

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

RE: APPLICATION OF SBA TOWER 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,
NIANTIC (EAST LYME), CONNECTICUT

DOCKET NO. 396

Date: April 16, 2010

LIMITED APPEARANCE

Pursuant to General Statutes § 16-50n and § 16-50j-15a of the Regulations of Connecticut State Agencies Regulations, T-Mobile Northeast LLC ("T-Mobile") submits this statement as a Limited Appearance in the above-captioned matter ("Docket 396").

T-Mobile is a licensed provider of wireless services in New London County, Connecticut and, more specifically, in the Town of East Lyme ("Town"). T-Mobile is in need of a wireless telecommunications facility in this area of Town to provide reliable coverage to residents and businesses. To this end, T-Mobile executed a lease for the construction and operation of a wireless telecommunications facility on property located at Indian Woods Road, East Lyme ("Indian Woods Site" or "Property"). Despite the lease, T-Mobile has remained silent to allow Docket 396 to proceed without distraction.

T-Mobile, however, has learned that the intervenors in Docket 396 have raised the Indian Woods Site as a possible alternative to the proposed site, and that the Connecticut Siting Council ("Council") and the applicant, SBA Tower II, LLC, have discussed the Property at length. T-Mobile, therefore, has an interest to aid the Council in evaluating the public need considerations set forth in General Statutes § 16-50g.

Specifically, T-Mobile finds it necessary to correct the record regarding the Indian Woods Site.

T-Mobile's expertise and experience in designing, constructing, operating and maintaining a wireless telecommunications system in the State of Connecticut, in accordance with the rules and regulations of the Council, the Department of Public Utility Control and the Federal Communications Commission, may be of benefit to the Council in resolving the issues presented in Docket 396. T-Mobile has participated in numerous dockets before the Council and has filed correspondence in many other dockets to assist the Council in its fact-finding.

Briefly, T-Mobile would like to clarify the characteristics of the Property. The Property is an approximately twelve acre parcel (Assessor's Map 10.3, Block 11) bordered by State land. The Property and adjacent lands are very heavily wooded, providing for substantial visual mitigation.

Additionally, statements were made about the Property during the proceedings for Docket 396. The following are additional clarifications or corrections to some of those statements.

1. The applicant testified that there is a "restrictive easement" on the Property and "[i]f you read the right-of-way, it indicates that it can only be accessed by an [A]merican made vehicle with two-wheel drive." (3.23.10 *Tr.*, p. 72.) That statement is inaccurate. There is an assignable right of way easement which provides access to the Property; however, this easement does not limit the right of way so it can "only be accessed by an American made vehicle with two-wheel drive" as the testimony suggests. Rather, the easement provides an access and utility right of way of twenty-five feet in

width, and provides that the Property owners must “build and maintain a driveway at least 10 feet wide on the above described tract which driveway shall allow for an ordinary [A]merican made two wheel drive passenger car to pass on said driveway year round.” (See *easement attached as Exhibit A.*) It does not limit the easement to such vehicles. T-Mobile has leased the Property and is the assignee of the easement. Its access or use of the right of way is not restricted in any way, including the use of the access for construction or four-wheel drive maintenance vehicles.

2. The applicant has testified that the Property has “quite a few wetlands on that site, making the location of the tower rather difficult.” (3.23.10 *Tr.*, p. 50.) The Property does contain wetlands. Based on the testimony of Dean Gustafson, however, the Property contains fewer wetlands than the proposed site. When analyzed in terms of acreage, the sites have proportionally the same wetland coverage. (*Id.*, p. 65.)

3. The applicant has also testified that “looking at a visual GIS map that access to the site would be difficult and have a wetlands crossing.” (*Id.*, pp. 63-64.) Access to the Indian Woods Site would be along an existing dirt driveway that would cross a culverted wetland area and stream crossing. T-Mobile would improve these culverts. Preliminary analysis indicates that that the construction of the Indian Woods Site would not impact the wetlands in a manner that could not be mitigated.

4. There was also testimony that the Property hosts “floodway waters.” (*Id.*, p. 64.) The Indian Woods Site, however, is not located in a floodway. The structures for the Indian Woods Site would be located in the floodway fringe (Zone B flood zone). Structures can be placed in the floodway fringe (outside of the floodway) with special

precautions. Accordingly, the location of the Indian Woods Site does not present an insurmountable obstacle for the construction and operation of a wireless facility.

5. The applicant has testified that "only one of the carriers could possibly use [the Indian Woods Site]." (*Id.*, p. 50.) The statement is true to the extent that Verizon has indicated that it could use the Indian Woods Site while AT&T could not. There is, however, no indication regarding the intent of any of the other carriers regarding co-location.

