

December 10, 2014

VIA EMAIL & OVERNIGHT DELIVERY

Hon. Robin Stein, Chairman
and Members of the Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 451
Homeland Towers, LLC (Homeland)
and New Cingular Wireless PCS, LLC (AT&T)
Proposed Wireless Telecommunications Tower Facility
1325 Cheshire Street, Cheshire, Connecticut

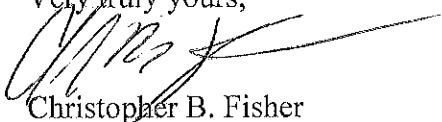
Dear Chairman Stein and Members of the Council:

On behalf of the Applicants in the captioned Docket we respectfully enclose an original and fifteen (15) copies of:

- Brief in Opposition to Motion to Re-open Hearing.

Thank you for your consideration in this matter. Should the Council or staff have any questions, please do not hesitate to contact me.

Very truly yours,



Christopher B. Fisher

Enclosures

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

HOMELAND TOWERS LLC ("HOMELAND")
AND NEW CINGULAR WIRELESS PCS, LLC
("AT&T") APPLICATION FOR CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR A
TELECOMMUNICATIONS TOWER FACILITY
IN CHESHIRE, CONNECTICUT

DOCKET NO. 451

December 10, 2014

**HOMELAND TOWERS AND NEW CINGULAR WIRELESS PCS, LLC
BRIEF IN OPPOSITION TO THE KUDISH MOTION TO REOPEN**

Homeland Towers and New Cingular Wireless, PCS, LLC ("Cingular"), Applicants in the above captioned Docket ("Applicants"), by their attorneys, Cuddy & Feder LLP respectfully submit this brief in opposition to the letter motion of Mr. Kudish dated November 29, 2014 which seeks to reopen the evidentiary/public hearing process in Docket 451.

**I. UAPA provides no express statutory authority
for a non-party's motion to reopen evidentiary/public hearings**

Once evidentiary/public hearings in contested cases are closed, there is a statutory process that requires administrative agencies to proceed to a final decision. See C.G.S. § 4-180. In this matter, one member of the public seeks to "reopen" the public hearing and evidentiary process prior to a final decision of the Siting Council. The sum and substance of the motion is one person's desire to oppose the project as proposed by the Applicants with the Town of Cheshire and force the needed tower facility to be relocated to their private property for personal economic gain. The General Statutes simply do not provide the Siting Council with statutory authority to "reopen"

under such circumstances. Rather, Section 4-180 of the Connecticut General Statutes provides that once the evidentiary process has been closed, an agency must proceed to a final decision. As such, the Applicants submit that this Docket should proceed to a final decision based on the evidentiary record and Mr. Kudish's motion denied.

II. The purported basis set forth by Mr. Kudish in his motion to "reopen" was already considered as part of the evidentiary hearing process.

In this particular case, we note that the Applicants previously considered Mr. Kudish's property (Hickory Hills Orchard) a fact which was disclosed in the materials submitted to the Town of Cheshire prior to the Applicants' filing with the Siting Council. Indeed, this information was included in the Siting Council Application itself and discussed on the record in the evidentiary hearings held by the Council in Docket 451. See Application, Tab 3, Homeland Site Search #5; Oct. 9, 2014 Hr. Tr. Pgs. 48-49. The reasons why Mr. Kudish's property was rejected as a viable tower site by the Applicants has been a matter of public record since at least June 2014.

Notably, Mr. Kudish did not apply for intervenor status in Docket 451 pursuant to Section 16-50n(b) of the General Statutes, even though that procedural avenue was available to him and exercised by other citizens of Cheshire. Indeed, Mr. Kudish did not even bother to make a limited appearance at the public hearing held specifically for public comments. Perhaps more importantly, nothing in Mr. Kudish's letter can be considered "new evidence" nor would it even relate to a potential "material change in conditions" associated with the Docket 451. As such, Section 4-181a of the General Statutes is not implicated.

The letter provided to the Council simply fails to make any proffer of evidence which would be submitted in furtherance of a reopened record as to why Mr. Kudish's

property would better meet the criteria for approval of tower facilities set forth in Section 16-50p of the General Statutes. In fact, Mr. Kudish makes broad based assumptions that his property is a technically suitable alternative to the proposed Facility by dint of discussions with persons searching for sites two years ago in 2012. Yet technical analysis conducted since that time by professionals, as evident and sworn to in the record of Docket 451, do not support Mr. Kudish's notion of technical suitability and the radio frequency service needs of either AT&T or the Town of Cheshire. See e.g. Oct. 9, 2014 Hr. Tr. Pgs. 123-126.

III. Conclusion

The motion should be denied because State enabling legislation does not give the Council statutory discretion to reopen and reconvene an evidentiary hearing in this matter. In fact, the basis for the motion is completely devoid given that the property the movant would like considered for a tower site was identified in the site search and the reasons why it was not a viable alternative discussed on the record with the Siting Council. Moreover, Mr. Kudish had ample opportunity to present either limited appearance information or request party status to present a case in this Docket but by his own admission chose to do neither. Mr. Kudish's pecuniary interest and desire to use the Siting Council process as an instrument for delay, negotiation and bargaining is simply not a valid basis for reopening the hearing in this Docket and does not cure his failure to timely engage in this contested case. Procedurally, the Council should deny the motion and move forward with a decision in Docket No. 451.

Dated: December 10, 2014

Homeland Towers and
New Cingular Wireless PCS, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and fifteen copies of the foregoing was sent electronically and by overnight mail to the Connecticut Siting Council and the following:

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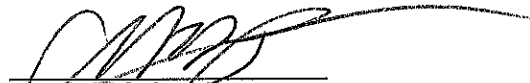
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December 10, 2014



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