

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**RE: APPLICATION OF SBA TOWERS II LLC DOCKET NO. 396
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**

Date: October 7, 2010

MOTION TO RE-OPEN EVIDENTIARY HEARING

The applicant, SBA Towers II LLC (“SBA”) hereby moves to re-open the evidentiary hearing on Docket 396. During this proceeding, SBA and the intervening carriers, New Cingular Wireless PCS, LLC (“AT&T”) and Cellco Partnership d/b/a Verizon Wireless (“Verizon”), established the need for a new Facility in this area of East Lyme. In addition, SBA presented evidence that T-Mobile had filed a co-location application with SBA for the purpose of locating antennas on SBA’s proposed Facility. Since that time, T-Mobile has executed a lease with SBA – further evidencing its need to locate antennas on the proposed facility and provide coverage to this area of East Lyme. Therefore, SBA moves to re-open the evidentiary hearing for the limited purpose of presenting evidence of its lease with T-Mobile.

BACKGROUND

SBA, in accordance with the provisions of Connecticut General Statutes (“CGS”) §§ 16-50g through 16-50aa and §§ 16-50j-1 through 16-50j-34 of the Regulations of Connecticut State Agencies (“RCSA”), applied to the Connecticut Siting Council (“Council”) on December 7, 2009 for a Certificate of Environmental Compatibility and Public Need (“Certificate”). SBA proposed to construct a 170-foot steel monopole

telecommunications facility (the "Facility") in the northern portion of a 51 acre parcel of land, owned by Christopher Samuelsen, known as 49 Brainerd Road in East Lyme, Assessor's ID 7.4-21 of the East Lyme Tax Assessor's Records (the "Property"). Both Verizon and AT&T intervened in this docket and established unrefuted testimony concerning their need to locate antennas on the proposed Facility and provide coverage in this area of East Lyme. In addition, SBA provided information to the Council concerning T-Mobile's interest in locating on the proposed Facility. Specifically, SBA provided the Council with a copy of T-Mobile's co-location application for the proposed facility. *See* SBA's interrogatory responses to the Council dated February 16, 2010 at Exhibit 2.

During this proceeding, evidence was presented suggesting that T-Mobile had a lease on a parcel of property located within the vicinity of the Property (the "T-Mobile Site"). *See* SBA Interrogatory Responses to the Friends of Pattagansett Trust dated March 16, 2010 at Interrogatory #6. During this proceeding, numerous parties and intervenors indicated that they believed that this T-Mobile Site may be a viable alternative to SBA's proposed Facility. *See e.g.* April 22, 2010 Transcript at 26. SBA established that the T-Mobile Site was not a viable alternative, particularly given the fact that AT&T testified that that the T-Mobile Site would not work to fill its existing coverage gaps, *see* March 23, 2010 Transcript at 141-142.

On October 6, 2010, T-Mobile informed SBA that it has executed its lease with SBA to co-locate on SBA's proposed facility at the Property. This lease not only further evidences the overwhelming and unrefuted need for the proposed Facility but also further evidences the fact that the T-Mobile Site is not a viable alternative. T-Mobile would not

have executed a lease to co-locate on the SBA facility if it intended to a pursue its own facility on the T-Mobile Site.

ARGUMENT

The Uniform Administrative Procedures Act, Connecticut General Statutes § 4-181a(b), provides:

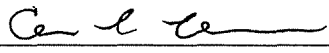
(b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

The Council previously re-opened this docket based on a motion by SBA pursuant to § 4-181a concerning new information regarding wetlands impacts. In addition, the Council has granted similar requests in other dockets in which new information concerning carrier interest has come to light after the close of the evidentiary record. *See* Docket 401. Here, changed conditions warrant a re-opening of the evidentiary record. As discussed above, the fact that T-Mobile has now executed a lease with SBA to co-locate on the proposed Facility establishes two points not previously in the record: (1) it furthers adds to the overwhelming evidence of the need for the proposed Facility on top of the evidence already included from intervenors Verizon and AT&T; and (2) it establishes that the T-Mobile Site is not a viable alternative to SBA's proposed Facility. A redacted and unredacted copy of T-Mobile's lease will be filed with the Council upon approval of this motion to re-open.

CONCLUSION

Based on the foregoing, SBA moves to re-open the evidentiary hearing on Docket 396 for the limited purpose of presenting evidence concerning T-Mobile's lease to co-locate on the proposed Facility.

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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