STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	DOCKET NO. 471
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APPLICATION OF CELLCO PARTNERSHIP 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 208 KIRK ROAD (a/k/a 1075 PARADISE AVENUE) IN HAMDEN, CONNECTICUT	:	MARCH 24, 2017

OBJECTION TO MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

Upon a review of the Motion for Protective Order, Protective Order and supporting Affidavit of Anthony R. Befera submitted by Cellco Partnership d/b/a Verizon Wireless ("Verizon"), it has become necessary for an objection to be submitted on party of Ms. Patricia Sorrentino, a party in this Docket. The Motion and supporting Affidavit, which endeavor to have the Connecticut Siting Council (the "Council") suppress the disclosure of consideration under a document entitled "Land Lease Agreement" (the "Lease"), do not fulfill the requisite elements of Conn. Gen. Stat. § 1-210(b)(5)(A) or (B) or qualify as "proprietary information or trade secrets" under Conn. Gen. Stat. § 16-50o(c). In fact, the plain language of Conn. Gen. Stat. § 16-50o(c) requires that the consideration "of any agreement" be submitted into the public record, which is the overriding purpose of that provision. Moreover, the financial terms of innumerable tower lease agreements, including the full lease agreements, entered into by Verizon can be

readily found in a Google search, thereby demonstrating that the Motion cannot be granted, consistent with the Connecticut Freedom of Information Act ("FOIA") set forth in Chapter 14 of the General Statutes. Accordingly, the Council must deny the Motion.

II. THE MOTION AND AFFIDAVIT DO NOT SUPPORT PROTECTIVE STATUS OF CONSIDERATION SET FORTH IN THE LEASE.

General Statutes § 16-50o(c), in pertinent part, specifically requires that "[t]he applicant shall submit into the record the full text of the terms of any agreement, and a statement of any consideration therefor, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility." (Emphasis supplied.) A fair reading of this provision is that "any consideration" must be entered into the public record, and it should never be prevented from full public disclosure, if an application is submitted to the Council. The last sentence of this subsection about not requiring "the public disclosure of proprietary information or trade secrets" cannot be fairly read to keep "secret" the consideration for any agreement, the public submission of which is the main point of Section 16-50o(c). If for instance, an agreement includes a provision that contains information constituting a trade secret within the limited terms of Section 1-210(b)(5)(A) – which does not include "consideration" for a lease agreement – an applicant would be well within its rights to request protective treatment for that portion of the agreement. Such is not the case in this proceeding, however. Verizon's flawed

reading of Section 16-50o(c), if accepted by the Council, would eviscerate the first sentence of the provision and underlying purpose and intent thereof.[1]

For the sake of argument, however, this Objection will also address whether the consideration set forth in the Lease qualifies for an exemption from disclosure under the FOIA. Conn. Gen. Stat. § 16-50o(c) only exempts from public disclosure those provisions involving proprietary information or trade secrets."[2] Those terms are not defined in Chapter 277a and cannot be construed to conflict with the Freedom of Information Act ("FOIA").[3] If Section 16-50o(c) were not clear about the need for inclusion in the public record of any consideration in an applicable agreement that is needed to complete the record of an application to the Council, the Motion would need to rest on whether Verizon has sufficiently demonstrated that the excised portions of the Lease qualifies for exemption from disclosure under Conn. Gen. Stat. § 1-210(b)(5)(A) or (B). Just because Verizon desires to keep a lease term "secret" does not mean that it qualifies for exemption from disclosure under the FOIA.

Significantly, neither the Motion nor its supporting materials specify whether Verizon is relying on subsections (A) or (B) of Conn. Gen. Stat. § 1-210(b)(5). Information about the amount of consideration agreed to under the Lease, contrary to

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[1] The Council's past rulings on this same issue, as claimed by Verizon, are of no precedential value, particularly if a comparable motion for protective order went unchallenged. As set forth herein, the facts differ significantly from those which the Council considered in Docket No. 366. Moreover, it is the rights of parties in this docket that are at issue, and it is the right of any party, intervenor or interested person to advocate that the Council follow the applicable law as to any particular issue, even if it differs from a prior position that the Council may or may not have taken.

