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Also admitted in District of  
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*Via Electronic Mail and Hand Delivery*

May 13, 2009

S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Re: **Docket No. 374 - 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 199 Town Farm Road, Farmington,  
Connecticut**

Dear Mr. Phelps:

Enclosed are an original and twenty (20) copies of Cellco Partnership d/b/a Verizon  
Wireless' Objection to the Admission of Certain Testimony and Exhibits of Susan  
Edelson in connection with the above-referenced proceeding.

Please feel free to contact me if you have any questions or require additional  
information. Thank you.

Sincerely,



Joey Lee Miranda

Enclosures

Copy to: Susan Edelson  
Claude Brouillard  
Sandy M. Carter



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**STATE OF CONNECTICUT**  
**CONNECTICUT SITING COUNCIL**

IN RE: :  
: :  
APPLICATION OF CELLCO PARTNERSHIP : DOCKET NO. 374  
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 199 : :  
TOWN FARM ROAD, FARMINGTON, : :  
CONNECTICUT : MAY 13, 2009

**APPLICANT’S OBJECTION TO THE ADMISSION OF CERTAIN  
TESTIMONY AND EXHIBITS OF SUSAN EDELSON**

Cellco Partnership d/b/a Verizon Wireless (“Cellco” or “Applicant”) hereby objects to the admission of certain testimony and exhibits submitted by Susan Edelson in connection with the above-referenced proceeding. As set forth more fully below, Ms. Edelson’s testimony, in part, raises issues outside the scope of this docket and beyond the jurisdiction of the Council and certain of Ms. Edelson’s exhibits are irrelevant, beyond the scope of this proceeding and/or outside the Council’s jurisdiction. Therefore, Cellco objects to their admission.

**BACKGROUND**

On January 23, 2009, Cellco filed an Application (“Application”) with the Connecticut Siting Council (“Council”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance and operation of a wireless telecommunications facility located at 199 Town Farm Road in Farmington, Connecticut (“Farmington N2 Facility”). On March 18, 2009, the Council issued a notice requiring that all parties and intervenors provide and exchange exhibits with all other parties and intervenors by May 7, 2009.

On or about May 3, 2009, David Edelson submitted prefiled testimony and exhibits on

behalf of Ms. Edelson. On or about May 4, 2009, David Edelson submitted an additional exhibit (Exhibit 35) on behalf of Ms. Edelson. For the reasons set forth more fully below, Cellco hereby objects to the admission of certain of the testimony and exhibits submitted on behalf of Ms. Edelson.

### ARGUMENT

#### **I. Ms. Edelson's Testimony, In Part, Raises Issues Outside The Scope Of This Docket And/Or Beyond The Jurisdiction Of The Council.**

Ms. Edelson submitted a prefiled memorandum raising numerous arguments in opposition to the proposed Farmington N2 Facility. *See, generally*, Memorandum to Connecticut Siting Council from Susan Edelson regarding Docket #374 May 14<sup>th</sup> 2009 ("Prefiled Testimony"). Cellco objects to the admission of portions of the Prefiled Testimony because it raises issues outside the scope of this docket and beyond the jurisdiction of the Council.

In her Prefiled Testimony, Ms. Edelson claims that Cellco was required to obtain a special permit and to receive approval from the Town Conservation Commission for the proposed Farmington N2 Facility. Prefiled Testimony at 3-5. Ms. Edelson also claims that the Application violates the Town's Zoning Regulations. Prefiled Testimony at 2, 4, 5-6. The provisions of Connecticut General Statutes section 16-50g *et. seq.* establish that the Council has *exclusive* jurisdiction over the matters under consideration in this docket and that the Council's jurisdiction pre-empts local land use regulations. *See* Conn. Gen. Stat. Section 16-50x(a); Conn. Gen. Stat. § 16-50i(a)(6); *see also* *Town of Westport v. Connecticut Siting Council*, 260 Conn. 266 (2002); *Sprint Spectrum LP v. Connecticut Siting Council*, 274 F.3d 674 (2001); *Corcoran v. Connecticut Siting Council*, 50 Conn. Supp. 443, 449-49 (2006), *aff'd*, 284 Conn. 455 (2007) ("The courts have interpreted this provision as giving the council the power to override municipal zoning provisions"). Accordingly, any claims by Ms. Edelson that permits were

required from the Town of Farmington or that the Application violates the Town's Zoning Regulations are outside the scope of this proceeding. Therefore, Cellco objects to the admission of such testimony.

Ms. Edelson also claims that she was not properly notified of meetings held by the Town Plan and Zoning Commission and the Town Council regarding the lease between the Town and Cellco. Prefiled Testimony at 3. Ms. Edelson further contends that the actions of the Town in leasing the land to Cellco were inappropriate because "Farmington residents were not aware that a portion of the land they voted to be open space had been carved out to allow the town to lease out the space in the future for a cell tower or as it saw fit." Prefiled Testimony at 6. Ms. Edelson also contends that the lease for the Farmington N2 Facility is "an illegal 'double lease.'" Prefiled Testimony at 9. The actions taken by the Town in leasing the site to Cellco are not before the Council and are outside the scope of this proceeding. Indeed, Connecticut General Statutes section 16-50p provides that, in making its decision on an application for a Certificate, the Council is not to consider whether an applicant has acquired property rights for the purpose of constructing the facility. Conn. Gen. Stat. § 16-50p(g). As a consequence, the Town's actions in approving the lease and the validity of the lease are beyond the scope of this proceeding. Accordingly, Cellco objects to the admission of such testimony.

