

STATE OF CONNECTICUT  
SITING COUNCIL

SBA Towers II/New Cingular Wireless PCS, LLC : DOCKET #412  
Application for a Certificate  
of Environmental Compatibility and Public Need :  
For a Telecommunications Facility Located :  
at Wewaka Brook Road, Bridgewater, Connecticut. : MARCH 31, 2011

**TOWN OF BRIDGEWATER REPLY TO OBJECTION**

The Town of Bridgewater hereby replies to the “Applicant’s Objection to Certain Testimony and Legal Arguments Advanced by the Town of Bridgewater” dated March 30<sup>th</sup>, 2011 (but filed at 8:30 pm) on the grounds that the objection

- a. seriously misleads the Council regarding the caselaw cited.
- b. improperly testifies ex parte through counsel to evidence that is not admissible, the statements of the President in a television address.

Background:

This matter arises out of the belated filing of Applicant’s pre-hearing filings. In accord with the pre-hearing conference memo, all parties were to have submitted their pre-hearing filings, testimony, witness list, exhibits and responses to Interrogatories by the end of business on March 29<sup>th</sup>, 2011.

The Town of Bridgewater duly filed its pre-hearing filings during business hours on March 29. Thereafter, the Applicant indicated that it had some items it needed to locate and belatedly announced that it was taking an extension of time until the next day, March 30<sup>th</sup>.

On March 30<sup>th</sup> at 8:28 pm, well after business hours which ensured that the Town would not receive notice of the filings until March 31<sup>st</sup>, Applicant filed all of its pre-hearing filings, including an objection to some of the Town’s expert testimony.

The self-styled objection is nothing more than a pre-hearing argument of law and fact which occurs after the hearing is concluded. It is assumed that this sharp practice was designed to poison the well against the Town's expert and to malign the Town's position by filing a belated pre-hearing filing at a time which would make it difficult for the Town to respond.

The Town objects to the abuse of the Council's grace of allowing a late-filing of pre-filed testimony. The idea of simultaneous pre-hearing filings is to prevent any party from having an unfair opportunity to rebut another's testimony precisely as the Applicant has done. Such practice should not be tolerated by a fair administrative body.

Of more grave concern to the Town is the nature of the objection itself. Substantively, the objection itself is misleading, and judging from the careful crafting of the language and the timing, intentionally so. The objection takes issue with the conflicting double standard used by wireless carriers to justify compliance with their license requirements for signal coverage before the FCC and the more arbitrary standard the carriers apply when appearing before the Council.

While clearly not objectionable or inadmissible under the relaxed rules of evidence at the Council, the objection states that previously the Council has rejected such a position of law in the past. The objection, not satisfied with its improper and premature (but belatedly filed) argument of law, then goes on to misleadingly cite to the Goldfisher v. Connecticut Siting Council case as if to suggest that the Superior Court and Appellate Court had also rejected the Town's position of law.

Nothing could be further from the truth. The Goldfisher case has absolutely nothing, zero to do with coverage analysis and the double standards applied by the carriers in different proceedings. The case has to do specifically and only with aggrievement based upon a failure to provide factual evidence of property value

impairment. There is no case law in Connecticut which addresses the Town's position regarding the coverage justifications and the conflicting and self-serving nature of the testimony of wireless carriers before agencies from whom they wish to receive permits.

In fact, the proffered evidence is entirely proper as it is within the Council's jurisdiction and mandate to determine whether the coverage need outweighs the damage to scenic vistas. See, Conn.Gen.Stat. §§16-50g and 16-50p(3)(b) which state:

**Sec. 16-50g. Legislative finding and purpose.**

The legislature finds that ...telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, **scenic**, historic and **recreational values of the state**. The purposes of this chapter are: ***To provide for the balancing of the need for adequate and reliable public utility services ... with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values;***

**Sec 16-50p(3)(b)** - The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine... The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, ... on... the natural environment, ecological balance, ... **scenic**, historic and recreational values, forests and parks...

The Objection thereafter goes on to cite a television address by the President of the United States. As minimally relevant and inadmissible as such "evidence" might be, even under the relaxed atmosphere of the Council rules, it is improper testimony by counsel and, provides no legal standard upon which any decision of this Council could legally be based.

Finally, the objection takes an unseemly swipe at Mr. Graiff, the Town's expert by suggesting that the Interrogatory responses will respond to Mr. Graiff's deficiencies.

To the extent that the objection is a motion to preclude testimony of Mr. Graiff, the Town objects. To the extent that the objection in both procedure and substance is untimely and misleading, its filing should be condemned.

Respectfully Submitted,

Town of Bridgewater,

By \_\_\_\_\_  
Keith R. Ainsworth, Esq.  
Evans Feldman & Ainsworth, L.L.C. #101240  
261 Bradley Street  
P.O. Box 1694  
New Haven, CT 06507-1694  
(203)772-4900  
(203)782-1356 fax  
krainsworth@snet.net

## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 31 day of March, 2011 and addressed to:

Ms. Linda Roberts, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

SBA Towers II/New Cingular Wireless, LLC (AT&T) c/o Daniel Laub, Esq., Cuddy & Feder, LLP, 445 Hamilton Avenue, 14<sup>th</sup> Floor, White Plains, NY 10601  
[dlaub@cuddyfeder.com](mailto:dlaub@cuddyfeder.com) ; [cfisher@cuddyfeder.com](mailto:cfisher@cuddyfeder.com) (electronic and US Mail)(Hollis Reading, SBA, One Research Drive, Suite 200C Westborough, MA 01581  
[hredding@sbsite.com](mailto:hredding@sbsite.com) ; Michele Briggs, AT&T, 500 Enterprise Drive, Rocky Hill, CT 06067 [michele.g.briggs@cingular.com](mailto:michele.g.briggs@cingular.com)

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Keith R. Ainsworth, Esq.