[2] As set forth above, however, Section 16-50o(c) expressly requires the public disclosure of consideration set forth in "any agreement" entered into by an applicant seeking authorization for action by the Council.

[3] "Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection [to full disclosure as public records] shall be void." Conn. Gen. Stat. § 1-210(a).

the Motion's representations, can hardly be considered a "trade secret" as that term is defined under Conn. Gen. Stat. § 1-210(b)(5)(A).[4] Thus, the question for the Council is whether a lease payment for a wireless communications facility constitutes "[c]ommercial or financial information given in confidence, not required by statute."[5] If the request does not meet any of the three components of this provision, the Council must deny the motion. It is respectfully submitted that the Motion does not meet any of the conditions of Conn. Gen. Stat. § 1-210(b)(5)(B).

First, the amount of a lease payment is required by statute: it is expressly required under Conn. Gen. Stat. § 16-50o(c), as detailed above. So Verizon's Motion fails the basic test for being exempt from the FOIA, as consideration <u>is</u> <u>required</u> by statute.

Second, it stretches the realm of credibility to consider a the ground lease for a wireless communications facility proposed by a massive national telecommunications company for review by and certification from a State Agency like the Council can hardly be considered to be "commercially valuable, confidential, proprietary and market-sensitive information that constitutes trade secrets" as represented in ¶ 6 of the Befera affidavit. Certainly, this embellishment in support of a Motion to suppress the terms of the Lease at 208 Kirk Road, Hamden should not be given credence without substantial

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[4] Under the FOIA, the term trade secret is ". . . defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed productions budgets. . . " that meet certain specified criteria, none of which can reasonably be deemed applicable to Verizon's Motion. Accordingly, the Movant must respectfully disagree with the Council's determination in Docket No. 366 that lease payment information constitutes a "trade secret" as that term is defined in the FOIA.

[5] Conn. Gen. Stat. § 1-210(b)(5)(B). The Motion erroneously characterizes commercial and financial information given in confidence as a "trade secret" which only pertains to certain limited and defined information set forth in Conn. Gen. Stat. § 1-210(b)(5)(A).

and credible supporting detail substantiating Verizon's representations. Instead, the Council has been provided only boilerplate language that does not even use the correct statutory terminology.

Third, for commercial and financial information to be considered exempt from disclosure under the FOIA, it must be "given in confidence." The Lease does not in and of itself contain any confidentiality provisions and, thus, cannot be deemed to be given in confidence, without more than just boilerplate representations. Moreover, the provisions of the Lease, specifically ¶ 16 (Right of First Refusal), ¶ 17 (Rights Upon Sale), and ¶ 22 (Assignment), contemplate the full disclosure of the entire Lease, including the consideration thereunder, to third parties in any of the transactions contemplated under those provisions.

Fourth, the Motion would have the Council assume that Verizon maintains secret protection for all of its lease terms. Any Google search for "Verizon Lease Documents" or "Cellco Lease Documents" demonstrates that innumerable Verizon lease documents in their entirety, as well as articles about its rental payments, are readily available in the public domain. See, for example, the following as a small sample of what is publicly available, all of which provide information on Verizon wireless communication lease payments and related lease terms:

http://www.yorkville.il.us/DocumentCenter/View/1057[6]

http://www.tahoedailytribune.com/news/south-lake-tahoe-approves-lease-for-verizon-cell-tower/[7]

[6] Attached as Exhibit 1
[7] Attached as Exhibit 2

http://www.sjccoc.us/minrec/agendas/2016/092016cd/09-20-16CON12.pdf[8]

http://epay.ci.walla-walla.wa.us:8800/lfportal/0/doc/11577/Page1.aspx[9]

http://www.co.currituck.nc.us/pdf/board-of-commissioners-minutes-2014/boc-agenda-packet-14aug18.pdf[10]

