STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

APPLICATION OF OPTASITE TOWERS LLC AND OMNIPOINT COMMUNICATIONS, INC. FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS FACILITY AT 52 STADLEY ROUGH ROAD, DANBURY, CONNECTICUT	:	DOCKET NO. 366
	:	NOVEMBER 25, 2008

WRITTEN COMMENTS OF
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS

Cellco Partnership d/b/a Verizon Wireless ("Cellco") hereby submits its Written Comments in response to the Connecticut Siting Council's ("Council") November 3, 2008 request for comments in connection with the Conn. Gen. Stat. § 16-50o(e) ("Notice"). Cellco is not, nor does it intend to become, a party or intervenor in the above-captioned docket.

I. BACKGROUND

The Council requested comments as to whether a protective order should be granted to prevent disclosure of the precise amount of rent paid in a telecommunication tower lease agreement as requested in a Motion for Protective Order dated October 6, 2008, by Optasite Towers LLC, a co-applicant in this Council Docket No. 366 (the "Motion"). In the Motion, Optasite seeks protective treatment, pursuant to Conn. Gen. Stat. § 1-210(b)(5), over the exact amount of consideration set out in a lease agreement between Optasite and Christ the Shepherd Church (the "Church"). The lease agreement gives Optasite the right to use a portion of the Church's property for the construction, maintenance and operation of a telecommunications facility. Optasite submitted a redacted copy of its lease with the Church to the Council in

accordance pursuant to Conn. Gen. Stat. § 16-50o(c). The City of Danbury, which was granted party status in this docket, has taken the position that the precise amount of Optasite's rental payments to the Church is subject to public disclosure. Accordingly, the Council has asked for comments from the wireless telecommunications industry on the following specific questions:

1. Does the plain language of C.G.S. § 16-50o(c) require disclosure of the rent amount contained in telecommunication tower lease agreements?

2. Does the rent amount contained in telecommunication tower lease agreements meet the definition of "proprietary information" or a "trade secret"?

II. COMMENTS

A. Question One: Does the plain language of C.G.S. § 16-50o(c) require disclosure of the rent amount contained in telecommunication tower lease agreements?

No. The plain language of Conn. Gen. Stat. § 16-50o(c) does not require disclosure of the rent amount contained in telecommunication tower lease agreements. Conn. Gen. Stat. § 16-50o(c) provides as follows:

> The applicant shall submit into the record the full text of the terms of any agreement, and a statement of any consideration therefore, 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. This provision shall not require the public disclosure of proprietary information or trade secrets.

Conn. Gen. Stat. § 16-50o(c) (emphasis added). This statute requires two things: (1) the full text of the terms of an agreement; and (2) a statement of any consideration, if not set out in the agreement. In the context of a lease agreement, the statute does not require disclosure of the exact amount of rent to be paid. The language of the statute describes clearly and precisely what is required. The statute does not require an exact copy of the lease. If the General Assembly had intended to require the submission of an exact copy of the lease agreement, it could have easily

drafted the statute to say so and it would be clear: "The applicant shall submit . . . an exact copy of any agreement . . . ." This is not the case. The statute calls only for the terms of the agreement, which can be submitted without even producing a copy of the agreement itself. The full terms of the lease can be submitted in a separate document, or a redacted copy of the lease, as long as it includes the text of the lease terms.

The statute also calls for a statement of the consideration under the agreement. Again, had the General Assembly intended to require the disclosure of the precise amount of consideration (in this context, rent payment), it could have easily and clearly drafted that language into the statute. It did not. A statement of the consideration means just that – a description of what consideration is provided under the agreement – that is, money, services or other form of consideration. Cellco concurs with Optasite's position on this point. *See* Motion at 1-2. This statement of consideration can be submitted to the Council in a separate document or by submitting a redacted copy of the lease.

