last dead zone in the area needing service, the fact that it has locked up the lease for it should eliminate any argument that needs to worry about its competitors.

Relevance: With language in CGS Sec.16-50o© that has become the subject of such discussion, that fact alone should make the rent amount extremely relevant, because, a stated above, the level of effort put forth to shield this data should be curious, and perhaps even disturbing to a Council that is duty bound to operate in public, for the public benefit and on behalf of the State of Connecticut. At last glance, the Council was not created to act as a shield for and on behalf of cell companies or others.

2. Optasite:

Aside from repeating much of what Brown Rudnick has set forth in its written arguments, the case law cited has such wide variation of finding and application that is of little practical use to this Council. In the face of the statutes governing this question ((CGS Sec. 16-50o©)) a plain and practical reading of which could easily have resolved the issue, the Council is left with what has already been discussed at length, namely, direct and plain words – **"full text" and "statement of any consideration"**- that contains no exclusions, exemptions or restrictions that any reasonable eye can see (parenthetically, it should be noted that the Applicant also redacts insurance amounts from its lease, leaving the City baffled regarding why that is also a "trade secret" or proprietary", as they so vigorously claim).

Conclusion:

The City is, obviously, not personally interested in the rent data itself, or whether is disclosed or is not, but does have a statutory stake as regards the overriding interests of its citizenry as reflected in the actions and obligations of this respected body. The City feels comfortable that other issues and arguments it intends to bring forward will assist the Council in discerning those matters within its decision-making process. However, the force with which Applicant and related parties argue for **non** disclosure should give the Council pause and should encourage this body to firmly decide this question for the benefit of itself, applicants and the public whose interests are all at stake.

The Protective Order should be denied.

The City of Danbury reserves the right to offer additional exhibits, testimony, witnesses and administratively noticed materials as may be necessary during the hearing process.

Dated at Danbury, Connecticut, this 1st day of December 2008.

City of Danbury

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CERTIFICATE OF SERVICE

I hereby certify that the original copy of the foregoing was delivered to the Connecticut Siting Council via U.S. mail, with an electronic copy sent via email, and one (1) copy of the above was mailed to the Applicant's legal counsel via U.S. mail, with a copy also electronically delivered, as follows:

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Dated: December 1, 2008

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