

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

RE: APPLICATION OF SBA TOWERS II LLC FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS FACILITY AT 49 BRAINERD ROAD, NIAHTIC (EAST LYME), CONNECTICUT

DOCKET NO. 396

Date: March 16, 2010

**APPLICANT'S RESPONSES TO FIRST SET OF INTERROGATORIES FROM
THE TOWN OF EAST LYME**

Applicant SBA Towers II, LLC ("SBA") hereby submits the following responses to the Town of East Lyme's first set of pre-hearing interrogatories dated March 1, 2010:

Q1. How did you determine that the proposed site location named in your application complies with the Town's existing Plan of Conservation and Development?

A1. As indicated during the February 23, 2010 hearing, at the time the application was prepared and filed, the 1999 Plan of Conservation and Development for the Town of East Lyme was in effect. Since the filing of the application, the Town adopted the 2009 Plan of Conservation and Development and SBA supplemented its bulk filing with copies of the new Plan.

As stated in its application, the 1999 Plan does not reference telecommunications facilities. Likewise, the 2009 Plan does not specifically reference telecommunications facilities. Therefore, the proposed site location is not in conflict with any recommendations in the 2009 Plan specific to telecommunications facilities.

As SBA indicated in its application, the proposed Facility is located within the coastal boundary as shown in both the 1999 Plan and 2009 Plan. Of note, simply because the proposed Facility is located within the coastal boundary does not make the proposed Facility inconsistent with either the Connecticut Coastal Management Act ("CCMA") or inconsistent with the 2009 Plan. As noted in Exhibit L of SBA's application, the CCMA identifies eight potential adverse impacts to coastal resources. Given the small footprint, the proposed Facility will have no impact on: 1) water quality, 2) existing circulation patterns of coastal waters, 3) natural erosion patterns, 4) natural or existing drainage patterns, 5) coastal flooding, 6) wildlife, finfish or shellfish habitat or 7) tidal wetlands, beaches and dunes, rocky shorefronts, bluffs or escarpments. Those are adopted in the 2009 Plan as well.

The 8th potential adverse impact referenced in the CCMA is "degrading visual quality by significantly altering the natural features of vistas or viewpoints." Again, simply because a

structure is located within a coastal boundary does not mean that the structure will degrade visual quality. Certainly, a significant number of existing residences, businesses, transportation and utility infrastructure, and other structures located within the coastal boundary are visible from some point within the coastal boundary.

Q2. How did you determine that Giant's Neck Road, Assessor's Parcel 10.3, 14-1, owned by the State Department of Environmental Protection site is "located too far outside the search area" as stated in Exhibit G, #9 of your application when the site abuts the proposed site?

A2. While assessor's parcel 10.3-14.1 (the "DEP Parcel") does abut the subject property at 49 Brainerd Road (the "Property") to the north (see Application at Exhibit B, Sheet CO1), the only frontage the DEP Parcel has is located on Route 156, West Main Street. Therefore, SBA investigated the possibility of locating a site closer to Route 156, in order to reduce the impact of an access drive of more than ¼ of a mile long on the DEP Parcel. SBA initially determined that this location, near Route 156, was located too far out of the search ring to provide coverage to the target area.

Shortly after the filing of the Application, the Town of East Lyme (the "Town") had again requested SBA to review the DEP Parcel as a potential alternative site despite the fact that the Town does not own the DEP Parcel and does not appear to have any rights to use or control the DEP Parcel. Initially, the Town had indicated that it, too, would prefer the location on that parcel to be near the frontage on Route 156. SBA forwarded that information to both AT&T and Verizon and it was determined that a location near the frontage on Route 156 would not satisfy AT&T's coverage objectives. After further discussion with the Town, SBA personnel walked the DEP Parcel and identified four locations on the DEP Parcel that would potentially be suitable for the construction of a telecommunications facility. Those are identified on the map attached hereto as Exhibit 1.

However, as indicated above, the Town does not own the DEP Parcel, does not, to the best of SBA's knowledge, have any control or rights of use of the DEP Parcel and has not received any indication from DEP that the DEP Parcel is available for the purpose of a telecommunications facility.

Q3. With regard to Assessor's Parcel 10.3, 14.1 referred to in Question No. 2, did you pursue any other means of access to the parcel other than Route 156?

A3. Because the DEP Parcel only had frontage on Route 156, SBA initially did not investigate other means of access to the DEP Parcel since that would require obtaining access and utility easements over numerous parcels in addition to the DEP Parcel. At the request of the Town, SBA has now investigated additional means of access to the DEP Parcel 10.3, 14-1. SBA has contacted several abutting property owners to determine if it is possible to access the DEP Parcel from those locations. To date, SBA has not received a response from any of these abutting property owners.

Q4. With regard to Question No. 3, please state all other means of access you pursued and exactly how you pursued it.

A4. SBA has reviewed the DEP Parcel and access thereto. This included reviewing assessor parcel maps, the GIS maps and driving the area around the DEP Parcel. It has been determined that the only public means of access to this site is via RT 156. All other parcels, except for a Town owned parcel 10.3 14, that abut the DEP Parcel are privately owned, residential parcels that would require easements for both access and utilities to the DEP Parcel. As stated in response to interrogatory #3, SBA has contacted several abutting property owners but, to date, has not received a response.

Q5. Please provide your coverage maps for Assessor's Parcel 10.3, 14.1.

