

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**RE: APPLICATION OF SBA TOWERS II, LLC DOCKET NO. 378
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A TELECOMMUNICATIONS
FACILITY AT ONE OF TWO ALTERNATE SITES AT
RABBIT HILL ROAD, WARREN, CONNECTICUT Date: April 22, 2009**

OBJECTION TO REQUESTS FOR EXTENSION OF TIME

The applicant, SBA Towers II, LLC ("SBA") respectfully submits this objection to the three requests for extension of time, all received by the Council on April 22, 2009, from the following potential participants in this docket: Ray and Maryellen Furse, Concerned Residents of Warren and Washington ("CROWW") and the Town of Washington Conservation Commission.¹ For the reasons set forth below, all three of these requests for extension of time should be denied.

FACTUAL BACKGROUND

On February 27, 2009, SBA Towers II, LLC ("SBA") filed this application for a certificate of environmental compatibility and public need in connection with the proposed construction and operation of a telecommunications facility located at one of two sites on Rabbit Hill Road in the Town of Warren (the "Property"). As can be seen from the bulk filing included in this application, SBA filed its technical report, pursuant to Conn. Gen. Stat. § 16-501 (e) on August 20, 2008. Currently, the hearing on this docket is scheduled for May 21, 2009, with a pre-filing deadline of May 14, 2009.

¹ The filing submitted is arguably filed on behalf of the Washington Conservation Commission. However, as can be seen from the filing, dated April 21, 2009, the filing is not signed or certified by the Conservation Commission's proposed representative in this case, should they be granted legal status in this proceeding, Susan Payne. The Conservation Commission has filed no document in this proceeding authorizing Diane Dupuis to file anything on the Commission's behalf.

A. Request by Ray and Maryellen Furse

On April 8, 2009, Ray and Maryellen Furse, abutting property owners to the requested party status in this proceeding. Since the Furses are abutting property owners, as required, the Furses were sent a certified mailing informing them of the filing of this application. SBA received a return receipt from that mailing, dated February 25, 2009, a copy of which is attached hereto as Exhibit 1. Therefore, the Furses have been on notice of the pendency of this application for almost two months. The Furses will have had more than sufficient time to review the application materials and prepare any pre-filed submissions in preparation for the May 21st hearing. Therefore, the Furses request for an extension of time should be denied.

B. Request by CROWW

On or about April 7, 2009, CROWW submitted a request for party status pursuant to Connecticut General Statutes §§ 16-50n 16-50o and 4-177a, which has not yet been ruled on by the Council. On April 22, 2009, CROWW filed a request for extension of time based on Conn. Gen. Stat. § 16-50j(h), which states:

Prior to commencing any hearing pursuant to section 16-50m, the council shall consult with and solicit written comments from the Department of Environmental Protection, the Department of Public Health, the Council on Environmental Quality, the Department of Agriculture, the Department of Public Utility control, the Office of Policy and Management, the Department of Economic and Community Development and Department of Transportation.

CROWW argues, based on no statutory or other legal support, that 16-50j(h) requires the Council to meet face-to-face with each agency listed. The plain language of the statute simply does not support CROWW's argument. The Council has satisfied the requirements of 16-50j(h) in correspondence sent to the listed departments dated April 14, 2009, a copy of

which is attached hereto as Exhibit 2. The Department of Agriculture, in fact, has requested party status in this proceeding. Therefore, CROWW's request for an extension of time is without merit and should be denied.

C. Request by the Washington Conservation Commission

The Washington Conservation Commission requested party status in this proceeding on April 15, 2009, which has not yet been ruled on by the Council. While both alternate sites involved in this application are located in the Town of Warren, they are located within 2,500 feet of the Warren/Washington line. Therefore, the Town of Washington Conservation Commission was sent as copy of this application when filed on February 27, 2009 as required by Conn. Gen. Stat. § 16-501(b). On April 22, 2009, the Washington Conservation Commission requested an extension of time of the hearing date for this application claiming that they did not have an opportunity to review the proposed application prior to its filing, as required by Conn. Gen. Stat. § 16-501 (e).

As can be seen in the bulk filing materials submitted, SBA filed its technical report, as required by Conn. Gen. Stat. § 16-501 (e), on August 20, 2008, more than six months prior to the filing of this application. Admittedly, its technical report contained site information on only Site a. SBA met with the chief elected officials of both the Town of Warren and Washington. In addition, while not required by Conn. Gen. Stat. § 16-501 (e), SBA attended public informational meetings requested by both Towns. As a result of SBA's municipal consultation and feedback received therein, SBA investigated the possibility of proposing an alternate site on the same Property, as is proposed in this pending application. SBA alerted both towns to the inclusion of Site B in November, 2008. See bulk file materials, letter dated November 14, 2008. The inclusion of this alternate site is

within the scope of the original technical report, filed with the both towns more than six months prior to the filing of this application.

The Conservation Commission's request is based on the erroneous opinion that, because SBA has altered its proposal by the inclusion of an alternate site on the same Property, that it is entitled to a new municipal consultation period under Conn. Gen. Stat. § 16-501 (e). This reasoning flies in the face of the purpose of a municipal consultation as required Conn. Gen. Stat. § 16-501 (e) and therefore should be denied. The purpose of Conn. Gen. Stat. § 16-501 (e) is for an applicant to obtain feedback from a town regarding a proposal and incorporate that feedback into the application to follow, which is precisely what SBA has done in this docket. It is contrary to the legislative intent to argue that an applicant cannot make design or location changes to a proposal as a result of feedback received during a municipal consultation or, if such changes are made, an applicant is required to engage in another 60-day municipal consultation. As the Council is aware, during a pendency of an application, applicants will routinely be asked to re-locate a proposed facility on the same parcel or will suggest other changes to a facility including height, color and the like. See Docket 329, Docket 372. Therefore, the suggestion that a new technical report is required because SBA has included an alternate site on the same Property is simply not supported by statute or Council procedure.


