

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY CELLCO  
PARTNERSHIP, d/b/a VERIZON WIRELESS,  
FOR A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED  
FOR A TELECOMMUNICATIONS FACILITY  
AT 723 LEETES ISLAND ROAD, (MEDLYN  
FARM), IN THE TOWN OF BRANFORD,  
CONNECTICUT

DOCKET NO. 413

Date: April 25, 2011

**OBJECTION TO MOTION TO COMPEL**

The Intervenor, T-Mobile Northeast LLC ("T-Mobile"), through counsel, respectfully submits this Objection to Motion to Compel in response to the Motion to Compel T-Mobile to provide more complete responses to discovery requests, submitted by the Intervenor, the Town of Branford ("Town"), dated April 15, 2011.

**I. BACKGROUND**

On April 6, 2011, the Town submitted a single set of interrogatories ("Interrogatories") to the Applicant, Cellco Partnership d.b.a. Verizon Wireless ("Verizon") and to the Intervenors, T-Mobile and Cingular Wireless PCS, LLC ("AT&T"). The Town propounded 40 interrogatories. The instructions to the Interrogatories stated:

[t]he following Interrogatories are directed to the Applicant and the other carrier intervenors as appropriate by the Town of Branford. The Term "you" refers to the Applicant or Intervenors as may be applicable.

On April 13, 2011, T-Mobile submitted its responses to the Interrogatories. Many of the interrogatories were directed towards the Applicant as the questions specifically refer to "applicant." T-Mobile did not respond to these particular interrogatories in accordance with the instructions. T-Mobile, however, responded to those interrogatories referring to "you" per the instructions.

On April 15, 2011, the Town filed its Motion to Compel, seeking more complete responses to the Interrogatories. The Town argued that T-Mobile should have responded to several interrogatories addressed to the “applicant” and to several other interrogatories to which T-Mobile interposed objections. The Town further stated that Verizon and AT&T responded to the Interrogatories in an appropriate (or “fair”) manner. (*Motion to Compel*, p. 1.)

On April 19, 2011, T-Mobile filed an Objection to the Town’s Motion to Compel, including supplemental responses to most of the Interrogatories raised in the Town’s Motion to Compel. With its supplemental responses, T-Mobile has disclosed a significant amount of information – an amount on par with Verizon and AT&T. The Town, however, has maintained its position and continues to apply a different standard of disclosure to T-Mobile, an intervenor in this proceeding.

On April 20, 2011, after brief oral argument, the Connecticut Siting Council (“Council”) requested that T-Mobile submit separately its supplemental responses to the Interrogatories and an objection to the Motion to Compel by April 25, 2011. The Council also afforded the Town two days to respond to T-Mobile’s Objection to the Motion to Compel. T-Mobile reserved its right to file a reply brief to the Town’s response or an objection to any other motion or procedural request made by the Town.

## **II. ARGUMENT**

Before addressing the specific interrogatories raised in the Town’s Motion to Compel, it is important to put this discovery dispute into proper context. After which, T-Mobile will address its few remaining objections individually.

**A. Although T-Mobile Is An Intervenor And Is Not Driving The Height Of The Facility, It Has Disclosed A Significant Amount Of Information.**

Many of the technical questions regarding coverage – particularly those referencing “applicant” – appear to address the height necessary for the proposed telecommunications facility at 723 Leetes Island Road, Branford (“Facility”). It is important to remember that T-Mobile is an intervenor in this Docket. T-Mobile is not the applicant, nor does it carry the burden of an applicant for a Certificate of Environmental Compatibility and Public Need. Additionally, T-Mobile would assume the lowest position on the Facility. In other words, T-Mobile is not driving the ultimate height of the Facility.

Moreover, the Town has admitted that the reason it is pressing forward with its objections is to acquire information regarding a different telecommunications facility proposed by T-Mobile and currently pending before the Council as Docket 407. The Town is focusing its energy, and the Council’s time, on acquiring information that does not bear directly on the application pending before the Council in this Docket. Furthermore, the Town filed approximately 40 interrogatories in Docket 407 regarding this information.

Accordingly, by its own admission, the Town is seeking information that is irrelevant to this Docket. This is a fishing expedition. On this ground alone, T-Mobile respectfully submits that the Council should sustain T-Mobile’s Objection and deny the Town’s Motion to Compel regarding those few objections by T-Mobile that remain.

The Town’s approach is underscored by the fact that T-Mobile has provided as much information (and in some cases more) than the other Intervenor, AT&T, and the Applicant, Verizon. Considering the information provided in response to the Council’s

First Set of Interrogatories together with the information provided in response to the Interrogatories, T-Mobile has disclosed a significant amount of information. Similarly, with T-Mobile's supplemental responses, all three carriers have interposed approximately the same number of objections to the Interrogatories. Yet, the Town has pursued only those objections with T-Mobile.