T-Mobile is willing to respond to a request for information from the Council if it would like any additional information regarding the Indian Woods Site. T-Mobile is also willing to appear and provide testimony should the Council conclude that is necessary for T-Mobile to do so.

Respectfully submitted,

T-MOBILE NORTHEAST LLC

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CERTIFICATION

I hereby certify that on this day a copy of the foregoing was delivered by Electronic Mail and regular mail, postage prepaid, to all parties and intervenors of record, as follows:

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Jesse Langer

EXHIBIT A

RIGHT OF WAY (EASEMENT)

KNOW ALL MEN BY THESE PRESENTS, That ARTHUR H. BURNETT and ELLEN M. BURNETT ooth of the Town of East Lyme, County of New London and State of Connecticut, for the consideration of One (\$1.00) Dollar and other valuable considerations, received to our full satisfaction of TIMOTHY R. NORTON and KATHLEEN T. NORTON both of the Town of East Lyme, County of New London and State of Connecticut do give, grant, bargain, sell and confirm unto the said TIMOTHY R. NORTON and KATHLEEN T. NORTON and unto the survivor of them, their heirs and assigns and the heirs and assigns of such survivor, forever, the right to pass and repass, by foot and by motor vehicle over a strip of land as shown on a certain map entitled "Map Showing Right of Way Conveyed by Arthur H. and Ellen M. Burnett to Timothy R. and Kathleen T. Norton of East Lyme, Connecticut Scale 1" = 50', November, 1983" and more particularly bounded and described as follows:

Beginning at a point set in the southerly line of Route 156, said point being the northwesterly corner of said right of way;

Thence running N 89°-49'-00"E along said Road a distance of 28.76 feet to a point;

Thence running S 29°-30'-00"W along land of the Grantors a distance of 124.77 feet to a point;

Thence running S 74°-30'-00"W along land of the Grantors a distance of 69.70 feet to a point,

Thence running S 29°-30'-00"W along other land of the Grantors a distance of 1189.64 feet to a point;

Thence running N 60°-30'-00"W along other land of the Grantors a distance of 25.00 feet to a point;

Thence running N 29°-30'-00"E along land now or formerly of Anna Mostowy and Earl L. Reisel ET AL in part a distance of 1200.00 feet to a point;

Thence running N 74°-30'-00"E along other land of the Grantors a distance of 69.70 feet to a point;

Thence running N 29°-30'-00"E along land now or formerly of Antony Morell a distance of 100.16 feet to the point of beginning.

The Grantees herein hereby agree that as a condition of the granting of this "right of way" that they will build and maintain a driveway at least 10 feet wide on the above described tract which driveway shall allow for an ordinary american made two wheel drive passenger car to pass on said driveway year round. The Grantees further agree that in the event that any utility (i.e., electric and/or telephone lines) is installed over said right of way, the said Arthur H. Burnett and Ellen M. Burnett will be allowed to connect onto said utility line by paying any such utility company only for the connection fee to such utility line on said right of way.

The Grantors herein reserve the right to themselves and their heirs and assigns to continue to use the land within which the aforesaid right of way has been granted for any uses and purposes which do not in any way interfere with the use thereof by the Grantees, the survivor of them or such survivors, heirs and assigns, fulfilling the purposes for which this right of way has been granted.

TO HAVE AND TO HOLD the above granted rights, privilege and authority unto the said Grantees, the survivor of them and such survivor's heirs and assigns forever, to their own proper use and behoof.

In Witness Whereof, We have hereunto set our hands and seals this 2nd day of December, 1983.

Signed, Sealed
and Delivered
in the Presence of:

[Signature]
Cynthia Gralas

[Signature]
ARTHUR H. BURNETT

SCOTT,
KANABIS & DUBICKI, P.C.
ATTORNEYS AT LAW
20 CHANNING STREET
NEW LONDON, CONN.
06320
(803) 442-0900

[Signature]

Ellen M. Burnett
ELLEN M. BURNETT

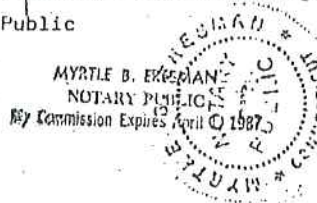
Cynthia Strass

STATE OF CONNECTICUT)
COUNTY OF NEW LONDON)

ss. East Lyme

On this the 2nd day of December, 1983, before me, Myrtle B. Ezerian, the undersigned officer, personally appeared, ARTHUR H. BURNETT and ELLEN M. BURNETT known to me (or satisfactorily proven) to the persons whose names are subscribed to the within instrument and acknowledge that they executed the same for the purposes therein contained, as their free act and deed.

Myrtle B. Ezerian
Notary Public



RECEIVED FOR RECORD Feb 10 1984
AT 11:20 A.M. BY: Felicia B. Williams
Clerk

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