

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
: :
APPLICATION OF CELLCO PARTNERSHIP : DOCKET NO. 448
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 :
831 DERBY MILFORD ROAD, ORANGE, :
CONNECTICUT : OCTOBER 14, 2014

**OPPOSITION TO INTERVENORS' RENEWED
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Cellco Partnership d/b/a Verizon Wireless (“Cellco”) respectfully submits this memorandum in opposition to the Intervenor’s Albert Subbloie, Jaqueline Barbara, Glenn MacInnes, and Jill MacInnes (the “Intervenor’s”) renewed Motion for Order to Compel Production of Documents in connection with the above-referenced proceeding. As demonstrated below, Cellco has presented the Council with substantial evidence in support of its application for a telecommunications facility at 831 Derby Milford Road in Orange, Connecticut and the Intervenor’s have received and have extensively exploited the opportunity granted them under the law to participate in this proceeding. The Intervenor’s cannot dictate the type of evidence that Cellco submits in support of its application. Therefore, the Intervenor’s renewed motion should be denied again.

The Intervenor’s present motion was first made to the Council at the third hearing session on September 16, 2014. (Docket 448, Hearing Transcript (“Tr.”), September 16, 2014, 553-62).

At that time, the Council heard extensive argument from the Intervenor's counsel in support of the motion. (*Id.*) The Council denied the motion. (*Id.* at 562.) The Intervenor's have failed to articulate any reason that the Council should have to repeat that effort; indeed, the Intervenor's present motion makes no reference to the fact that the Council has already considered and, more importantly, rejected this motion. Absent an articulation by the Intervenor's of some new grounds for this renewed motion, grounds that did not exist less than a month ago when the Council last denied it, this motion should likewise be denied. *See Fairwindct, Inc. v. Conn. Siting Council*, No. CV116011389S, 2012 Conn. Super. LEXIS 2456, at *67 (Conn. Super. Ct. Oct. 1, 2012) (supporting an agency's interest in reasonable, orderly and non-repetitive proceedings).

The Intervenor's motion should also be denied were the Council to consider its merits. As the applicant in this contested case, Cellco bears the burden of submitting evidence into the administrative record that affords a substantial basis of fact to support each finding that the Council must make to grant the application. *See Palomba-Bourke v. Comm'r of Soc. Servs.*, 312 Conn. 196, 202 (2014). Evidence in contested cases may take the form of documents or testimony. Conn. Gen. Stat. § 4-178. Cellco has met that standard through both the testimony of its expert witnesses and the volumes of documents, data and reports in the Docket No. 448 record.

In their renewed motion, the Intervenor's seek to compel Cellco to produce yet more evidence in support of its application. As demonstrated by the absence of any citation to legal authority in the Intervenor's renewed motion, there is no basis in law to support this attempt. The Intervenor's refer to due process, suggesting, but not substantiating, a constitutional right to the production of additional evidence in support of Cellco's application. But the Uniform Administrative Procedures Act ("UAPA") allows the Council to limit the participation of the

Intervenors' in its proceedings, Conn. Gen. Stat. § 4-177a(d), and Connecticut courts have repeatedly concluded that the procedures required by the UAPA exceed the minimal procedural safeguards mandated by the due process clause. *See, e.g., Jones v. Conn. Med. Examining Bd.*, 309 Conn. 727, 741 (2013). Therefore, the Intervenors have no due process right to compel the submission of additional evidence in support of Cellco's application.

The applicant in an administrative proceeding chooses what evidence it submits in support of its application. The existence of additional evidence that would also support the application does not undermine the substantial nature of the evidence already submitted in support of the application. Similarly, the existence of additional ways to support the application does not confer upon the Intervenors the right to decide what evidence will be presented in support of the application. Intervenors have no right to compel the submission of a different form of evidence in support of the Cellco application. That is particularly true in this case, where the Council has already concluded that it does not need the additional evidence that the Intervenors seek to obtain. (Tr. September 16, 2014, p. 561.)

The Intervenors characterize their expert witness's testimony and report as "damning" and "exhaustive," even without the additional evidence that they now seek to obtain. (Motion ¶ 11.) Had their expert's submissions met either description, the additional evidence would be unnecessary. More fundamentally, the Intervenors' contention that the Council cannot properly evaluate the application without more evidence, supplants the Council's role and ignores all of the other evidence already submitted and included in the Docket No. 448 record. Cellco has already met its burden of adducing substantial evidence to support its Docket No. 448 application. The Intervenors have no right to compel the production of still more evidence in support of the application.

WHEREFORE, Cellco respectfully requests that the Council deny the Intervenors' renewed motion to compel.


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

By 
Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2014, a copy of the foregoing was sent via electronic mail and first class mail, postage prepaid, to the following:

Albert Subbloie c/o Mario F. Coppola, Esq. Mark Kovack, Esq. Berchem, Moses and Devlin, P.C. 1221 Post Road East Westport, CT 06880 mcoppola@bmdlaw.com mkovack@bmdlaw.com	Jacqueline Barbara c/o Mario F. Coppola, Esq. Mark Kovack, Esq. Berchem, Moses and Devlin, P.C. 1221 Post Road East Westport, CT 06880 mcoppola@bmdlaw.com mkovack@bmdlaw.com
Glenn MacInnes c/o Mario F. Coppola, Esq. Mark Kovack, Esq. Berchem, Moses and Devlin, P.C. 1221 Post Road East Westport, CT 06880 mcoppola@bmdlaw.com mkovack@bmdlaw.com	Jill MacInnes c/o Mario F. Coppola, Esq. Mark Kovack, Esq. Berchem, Moses and Devlin, P.C. 1221 Post Road East Westport, CT 06880 mcoppola@bmdlaw.com mkovack@bmdlaw.com
State Senator Gayle Slossberg Legislative Office Building Room 2000 Hartford, CT 06106 gslossberg@yahoo.com	State Representative Paul Davis Legislative Office Building Room 4045 Hartford, CT 06106 paul.davis@cga.ct.gov
State Representative Themis Klarides Legislative Office Building Room 4200 Hartford, CT 06106 themis.klarides@housegop.ct.gov	State Representative James Maroney Legislative Office Building Room 5006 Hartford, CT 06106 james.maroney@cga.ct.gov



Kenneth C. Baldwin