**B. T-Mobile Has Responded To The Interrogatories Directed To The "Applicant" As Requested By The Town.**

The Town argues that T-Mobile should have responded to interrogatories 1-5, 7, 19 and 26. Interrogatories 1 through 5 relate to the Applicant. Interrogatory 1 references the "applicant" and interrogatories 2 through 5 relate back to interrogatory 1. T-Mobile did not respond to these interrogatories as they were not directed to T-Mobile. Many of the interrogatories directed to the Applicant seek information inapplicable to T-Mobile as an intervenor, such as construction practices, visibility analysis, etc. The Town could have avoided any confusion by submitted interrogatories directly to T-Mobile and/or seeking information from the Intervenors in this Docket pertinent to intervenors (as opposed to applicants) within the context of an Application for Certificate of Environmental Compatibility and Public Need. It is not for the responding party to guess which interrogatories it should answer when those interrogatories are not clearly directed to that party. Nevertheless, since the Town has now requested that T-Mobile respond to these specific interrogatories, T-Mobile has submitted supplemental responses concurrently with this Objection to Motion to Compel.

**C. The Town Seeks Information That Is Irrelevant To The Proceedings And Otherwise Falls Outside The Scope Of Legitimate Discovery.**

The Town also seeks a supplemental response to interrogatory 23. That interrogatory and T-Mobile's initial response are as follows:

23. Have you employed stealth technology including flush mounting, combined antenna arrays (single antennas which will serve LTE, PCS and 850Mhz), and close centerline to centerline antennas (close meaning < 8ft)? If so, which of these technologies and where?

A23 T-Mobile objects to this Interrogatory because it is unlimited in scope – the existing facilities nationwide that employ such technologies are too numerous to list. Additionally, T-Mobile notes that the Facility would employ stealth technology.

The scope of this interrogatory is unlimited. This interrogatory calls for each wireless carrier to provide each and every instance of stealth technology employed anywhere. In its Motion to Compel, the Town indicated that the responses by Verizon and AT&T were fair. (*Motion to Compel, p. 1.*) Verizon provided a few representative examples and AT&T referred to Verizon's response without providing any information. The Town is applying a different standard of disclosure to T-Mobile, which the Council should not countenance. Although recognizing this inconsistent treatment, T-Mobile has provided a supplemental response similar to Verizon.

The Town also seeks a supplemental response to interrogatory 31. That interrogatory and T-Mobile's response are as follows:

31. What is the percentage of dropped calls and ineffective attempts, as compared to the remainder of the Market Trading Area for Branford?

A31 T-Mobile objects to this interrogatory because it is overbroad and unduly burdensome. A "Market Trading Area" may include a large geographic area covering several States. Without waiving this objection, please see T-Mobile's responses to the Council's First Set of Interrogatories, dated February 4, 2011.

T-Mobile provided the pertinent information in response to the Council's First Set of Interrogatories. Dropped call statistics for a "Market Trading Area" would include a large geographic area, over several states, with a vast number of telecommunications facilities. Moreover, Verizon and AT&T did not produce dropped call statistics for the "Market Trading Area" and, as Verizon stated in its response, such information is irrelevant to this proceeding. Because the Town stated that Verizon and AT&T's responses were acceptable, the Town should not apply a different standard to T-Mobile – whose response was substantially similar to those of Verizon and AT&T. (*Motion to Compel, p. 1.*) Accordingly, T-Mobile stands by its objection to disclose information *beyond the information already produced.*

The Town also seeks additional information regarding interrogatories 33 and 37. In those interrogatories, the Town has requested that T-Mobile provide propagation plots in addition to those disclosed in response to the Council's First Set of Interrogatories. Those interrogatories and T-Mobile's responses are as follows:

- 33. Can you provide separate proposed and existing coverage maps depicting the coverage from the target levels up to -88dBm with the levels at -3dBm intervals (e.g.: -74 to -77dBm, -77dBm to -80dBm, etc)?
- A33 T-Mobile declines to produce an additional set of propagation plots. T-Mobile already provided propagation plots to the Council in response to the Council's First Set of Interrogatories, dated February 4, 2011.
- 37. Can you provide coverage propagation maps and isolated propagation maps for the proposed facility on clear plastic overlays using a scale that matches that of the Application?
- A37 T-Mobile declines to produce an additional and enhanced set of propagation plots. T-Mobile already provided propagation plots to the Council in response to the Council's First Set of Interrogatories, dated February 4, 2011.