Ms. Edelson further claims that, during the sixty day municipal review period, the Town failed to provide a forum for "concerned individuals . . . to voice their opinions and concerns" regarding the proposed Farmington N2 Facility. Prefiled Testimony at 8. The actions of the Town are not before the Council. As a consequence, those actions are beyond the scope of this proceeding. Accordingly, Cellco objects to the admission of such testimony.

Ms. Edelson also expresses concern regarding the "potentially relatively unknown health

and injury risks” associated with the Farmington N2 Facility. Prefiled Testimony at 7. As the Council is aware, Section 704(a) of the Telecommunications Act of 1996 expressly pre-empts state and local government regulation of the placement, construction or modification of wireless facilities on the basis of radio frequency (“RF”) health effects to the extent a proposed facility complies with the Federal Communications Commission’s (“FCC”) regulations. 47 USC § 332(c)(7)(B)(iv). Cellco has presented evidence that the Farmington N2 Facility will comply with the FCC regulations. *See* Application at 15. As a result, to the extent Ms. Edelson’s claims are based on the health effects associated with RF emissions, these matters are outside the jurisdiction of the Council. Accordingly, Cellco objects to the admission of such testimony.

**II. Certain of Ms. Edelson’s Exhibits are Irrelevant, Beyond the Scope of this Proceeding and/or Outside the Jurisdiction of the Council.**

In support of her testimony, Ms. Edelson has submitted thirty-five exhibits. Cellco objects to the admission of Exhibits 12, 13, 17, 18 and 25 as irrelevant, beyond the scope of this proceeding and/or outside the Council’s jurisdiction.<sup>1</sup>

Exhibit 12 consists of: (a) an uncredited document that appears to relate to the City of Danbury; and (b) a letter from Kurt M. Kleis & Associates, Inc. regarding property values in the City of Danbury. As the Council is aware, the Application relates to a proposed facility in the Town of Farmington, not in the City of Danbury. As a consequence, Exhibit 12 is not relevant to this proceeding. Accordingly, Cellco objects to its admission.

Exhibit 13 consists of: (a) an article from the U.S. Chemical Safety and Hazard Investigation Board Investigation Digest (“Investigation Digest”) regarding a matter that occurred in Iowa; and (b) an excerpt from the FCC’s Office of Engineering & Technology Bulletin 56 (“FCC Bulletin”) regarding the biological effects and potential hazards of RF

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<sup>1</sup> Cellco also has concerns about the ability of the witness to verify certain exhibits. However, Cellco will reserve those objections until such time as the exhibits are offered into evidence.

emissions. As the Council is aware, the Application relates to a proposed facility in the Town of Farmington, not in Iowa. As a consequence, the Investigation Digest article is not relevant to this proceeding. With respect to the FCC Bulletin, as discussed above, Section 704(a) of the Telecommunications Act of 1996 expressly pre-empts state and local government regulation of wireless facilities on the basis of RF health effects to the extent that such facilities comply with the FCC regulations. 47 USC § 332(c)(7)(B)(iv). Cellco has presented evidence that the Farmington N2 Facility will comply with the FCC regulations. *See* Application at 15. As a result, RF health effects are outside the jurisdiction of the Council. Accordingly, Cellco objects to the admission of Exhibit 13.

Exhibit 17 is an article from Courant.com regarding the award of a grant to the Town of Farmington for the purchase of the Krell Farm. The proposed Farmington N2 Facility would be located on the Simmons Family Farm, not the Krell Farm. Accordingly, Exhibit 17 is irrelevant to this proceeding and Cellco objects to its admission.

Exhibit 18 is a lease agreement, dated February 20, 2002, between the Town of Farmington and Ronald Simmons. As discussed above, Connecticut General Statutes section 16-50p provides that, in making its decision on an application for a Certificate, the Council is not to consider whether an applicant has acquired property rights for the purpose of constructing the facility. Conn. Gen. Stat. § 16-50p(g). As a consequence, the lease between the Town and Mr. Simmons is beyond the scope of this proceeding. Accordingly, Cellco objects to the admission of Exhibit 18.

Exhibit 25 appears to be a brochure issued by the Plainville Historical Society regarding the Farmington Canal. As the Council is aware, the Application relates to a proposed facility in the Town of Farmington, not in the Town of Plainville. As a consequence, Exhibit 25 is not

relevant to this proceeding. Accordingly, Cellco objects to its admission.

**CONCLUSION**

For all the foregoing reasons, Cellco hereby objects to the admission of certain testimony and exhibits submitted on behalf of Susan Edelson in connection with this proceeding.

Respectfully submitted,  
CELLCO PARTNERSHIP d/b/a VERIZON  
WIRELESS

By   
Joey Lee Miranda, Esq.  
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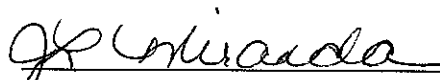
Its Attorneys

**CERTIFICATION**

I hereby certify that on the 13th day of May 2009, a copy of the foregoing was sent via electronic mail and mailed, postage prepaid, to:

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Joey Lee Miranda