A5. SBA does not provide wireless service. Therefore, SBA cannot produce coverage maps.

Q6. Please state what steps Dean Gustafson undertook to come to his conclusions set forth in Exhibit L of your Application, "Coastal Consistencies Review Section," #6. - specifically that "the proposed facility will not significantly obstruct views of coastal resources from scenic overlooks or publically accessible areas."

A6. The Connecticut Department of Environmental Protection ("DEP) Office of Long Island Sound Programs Fact Sheet for Adverse Impacts (attached) was used to conclude that "the proposed facility will not significantly obstruct views of coastal resources from scenic overlooks or publically accessible areas." A copy of the fact sheet is attached hereto as Exhibit 2. The DEP Fact Sheet provides an example of "degrading visual quality through significant alternation of the natural features of vistas and view points", namely "new construction that significantly obstructs coastal views from a scenic overlook or public park". The word "obstruct" provided by DEP's example is not defined under Connecticut General Statutes section 22a-93. According to Merriam-Webster, "obstruct" means: 1) to block or close up by an obstacle; 2) to hinder from passage, action, or operation, impede; or, 3) to cut off from sight, a wall obstructs the view. Therefore, since the proposed Facility is located in an inland location and views of coastal resources from a scenic overlook or public park are not "cut off from sight" or "obstructed" by the proposed Facility, the conclusion that "the proposed facility will not significantly obstruct views of coastal resources from scenic overlooks or publically accessible areas" is a valid conclusion.

Q7. Please state how you came to your conclusion that the proposed site location complies with the Connecticut Coastal Management Act - specifically, Section 22a-93 (15)(F), which defines an "adverse impact on coastal resources as "degrading visual quality through significant alteration of the natural features of vistas and view points."

A7. That conclusion is based on the fact that residential, transportation and utility infrastructure shoreline development exists throughout the area. These forms of development are all visible from numerous sections of the shore line. A telecommunications facility is consistent with, and directly related to serving, these developments. The addition of the proposed facility does not constitute a significant alteration of the natural features of vistas and viewpoints. While

it is evident from the materials submitted by SBA that some coastal locations will have views of the proposed tower, at distances ranging from 0.25 mile to greater than two miles away, that does not represent a wholly unique or otherwise prominent feature from several of these vantage points.

Q8. Has the Town of East Lyme or any of its authorized representatives ever asked you for room on the proposed tower?

A8. SBA has discussed the possibility of locating the Town's emergency services equipment on the proposed tower with Town officials. SBA has not received a formal request or equipment list from the Town detailing what, if any, equipment the Town would seek to install on the proposed facility.

Q9. In answer to Interrogatory No. 3 from the Connecticut Siting Council you state "SBA has reserved the top of the tower for the town's emergency services free of charge." What exactly have you offered the Town of East Lyme in terms of space on your proposed tower?

A9. As is its usual practice, SBA has offered space on the top of the tower, free of charge, to the Town of East Lyme. As the Council is aware, this typically involves the placement of one or several whip antennas at the top of the tower.

Q10. Have you considered the Indian Woods Road parcel owned by Mr. Norton as an alternative site?

A10. SBA did not consider this location during its initial site search for a variety of reasons. First, as noted in SBA's interrogatory responses dated February 16, 2010, the initial search ring was located to the west of the site at 49 Brainerd Road (the "Site"). Therefore, as an initial matter, the Indian Woods Road parcel was approximately .75 miles out of the target coverage area. In addition, the Indian Woods Road parcel has several limitations including: 1) it does not have frontage on a public road but rather has a right-of way, with limited use, over an adjoining parcel; 2) there are wetlands on the property and development of a proposed facility on this property would require a wetlands crossing; and 3) there are many more residences within close proximity to this parcel as opposed to the Site on Brainard Rd.

In this proceeding, a member of the public during the public comment session on February 23, 2010 indicated that he had leased a portion his parcel on Indian Woods Road to T-Mobile. SBA cannot lease the parcel and therefore it is not a viable alternative since it has already been leased to T-Mobile. Notwithstanding, SBA understands that this location, even at a height up to 200 feet, would not fulfill AT&T's coverage objectives in this area of East Lyme.

Therefore, the Indian Woods Road parcel is not an alternative site location.


Q11. If the answer to the previous interrogatory is in the affirmative, please state exactly what you did to research the site as an alternative location.

A11. Despite the fact that the parcel on Indian Woods Road is not available for SBA to lease, SBA has conducted a preliminary investigation into this parcel. First, SBA obtained information concerning the site coordinates and also obtained information demonstrating that T-Mobile proposed to construct a 160 foot tower at this location. Second, SBA forwarded this information to both Verizon and AT&T. SBA understands from AT&T that this parcel would not fulfill AT&T's coverage objectives, even when the analysis was conducted up to 200 feet in height. Therefore, SBA determined that this parcel is not an alternative site to the proposed Facility in this application.

Notwithstanding all of this, SBA all conducted a preliminary environmental investigation into this parcel. It is noted that the Indian Woods Road parcel is landlocked, and therefore there could be access issues to the property. In addition, the Indian Woods Road parcel contains extensive wetlands. In order to access the small portion of the property that is not wet, a wetlands crossing would be required.

Based on all of this, SBA has determined that the Indian Woods Road parcel leased by T-Mobile is not a viable alternative to the site proposed in this application.

Respectfully Submitted,

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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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