



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

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### \* CORRECTED LETTER \*

December 23, 2009

Julie D. Kohler, Esq.  
Monte E. Frank, Esq.  
Jesse A. Langer, Esq.  
Cohen and Wolf, P.C.  
1115 Broad Street  
Bridgeport, CT 06604

RE: **DOCKET NO. 392** - T-Mobile Northeast, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located 387 Shore Road, Old Lyme, Connecticut.

Dear Attorneys Kohler, Frank, and Langer:

At a public meeting held on December 18, 2009, the Council approved the Motion for Protective Order, dated October 19, 2009, related to the disclosure of monthly rent contained within the lease agreement consistent with the Conclusions of Law adopted in Docket 366-Danbury, dated April 23, 2009 (copy enclosed).

Please feel free to call S. Derek Phelps, Executive Director if you have any questions.

Very truly yours,

Daniel F. Caruso  
Chairman

DFC/MP/jbw

c: Parties and Intervenor

**DOCKET NO. 366** - Optasite Towers LLC and Omnipoint } Connecticut  
Communications, Inc. application for a Certificate of }  
Environmental Compatibility and Public Need for the } Siting  
construction, maintenance and operation of a telecommunications }  
facility located at 52 Stadley Rough Road in Danbury, } Council  
Connecticut.

April 23, 2009

### **Conclusions of Law Re Motion for Protective Order to Not Disclose the Exact Monthly Rent in Lease Agreement**

#### **1. The plain language of C.G.S. §16-50o(c) requires disclosure of the rent amount contained in telecommunication tower lease agreements.**

C.G.S. §16-50o(c) states: “The applicant shall submit into the record the *full text of the terms* of any agreement, and a *statement of any consideration* therefor, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility. This provision shall not require the public disclosure of proprietary information or trade secrets.” (Emphasis added).

In its motion for protective order and at a public hearing on October 28, 2008, Optasite Towers, LLC (Optasite) argued that C.G.S. §16-50o(c) requires a general statement as to the rent paid rather than the exact amount. However, in a 2004 application for the construction and operation of a proposed telecommunications tower in Litchfield, Sprint Spectrum, L.P. (Sprint), in accordance with C.G.S. §16-50o(c), “produced an unredacted copy of its lease agreement with the property owner and records relating to the compensation between the property owner and various carriers.”<sup>1</sup> In its objection, the City of Danbury (Danbury) argued that the statute clearly means disclosure of the exact rent amount without limitations. In support of its position, Danbury cites to a redevelopment statute pertaining to the taking of property at fair market value which requires “a statement of compensation... setting forth the amount ...”<sup>2</sup> However, C.G.S. §16-50o(c) pertains to the record of a Siting Council (Council) hearing rather than a compensation mandate.

When interpreting a statute, the starting point is the statute’s plain meaning. C.G.S. §1-2z provides in relevant part, “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.”<sup>3</sup> For interpretive guidance, courts will also look to the legislative history. In

<sup>1</sup> *Rosa v. Conn. Siting Council*, 2007 Conn. Super. LEXIS 590, \*20 (Conn. Super. 2007).

<sup>2</sup> CONN. GEN. STAT. §8-129(a)(3) (2009) (“The redevelopment agency shall file a statement of compensation... setting forth the *amount* of such compensation...”) (Emphasis added).

<sup>3</sup> CONN. GEN. STAT. §1-2z (2009).

facility.” However, the statute specifically exempts proprietary information or trade secrets from public disclosure.

## **2. The rent amount contained in telecommunication tower lease agreements meets the definition of “proprietary information” and “trade secret.”**

In its motion for a protective order, Optasite states that the rent amount is proprietary information. Danbury suggests that rent amounts may be “low hanging fruit” that create a disincentive for applicants to explore alternative sites. The city also argues that proprietary information is narrowly defined and typically includes scientific and technical data. However, at a public hearing on December 8, 2008, Danbury and Optasite agreed to the release of the rent amount under a protective order.

“Proprietary information” is defined in Black’s Law Dictionary as “information in which the owner has a protectable interest.”<sup>11</sup> DPUC defines “proprietary information” as information that may be exempt from public disclosure pursuant to C.G.S. §1-210(b). The Connecticut Freedom of Information Act (FOIA) defines “trade secret” as:

“information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by, other persons who can obtain economic value from their disclosure or use, *and* (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy...” (Emphasis added).<sup>12</sup>

The Connecticut Supreme Court defined “trade secret” as consisting of any “... compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”<sup>13</sup> The Court set out several factors to be considered in determining whether given information qualifies as a trade secret, which are: 1) the extent to which the information is known outside of the business; 2) the extent to which it is known by others involved in the business; 3) the extent of measures taken to guard the secrecy of the information; 4) the value of the information to the business and competitors; 5) the amount of effort expended in developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.”<sup>14</sup>

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<sup>11</sup> BLACK’S LAW DICTIONARY 1235 (7<sup>th</sup> ed. 1999).

<sup>12</sup> CONN. GEN. STAT. §1-210(b)(5)(A) (2009).

<sup>13</sup> *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission*, 55 Conn. App. 527, 530 (Conn. App. 1999), citing *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318-19 (1963).

<sup>14</sup> *Id.*

**LIST OF PARTIES AND INTERVENORS  
SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Applicant</b>	<input checked="" type="checkbox"/> U.S. Mail	T-Mobile Northeast, LLC	Julie D. Kohler, Esq. Monte E. Frank, Esq. Jesse A. Langer, Esq. Cohen and Wolf, P.C. 1115 Broad Street Bridgeport, CT 06604 (203) 368-0211 (203) 394-9901 fax <a href="mailto:jkohler@cohenandwolf.com">jkohler@cohenandwolf.com</a> <a href="mailto:mfrank@cohenandwolf.com">mfrank@cohenandwolf.com</a> <a href="mailto:jlanger@cohenandwolf.com">jlanger@cohenandwolf.com</a>
<b>Party</b> <i>(granted on December 18, 2009)</i>	<input checked="" type="checkbox"/> U.S. Mail	Town of Old Lyme	The Honorable Timothy C. Griswold Office of the Selectmen Town of Old Lyme 52 Lyme Street Old Lyme, CT 06371