

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
: :
APPLICATION OF CELLCO PARTNERSHIP : DOCKET NO. 415
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 87 :
WEST QUASSET ROAD, WOODSTOCK, :
CONNECTICUT : JULY 27, 2011

**APPLICANT’S OBJECTION TO MOTION TO REOPEN AND
REQUEST FOR INTERVENOR STATUS FOR AMERICAN TOWER CORPORATION**

Cellco Partnership d/b/a Verizon Wireless (“Cellco”) hereby objects to the Motion to Reopen the Docket No. 415 Hearing and the Request for Intervenor Status filed by American Tower Corporation (“ATC”) on July 26, 2011. As discussed more fully below, ATC’s request to intervene is untimely and fails to satisfy the statutory requirements to obtain intervenor status. Further, because ATC has no status in Docket No. 415 it has no right to request a reopening of the hearing. For these reasons, the Council should deny both the ATC motion to reopen and request to intervene.

BACKGROUND

In 1991, Cellco established its existing Woodstock facility by installing a single whip antenna, providing cellular service only, at the top of an existing 150-foot narrow profile lattice tower located in the southeast corner of a 29.5 acre parcel at 87 West Quasset Road in Woodstock (the “Property”). (Cellco Application pp. i. and 10-11). The existing narrow profile

lattice tower is now owned by ATC. Cellco's existing Woodstock facility is the only "non-sectorized" cell site in its Connecticut network. (May 26, 2011 Afternoon Hearing Transcript ("Tr. 1") pp. 30-31). Cellco's Woodstock facility has not been upgraded because the existing ATC tower is not structurally capable of supporting Cellco's full "sectorized" array of cellular, PCS and LTE antennas. (Tr.1 pp. 34-35).

In 2007, Cellco began discussing the need to upgrade its existing Woodstock facility with ATC. To accommodate Cellco's antenna loading requirements, ATC would need to replace the existing tower with a new 150-foot tower within its leased area in the southeast corner of the Property. The existing ATC tower is located within approximately 13 feet of the nearest property boundary and approximately 288 feet of the nearest residence, owned by Richard T. Carr. (Cellco Application Tab 1). ATC assured Cellco that it would actively pursue and obtain all necessary property rights, permits and approvals for a so-called "drop and swap whereby a new monopole, of equal height, could be erected to support the equipment of Verizon..." (See ATC's Limited Appearance filing dated June 27, 2011). In 2009, two years after being notified of Cellco's need to upgrade its Woodstock facility, ATC still had not obtained the necessary property rights or applied for the necessary permits and approvals to re-build its existing tower.

Seeing little or no progress in ATC's efforts to accommodate Cellco's need for a new tower, Cellco began to search for an alternative Woodstock tower site in March of 2009 and discussed potential alternative locations with Woodstock's First Selectman and members of the Woodstock Telecommunications Task Force. At the suggestion of the First Selectman, Cellco approached the owner of the Property and ultimately entered into a lease for the development of the proposed replacement tower in the central portion of the Property, approximately 710 feet northwest of the ATC tower. (Cellco Application, pp. 10-11 and 19-20, Tab 1, Tab 8).

In January of 2011, after waiting for nearly four years for ATC to rebuild its existing tower, Cellco informed ATC that it was going to proceed with its own application for a replacement tower in the central portion of the Property. Cellco filed its Application for the Woodstock replacement tower on January 28, 2011. The Cellco facility would consist of a 150-foot steel monopole tower located in the central portion of the Property more than 600 feet from the nearest Property boundary and 800 feet from the nearest off-site residence owned by Richard Carr. (Cellco Application, Tab 1).

The Council published a schedule for Docket No. 415 on March 3, 2011. The deadline established for the filing of requests for party or intervenor status was May 19, 2011. The Council's hearing on Docket No. 415 was held on May 26, 2011 and closed following the evening session that same day. At no time during the course of this proceeding did ATC contact the Council or seek to intervene. The 30-day post-hearing comment period and the record for Docket No. 415 formally closed on June 27, 2011. By letter dated June 27, 2011, ATC provided the Council with responses to certain questions regarding its existing tower. (See ATC's Limited Appearance Statement). It was not until July 26, 2011, however, more than 60 days after the close of the hearing and more than 30 days after the close of the Council's record, that ATC asked to intervene in this Docket.

ARGUMENT

I. ATC's July 26, 2011 Request to Intervene is Untimely and Fails to Satisfy the Statutory Requirements for Intervenor Status.

In order for the Council to grant ATC intervenor status in this proceeding it must find that: (1) ATC has submitted a written petition to intervene to the Council and mailed a copy of

that petition to all parties at least five days prior to the date of the public hearing; and (2) the ATC petition “states facts that demonstrate that [its] participation [in this docket] is in the interests of justice and will not impair the orderly conduct of the proceedings”. (Conn. Gen. Stat. § 4-177a(b)). The ATC petition fails in both respects.

The ATC petition to intervene was not filed with the Council until July 26, 2011, more than 60 days after the commencement of the Council’s May 26, 2011 public hearing. ATC also failed to mail a copy of its petition to Cellco, the only party in this proceeding. The Council, by adopting its docket schedule, set May 19, 2011 (seven (7) days prior to the hearing) as the deadline by which requests for party or intervenor status were to be submitted. Notwithstanding these statutory and procedural requirements, Regulations promulgated by the Council permit any person to ask the Council for permission to participate as an intervenor “[a]t any time *prior to the commencement of oral testimony* in any proceeding...” (R.C.S.A. § 16-50j-15a (emphasis added)). Regardless of the timing measure ultimately adopted, ATC’s July 26, 2011 petition was not timely filed and should therefore be rejected.

The ATC petition also fails to state any facts that demonstrate to the Council that its participation in this docket is in the interests of justice and will not impair the orderly conduct of the proceedings. For this reason alone the petition should be rejected. The very fact that ATC filed its petition to intervene more than two months after the close of the hearing and on the eve of the Council’s consideration of draft Findings of Fact, acts to impair the orderly and timely resolution of this docket, to the detriment of the Applicant.

III. ATC has no standing in the Docket No. 415 proceeding and, therefore, cannot request that the matter be reopened.

ATC is not a party to the Docket No. 415 proceeding and did not request intervenor status until more than two months after the hearing concluded. The right to request that the hearing be reopened should be reserved for parties to the proceedings and other persons or entities that timely intervened. As described above, ATC has been aware of Cellco's need to upgrade its existing Woodstock facility since 2007, knew of Cellco's efforts to search for an alternative cell site location since 2009 and was notified prior to the submission of the new tower application on January 28, 2011. For months following the submission of the Application, ATC failed to take advantage of the opportunity to participate in this proceeding. The Applicant should not now be penalized simply because ATC failed to act.

For all of these reasons, Cellco respectfully requests that the Council deny ATC's petition to intervene and motion to reopen the Docket No. 415 hearing.

Respectfully submitted,

CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

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