Verizon will undoubtedly, and ironically, contend that most of these are leases are with governmental entities and were required to be disclosed fully due to other jurisdictions' open records laws, but this argument is beside the point: The FOIA exemption from disclosure for financial information is that such information must be "given in confidence", and the Motion vastly overstates its position in representing Verizon lease payments are "confidential and proprietary" and that it has "used its best efforts to maintain as secret in order to avoid the harm that would result if the [lease payments] were to become publicly available." Given that its lease payment information is unquestionably publicly available in prolific nature through simple Google searches, Verizon's claim of "harm that would result if the information were to become publicly available"[11] is an *alternative fact* that should not be credited by the Council. Upon information and belief, Verizon is doing quite well as it ranked number 13 on the 2016 Fortune 500 Company list, notwithstanding the "harm" allegedly caused it from the widespread availability on the Internet of its various tower lease payments throughout the U.S. The only conceivable "harm" that can be imagined (as none is articulated in the Motion and Befera Affidavit) is that Mr. Befera may have to address a sophisticated land owner's use of lease information that is in the public domain in his future

[8] Attached as Exhibit 3
[9] Attached as Exhibit 4
[10] Attached as Exhibit 5
[11] Befera Affidavit ¶ 7.

negotiations on behalf of Verizon - the same as any person who negotiates commercial real estate transactions. This hardly constitutes as the type of "harm" sufficient to override the plain language of Section 16-50o(c) and the FOIA.

Sixth, the Motion also represents that the Council "has historically granted protected treatment of similar filings." This precedent, however, does not require the Council to blindly walk down a worn path upon which a huge tree has been felled.[12] The cases are legion in which Connecticut courts have stated that the general rule under the FOIA is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in Chapter 14. The burden of proving the applicability of an exception to the FOIA rests upon the party claiming it. It is patently obvious that Verizon has not met that burden. Verizon is only seeking protection of the consideration for private advantage, not because the information is proprietary or a trade secret. There is no reason why special treatment by the State of Connecticut should be afforded Verizon to allow it not to disclosure its entire lease agreements when those entire lease agreements have been fully disclosed in other States.[13] The rule of narrow construction for exemptions from disclosure further demonstrates that the Council should not, consistent with the FOIA, allow Verizon to continue to evade full disclosure of its leases.

Finally, the failure to disclose the entire Lease will prejudice the rights of Ms. Sorrentino, as her discovery and cross-examination may very well limited if the full

[12] The metaphor is quite apropos given the number of trees that will need to be removed in order to accommodate Verizon's proposed tower site in this Docket.
[13] The widespread availability of Verizon tower leases on the Internet is a fact that clearly distinguishes this Motion from the one considered by the Council in Docket No. 366.

terms of the Lease are not disclosed as required by statute, as those terms, if effected, will enable Verizon to construct, maintain, repair and operate a 160 foot tall tower, along with equipment and chain link fencing and the access easement with conduits and/or electric wiring that will be used to power the facility in extremely close proximity to her property. Given the extreme close proximity to her property line and her residential home, she has every right to know the full terms of the Lease as she and the Council assess the impact on her own property, should the Council approve the Verizon proposal as is.

III. CONCLUSION

For the foregoing reasons, Ms. Sorrentino respectfully requests that the Council deny with prejudice Verizon's Motion for Protective Order. The Motion and supporting documents do not satisfy the burden that is required to overcome the presumption of full disclosure of a lease document that of a company that is subject to and availed itself of at least some of the provisions of Title 16 of the General Statutes. Verizon has not demonstrated that the Lease, in its entirety, qualifies for protective treatment. Verizon's lease considerations in other jurisdictions are readily available in the public domain. Most significantly, however, Section 16-50o(c) specifically requires that consideration of "any agreement" be provided to the Council and that provision is stated so that consideration is not considered to be exempt from public disclosure under FOIA.

Alternatively, Ms. Sorrentino respectfully requests that the Council schedule a hearing dedicated only to the contentions set forth in the Befera Affidavit and repeated in the Motion in order for a full record to be developed on an issue that involves a) a

critical statutory component of PUESA and b) a critical application of the FOIA statutes concerning access to records that should be public.

Respectfully submitted,

PATRICIA SORRENTINO

By: _____
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Her Attorney

CERTIFICATION

This is to certify that on the 24th day of March the foregoing Cover Letter and Objection to Motion for Protective Order was sent via United States mail, postage prepaid to the following parties of record:

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