Conn. Gen. Stat. § 16-50o(c) does not require the disclosure of the exact amount of rent to be paid because to reveal that amount would constitute the disclose of confidential, proprietary, commercially sensitive trade secret information, which is specifically exempted from disclosure under Conn. Gen. Stat. § 16-50o(c) and in accordance with the Connecticut Freedom of Information Law, Conn. Gen. Stat. § 1-210 *et seq.*

In its Motion, Optasite correctly points out that the legislative history of the statute indicates that it was adopted to address potential issues arising out of agreements between Cross Sound Cable Company, LLC ("CSCC"), the applicant in Docket No. 208 and the "oystermen", individuals controlling oyster beds along the Connecticut coastline. *See* Optasite Motion at 2. The legislative history (in the form of Senate debate) is instructive: "the Chairman of the Siting

Council actually asked for the arrangements had been made between the parties that are petitioning and some of the people that were objecting, especially some of the major oystermen and the oyster growers up there, they had made a deal with them and I call it pretty much hush money." 44 S. Proc. Pt. 8, 2001 Sess., p. 2186-87 (copy attached).

It is clear that the legislators were concerned with making sure terms of "back room deals" or "hush money" arrangements were open to the public. "They [the CSCC] had arrangements with these oystermen and because of the arrangement the court had sealed the arrangements themselves so that they couldn't be divulged to the Siting Council which meant that no matter what you did, you couldn't find out how much was being paid to these people." *Id.* at 2187. However, the statute was specifically designed to protect against the disclosure of legitimate, proprietary information. When asked if it is the "intention that any information that would come out in terms of the terms of the agreement would include any proprietary information," *id.* at 2188, a Senator answered no. "Proprietary information I think is, should be confidential and I think should be established as confidential. I'm talking about agreements that are made between the parties where the details of these agreements, and that's not a proprietary type information in my book in this particular instance." *Id.* at 2188-89.

Lease agreements associated with wireless facilities are not back room deals and do not promote the passing of "hush money." Wireless lease agreements are legitimate private contracts negotiated in good faith. The General Assembly was sensitive to the fact that legitimate agreements may contain confidential, commercially sensitive and proprietary

information, which should be protected from public disclosure. As such, the statute does not require disclosure of the precise rent amount.[1]

B. Question Two: Does the rent amount contained in telecommunication tower lease agreements meet the definition of "proprietary information" or a "trade secret"?

Yes. The rent amount contained in lease agreements clearly meets the definition of "proprietary information" and "trade secret." Conn. Gen. Stat. § 1-210(b)(5)(A) provides that the Connecticut Freedom of Information Act does not require the disclosure of:

> Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive 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 their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy.

Conn. Gen. Stat. § 1-210(b)(5)(A) (emphasis added).

The Council has provided the definition of "proprietary information" as "[i]nformation in which the owner has a protectable interest." Notice at 2.

Conn. Gen. Stat. § 1-210(b)(5)(A) requires two things: (1) information must derive independent economic value from not being generally known to or readily ascertainable by others who can obtain economic value from use or disclosure of the information; and (2) be the subject of reasonable efforts to maintain its secrecy. The amount of rent payment contained in a lease agreement meets both of these factors.

---

[1] While not specifically included in the Council's request for comment, Cellco also agrees with Optasite's position that the exact amount of rent is not relevant to the Council's review of an application for a wireless telecommunications facility. Financial terms between a wireless carrier or tower company and the owner of land on which a facility would be located is not included in Conn. Gen. Stat. § 16-50p, as a factor the Council may consider when evaluating a proposed wireless telecommunications facility. *See* Motion at 2-3.

Conn. Gen. Stat. § 1-210(b)(5)(A) does not set out an exhaustive list of information that is subject to protection. Information that is properly protected also includes economic or commercially sensitive information that meets the two prongs of Conn. Gen. Stat. § 1-210(b)(5)(A) regarding independent economic value efforts to maintain confidential information.

Although not common before the Council, protective orders are used in proceedings before the Department of Public Utility Control ("Department") in order to prevent the public disclosure of proprietary information. Many examples could be cited, but to illustrate a few, the Department granted Connecticut Natural Gas Corporation ("CNG") a protective order over interrogatory responses containing four contracts for collection services provided to CNG, including payment terms that CNG negotiated. *See* Docket No. 06-03-04PH01, *Application of Connecticut Natural Gas Corporation for a Rate Increase – Revenue Requirements – Phase I*, Motion for Protective Order (Nov. 29, 2006) ("CNG Motion").[2] CNG stated that the information is "highly confidential, proprietary and commercially sensitive and public disclosure of such information would place CNG at a competitive disadvantage in the marketplace and result in financial harm by preventing CNG from negotiating the best possible terms . . . in the future." CNG Motion at 2.