Despite not being required, SBA has provided all relevant information regarding the alternate Site B to both Towns, including plans, a viewshed map and propagation maps from AT&T on February 11, 2009. In addition, SBA voluntarily conducted a balloon float at both alternate sites back in November, 2008, which both towns were notified of. Finally, SBA offered attend another informational session concerning the Site B alternate. That offer was

made to both towns and SBA, to date, has not received a response from either town regarding that offer. Indeed, the Town of Warren recognized, after review of the application materials, that the Site B alternate fell within the scope of SBA's original technical report, as evidenced by correspondence dated April 1, 2009 and attached hereto as Exhibit 3. Clearly, the Washington Conservation Commission has had more than enough time and information to fully review SBA's pending application. Therefore, the Washington Conservation Commission's request for an extension of time based on Conn. Gen. Stat. § 16-501 (e) should be denied.

CONCLUSION

Based on the foregoing, all three requests for extension of time should be denied and the hearing scheduled for May 21, 2009 should proceed as noticed.

Respectfully Submitted,

By: 
Attorney For SBA Towers II, LLC
Carrie L. Larson, Esq.
clarson@pullcom.com
Pullman & Comley, LLC
90 State House Square
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Ph. (860) 424-4312
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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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14th Floor
White Plains, New York 10601

F. Philip Prelli
Commissioner
Department of Agriculture
165 Capitol Avenue
Hartford, CT 06106

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Washington Conservation Commission
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Town of Washington
Bryan Memorial Town Hall
P. O. Box 383
Washington Depot, CT 06794


The Honorable Mark E. Lyon
First Selectman, Town of Washington
Bryan Memorial Town Hall
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CROWW
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The Honorable Jack Travers
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Ray and Maryellen Furse
26 Jack Corner Road
Warren, CT 06777

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President, CROWW
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Carrie L. Larson

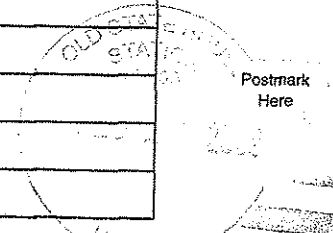
EXHIBIT 1

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

7007 2560 0000 1098 8186

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent to
Raymond W. & Maryellen S. Furse
 Street, Apt. No., or PO Box No. **26 Jack Corner Road**
 City, State, ZIP+4 **New Preston, CT 06777**

PS Form 3811, August 2006 See Reverse for Instructions

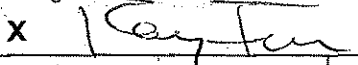
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
1. Article Addressed to:	B. Received by (Printed Name) RAY FURSE C. Date of Delivery 7/25/09
<p style="text-align: center;">Raymond W. & Maryellen S. Furse 26 Jack Corner Road New Preston, CT 06777</p>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
	7007 2560 0000 1098 8186

EXHIBIT 2



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

April 14, 2009

TO: Commissioner Gina McCarthy
Department of Environmental Protection

Commissioner F. Philip Prelli
Department of Agriculture

Commissioner J. Robert Galvin
Department of Public Health

Karl Wagener, Executive Director
Council on Environmental Quality

Commissioner Donald W. Downes, Chairman
Department of Public Utility Control

Robert Genuario, Secretary
Office of Policy and Management

Commissioner Joan McDonald
Department of Economic and Community Development

Thomas A. Harley, P.E., Chief Engineer
Bureau of Engineering and Construction
Department of Transportation

FROM: S. Derek Phelps, Executive Director

RE: **DOCKET NO. 378** – SBA Towers II, LLC application for a Certificate of Environmental Compatibility and Public need for the construction, maintenance and operation of a telecommunications facility located at one of two sites on Rabbit Hill Road, Warren, Connecticut.

Pursuant to General Statutes § 16-50j(h), the Connecticut Siting Council hereby solicits your written comments and consultation. Your response by or before May 14, 2009, will be appreciated.

A copy of the application with location maps has previously been provided to you, pursuant to General Statutes § 16-50l.

SDP/RDM/laf

c: Parties & Intervenors
Council Members

EXHIBIT 3



Town of Warren

Selectman's Office
7 Sackett Hill Rd
Warren CT 06754

CM
SAP
10/11/09

April 1, 2009

S. Derek Phelps
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain CT 06051

ORIGINAL

RECEIVED
APR - 3 2009

CONNECTICUT
SITING COUNCIL

DO 378

RE: Rabbit Hill Road, Warren CT

Dear Mr. Phelps:

As per our phone conversation regarding the proposed cell tower on Rabbit Hill Road in the Town of Warren, after review, I agree site B is an alternative site to the original site that was proposed at a public hearing previously held. It is on the same parcel of land just in a different location. So I agree a sixty (60) day waiting period does not apply.

A separate letter from our Zoning Board and Conservation Commissions, with comments on the application, will follow.

Regards,

Jack E. Travers
First Selectman