T-Mobile has provided the propagation plots necessary for the Council and the Town to assess T-Mobile's coverage needs in the areas surrounding the proposed telecommunications facility. Like Verizon, T-Mobile provided the Council with propagation plots based upon a design threshold for coverage. As stated in the Town's Motion to Compel, Verizon's response in this manner was acceptable. (*Motion to Compel, p. 1.*) As stated above, the Town should not apply different standards to similar responses by the wireless providers in this Docket. Moreover, in interrogatory 37, the Town requested propagation plots on clear plastic overlays, which is an expensive request that would unduly burden T-Mobile, particularly as an intervenor.<sup>1</sup> Accordingly, T-Mobile stands by its response.

Finally, the Town seeks a supplemental response to interrogatory 39. The interrogatory and T-Mobile's response are as follows:

39. What are the coordinates, antenna heights, antenna types, orientations, tilt, EIRP for all of your existing wireless facilities in Branford and adjacent towns which are directed into Branford?

A39 T-Mobile objects to this interrogatory to the extent it seeks information irrelevant to the proceedings, specifically information about facilities located in Branford and adjacent towns that are not adjacent to the proposed Facility. T-Mobile also objects to this interrogatory to the extent it seeks proprietary information and otherwise privileged information. Notwithstanding this objection, T-Mobile provides the information contained in Attachment A appended hereto, which includes information regarding facilities adjacent to the proposed Facility.

Like Verizon, T-Mobile provided information regarding the telecommunications facilities adjacent to the proposed Facility. Any information beyond the adjacent facilities has no bearing on this Docket. Nevertheless, T-Mobile provided additional

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<sup>1</sup> T-Mobile provided propagation plots on clear plastic overlays for the combined Dockets 391, 392 and 393, which pertained to three telecommunications facilities T-Mobile proposed in Old Lyme simultaneously. The provision of clear plastic overlays is not required by statute or by the Council's regulations.

information in response to this interrogatory in its supplemental response submitted to the Council concurrently with this Objection to the Town's Motion to Compel. T-Mobile, however, did object to the disclosure of some of the requested information on the ground that the information sought is proprietary. T-Mobile will address this particular issue below.

**D. T-Mobile Is Not Required To Disclose Proprietary Information, Specifically Proprietary Information That Relates To A Different Telecommunications Facility.**

T-Mobile is not required to disclose information that is proprietary or constitutes trade secrets. The Council has recognized this principle consistently in its rulings regarding proprietary information contained in leases regarding telecommunications facilities. See General Statutes § 16-50o (c). The same principle embodied in § 16-50o (c) applies in the present case.

"Proprietary information" is defined as "information in which the owner has a protectable interest." Black's Law Dictionary (6th Ed. 1990). Additionally, the Uniform Trade Secrets Act defines a "trade secret" as "information including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list that: (1) derives 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 its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." General Statutes § 135-51 (d); see also General Statutes § 1-210 (b) (5) (A).

The Connecticut courts value such information as confidential and have established measures to maintain confidentiality. The rules of practice allow litigants to



obtain protective orders to prevent the disclosure of trade secrets or other confidential research, development or commercial information. Practice Book § 13-5. The Uniform Trade Secret Act requires our courts to “preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.” General Statutes § 35-55.

The Connecticut Supreme Court has articulated several factors to consider when determining whether certain information constitutes a “trade secret.” Those factors include: (1) the extent to which the information is known outside 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 or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Town & Country House & Homes Service v. Evans*, 150 Conn. 314, 318-19, 189 A.2d 314 (1963)(listing factors applicable to nearly identical common law definition of “trade secret”).

T-Mobile has interposed five objections based upon proprietary information. Two of the objections are to interrogatories to which Verizon and AT&T interposed similar objections. Those two interrogatories are as follows:

3. What clutter model and what terrain data base were utilized in these calculations?
- A3 Like Verizon and AT&T, T-Mobile objects to this interrogatory because it seeks proprietary information.

5. Were drive tests ("scan tests") that would verify the results of the calculated plots conducted? If so, please provide the data sets which were generated by the tests and note whether the data needs to be corrected for variables including, but not limited to, antenna position, gain and line loss.

A5 Like Verizon and AT&T, T-Mobile objects to this interrogatory because it seeks proprietary information. Without waiving this objection, T-Mobile provides the following supplemental response: no drive tests were conducted.

First, the Town has stated that Verizon and AT&T's responses to these interrogatories are appropriate. Because T-Mobile has responded in kind, T-Mobile should not have to disclose this information. The Town has conceded that this information is proprietary and/or a "trade secret."

Second, regardless of the Town's concession, the information is proprietary. The information requested is information in which T-Mobile "has a protectable interest." This information pertains to how T-Mobile configures, orientates and fine-tunes its network in competition with other wireless providers. How T-Mobile operates its network to provide services in competition with other providers such as Verizon and AT&T falls squarely within the type of "protectable interests" deemed to be proprietary.