Similarly, the Department granted Yankee Gas Services Company ("Yankee Gas") a protective order over interrogatory responses that included data regarding pricing strategies for use in negotiations with customers. *See* Docket No. 05-04-01, *DPUC Semi-Annual Investigation of the Purchased Gas Adjustment Clause Charges or Credits Filed By: Connecticut Natural Gas Corporation, The Southern Connecticut Gas Corporation and Yankee Gas Services Company*, Motion of Yankee Gas Services Company for a Protective Order (April 14, 2005) ("Yankee

[2] The Department granted this motion on December 4, 2006. *See* Letter from Louise E. Rickard to Janet L. Janczewski (Dec. 4, 2006).

Motion").[3] Yankee Gas also stated that disclosure of the information would harm it in future negotiations. Yankee Motion at 2.

To require the amount of rent paid under a telecommunication tower lease agreement would yield equally harmful results. First, like the CNG, information, rent information relates to payment terms. Second, the amount of rent payment was subject to negotiation between the parties, just like the CNG and Yankee Gas information. In addition, the exact amount of rent payment is highly confidential, proprietary and commercially sensitive and public disclosure of such information would place the telecommunications company at a competitive disadvantage in the marketplace and result in financial harm by preventing the company from negotiating the best possible lease terms in the future, exactly like the CNG and Yankee Gas information. Indeed, if the exact amount of rent payment was widely known, all future lessors and lessees would know exactly how to negotiate in their favor. This will lead to financial harm by upsetting the marketplace and preventing companies from negotiating the best possible lease terms. Such information clearly constitutes proprietary information due to the inherent protectable interest.

The amount of rent payment also qualifies as a trade secret under the second prong of Conn. Gen. Stat. § 1-210(b)(5)(A). Cellco has consistently taken great efforts to maintain the confidentiality of the amount of rent it pays. First, Cellco always submits a redacted copy of any lease with the Council. Second, Cellco takes other efforts to maintain the secrecy and confidentiality of the information throughout application proceedings. For example, Cellco was recently asked for information relating to rent payment in an interrogatory in Docket No. 358. *See* Docket No. 358, *Application of MCF Communications bg, Inc. and Cellco Partnership d/b/a*

[3] The Department granted this motion on April 19, 2005. *See* Letter from Louise E. Rickard to Stephen Gibelli (Apr. 19, 2005).

Verizon Wireless for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Wireless Telecommunications Facility in the Town of Thompson, Connecticut, Letter from Richard W. Thornberg, Jr. to Kenneth C. Baldwin (May 27, 2008); Applicants' Responses to Pre-Hearing Questions from the Thompson Hills West Condominium Association at 5 (June 3, 2008). In all cases, Cellco protects this information from public disclosure due to the potential harm that would result.

III. CONCLUSION

For the foregoing reasons, Cellco respectfully submits that the plain language of Conn. Gen. Stat. § 16-50o(c) does not require disclosure of the exact rent amount contained in telecommunication tower lease agreements and the rent amount contained in telecommunication tower lease agreements meets the definition of "proprietary information" and "trade secret." Cellco appreciates the opportunity to submit these Written Comments.

Respectfully submitted,

CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS

By _____

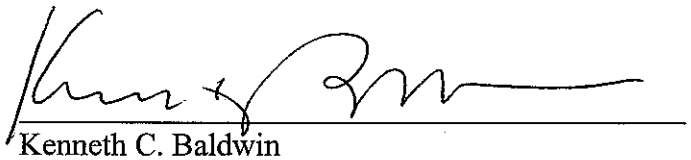
Kenneth C. Baldwin, Esq.
John A. Poakeart, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel. No. (860) 275-8200
Fax No. (860) 275-8299

CERTIFICATION

This is to certify that on this 25th day of November 2008, a copy of the foregoing was mailed, postage prepaid, to the following:

Christopher B. Fisher, Esq.
Lucia Chiocchio, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601

Laszlo L. Pinter, Esq.
Robin Edwards, Esq.
Deputy Corporation Counsel
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810



Kenneth C. Baldwin