The requested information would also constitute a "trade secret." T-Mobile takes measures to protect this information from others (as demonstrated in this Docket). T-Mobile also expends significant amounts of money in developing this information. Finally, the information is not easily acquired or duplicated by others.

The Town has also asked for the following information: (1) beam tilt; (2) downtilt; and (3) orientations. The interrogatories requesting this information and T-Mobile's responses are as follows:

4. What effective radiated power and antenna type along with beam tilt, if applicable, were utilized in these calculations?

A4 T-Mobile objects to this interrogatory to the extent it seeks proprietary information. Without waiving this objection, T-Mobile provided information responsive to this interrogatory in its responses, dated April 13, 2011. T-Mobile provides the following supplemental information: the propagation plots incorporated an effective radiated power of 57.61 dBm.

19. In any coverage simulations what angle of downtilt was assumed for each facility depicted in the coverage map generation?

A19 T-Mobile objects to this interrogatory because it seeks proprietary information.

39. What are the coordinates, antenna heights, antenna types, orientations, tilt, EIRP for all of your existing wireless facilities in Branford and adjacent towns which are directed into Branford?

A39 T-Mobile objects to this interrogatory to the extent it seeks information irrelevant to the proceedings, specifically information about facilities located in Branford and adjacent towns that are not adjacent to the proposed Facility. T-Mobile also objects to this interrogatory to the extent it seeks proprietary information and otherwise privileged information. Notwithstanding this objection, T-Mobile provided information contained in Attachment A appended to T-Mobile's initial responses to the Town's interrogatories, which included information regarding facilities adjacent to the proposed Facility. T-Mobile provides the following supplemental information contained in Attachment A appended hereto, which includes information regarding facilities adjacent to the proposed Facility.

T-Mobile also considers this information to be "a protectable interest." As discussed above, this information also pertains to how T-Mobile configures, orientates and fine-tunes its network in competition with other wireless providers. How T-Mobile operates its network to provide services in competition with other providers such as Verizon and AT&T falls squarely within the type of "protectable interests" deemed to be proprietary. The requested information would also constitute a "trade secret" as T-Mobile takes measures to protect this information from others; T-Mobile also expends

significant amounts of money in developing this information; and the information is not easily acquired or duplicated by others.

Moreover, T-Mobile has disclosed a substantial amount of information regarding its coverage needs in this area of the Town. The information provided is sufficient for the Council and the Town to assess T-Mobile's coverage need for purposes of this Docket.

**E. A Protective Order Allowing Limited Disclosure Of T-Mobile's Proprietary Information To The Town Is Inappropriate.**

As discussed above, T-Mobile has objected to some of the Interrogatories because T-Mobile deems the information requested as proprietary. Verizon and AT&T have interposed similar objections. T-Mobile requests that the Council preclude the Town from obtaining this information. Moreover, an order allowing limited disclosure to the Town, even under a Protective Order, would serve no practical purpose as the Town would then have this information at its disposal for Docket 407, which is the intended purpose of the Interrogatories in this Docket. If the Council elects to conduct further proceedings into the matter, T-Mobile requests that the Council hold any such proceedings in-camera.

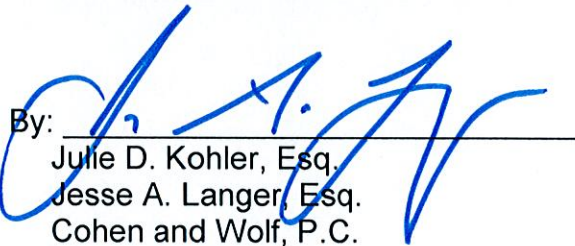
**III. CONCLUSION**

Overall, T-Mobile has provided a significant amount of information regarding an application to which it is an intervenor. Much of the information requested is not pertinent to the Council's task in determining whether the Facility should be sited at the proposed location. Additionally, much of the requested information subject to this dispute is proprietary information.

WHEREFORE, T-Mobile respectfully requests that the Council deny the Town's Motion to Compel. If the Council elects to conduct further proceedings into the matter, T-Mobile requests that the Council hold any such proceedings in-camera.

**Respectfully submitted,**

**T-MOBILE NORTHEAST LLC**

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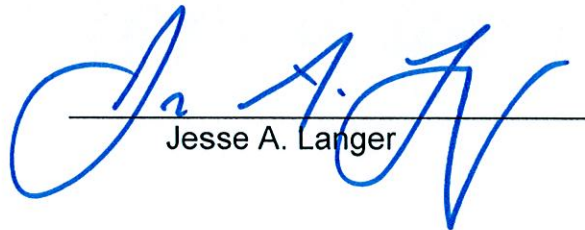
**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the foregoing was delivered by electronic mail and regular mail, postage prepaid, to all parties and intervenors of record, as follows:

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