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

Internet: ct.gov/csc

Daniel F. Caruso
Chairman

July 16, 2010

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

RE: **DOCKET NO. 402** - Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public need for the construction, maintenance and operation of a telecommunications facility located at 16 Bell Road Extension, Cornwall, Connecticut.

Dear Attorney Baldwin:

At a public meeting held on July 15, 2010, the Council approved the Motion for Protective Order, dated June 28, 2010, related to the disclosure of monthly rent contained within the lease agreement consistent with the Conclusions of Law adopted in Docket 366-Danbury, dated April 23, 2009 (copy enclosed).

Please feel free to call S. Derek Phelps, Executive Director if you have any questions.

Very truly yours,

Daniel F. Caruso
Chairman

DFC/RDM/laf

c: Parties and Intervenors

DOCKET NO. 366 - Optasite Towers LLC and Omnipoint Communications, Inc. application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 52 Stadley Rough Road in Danbury, Connecticut.	}	Connecticut
	}	Siting
	}	Council
		April 23, 2009

Conclusions of Law Re Motion for Protective Order to Not Disclose the Exact Monthly Rent in Lease Agreement

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

C.G.S. §16-50o(c) states: "The applicant shall submit into the record the *full text of the terms* of any agreement, and a *statement of any consideration* therefor, 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." (Emphasis added).

In its motion for protective order and at a public hearing on October 28, 2008, Optasite Towers, LLC (Optasite) argued that C.G.S. §16-50o(c) requires a general statement as to the rent paid rather than the exact amount. However, in a 2004 application for the construction and operation of a proposed telecommunications tower in Litchfield, Sprint Spectrum, L.P. (Sprint), in accordance with C.G.S. §16-50o(c), "produced an unredacted copy of its lease agreement with the property owner and records relating to the compensation between the property owner and various carriers."[1] In its objection, the City of Danbury (Danbury) argued that the statute clearly means disclosure of the exact rent amount without limitations. In support of its position, Danbury cites to a redevelopment statute pertaining to the taking of property at fair market value which requires "a statement of compensation… setting forth the amount ..."[2] However, C.G.S. §16-50o(c) pertains to the record of a Siting Council (Council) hearing rather than a compensation mandate.

When interpreting a statute, the starting point is the statute's plain meaning. C.G.S. §1-2z provides in relevant part, "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other

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[1] *Rosa v. Conn. Siting Council,* 2007 Conn. Super. LEXIS 590, *20 (Conn. Super. 2007).

[2] CONN. GEN. STAT. §8-129(a)(3) (2009) ("The redevelopment agency shall file a statement of compensation… setting forth the *amount* of such compensation…") (Emphasis added).

statutes."[3] For interpretive guidance, courts will also look to the legislative history. In determining common usage, courts often look to the dictionary definition of a term. The American Heritage Dictionary defines "text" as "the wording or words of something written or printed."[4] Optasite has a written lease with Christ the Shepherd Church (Church). Black's Law Dictionary defines "consideration" as "something of value (such as an act, a forbearance or a return promise) received by a promisor from a promisee"[5] and "statement" as "a formal and exact presentation of facts."[6] Taken together, the phrase "statement of consideration" may be interpreted as an exact presentation of the value to be received by Optasite from the Church. According to the plain language of C.G.S. §16-50o(c), the applicant is required to submit the entire lease agreement including the exact rent amount.

C.G.S. §16-50o(c) is directly related to C.G.S. §16-50p. The applicant argues that the rent amount in the lease agreement is not relevant to the Council's statutory criteria under C.G.S. §16-50p. However, under C.G.S. §16-50p(b)(1), the Council must examine the economic feasibility at fair market rates of the shared use of the facility.[7] The applicant also argues that C.G.S. §16-50p(g) prohibits the Council from considering an applicant's interest in property proposed for a telecommunications tower.[8] However, as Danbury points out in its objection, the Council is permitted to consider the likelihood of an applicant securing a proposed site.[9] Therefore, according to the statutory criteria, the exact rent amount paid for an applicant's interest in property proposed for a tower is a factor for consideration at the Council's discretion.

In its motion for a protective order, Optasite states that C.G.S. §16-50o(c) was adopted by the legislature in an effort to address Cross Sound Cable's private agreements with oystermen related to their opposition to the proposed project in Docket 208 and that C.G.S. §16-50o(c) was amended on the floor to exclude the disclosure of confidential, proprietary information in those agreements.[10] According to Optasite, the legislation requires disclosure of how the landowner will be paid rather than the precise rent amount. According to Danbury, the legislation requires public disclosure of the precise rent amount. Public Act 04-246 moved the language of present C.G.S. §16-50o(c) from C.G.S. §16-50p(a) to facilitate its application to proposed telecommunications towers, as well as transmission lines. Therefore, the legislature clearly intended the language of C.G.S. §16-50o(c) to apply to the public disclosure of "the full text of the terms" contained in lease agreements between an applicant and a third party, and a "statement of

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[3] CONN. GEN. STAT. §1-2z (2009).
[4] THE AMERICAN HERITAGE DICTIONARY 1332 (Houghton Mifflin Co. 1976).
[5] BLACK'S LAW DICTIONARY 300 (7th ed. 1999).
[6] *Id.* at 1416.
[7] CONN. GEN. STAT. §16-50p(b)(1) (2009).
[8] CONN. GEN. STAT. §16-50p(g) (2009) ("In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may already have acquired land or an interest therein for the purpose of constructing the facility which is the subject of its application.")
[9] *Corcoran v. Conn. Siting Council*, 50 Conn. Supp. 443, 452 (Conn. Super. 2006), *affirmed by* 284 Conn. 455 (2007) ("the language of 16-50p(g) is that of an enlargement of the council's discretion, not a limitation...")
[10] H.B. 6954, 2001 Sen. Reg. Sess. (2001).

consideration therefor… in connection with the construction and operation of the facility." However, the statute specifically exempts proprietary information or trade secrets from public disclosure.

2. The rent amount contained in telecommunication tower lease agreements meets the definition of "proprietary information" and "trade secret."

In its motion for a protective order, Optasite states that the rent amount is proprietary information. Danbury suggests that rent amounts may be "low hanging fruit" that create a disincentive for applicants to explore alternative sites. The city also argues that proprietary information is narrowly defined and typically includes scientific and technical data. However, at a public hearing on December 8, 2008, Danbury and Optasite agreed to the release of the rent amount under a protective order.

"Proprietary information" is defined in Black's Law Dictionary as "information in which the owner has a protectable interest."[11] DPUC defines "proprietary information" as information that may be exempt from public disclosure pursuant to C.G.S. §1-210(b). The Connecticut Freedom of Information Act (FOIA) defines "trade secret" 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…" (Emphasis added).[12]

The Connecticut Supreme Court defined "trade secret" as consisting of any "… compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it."[13] The Court set out several factors to be considered in determining whether given information qualifies as a trade secret, which are: 1) the extent to which the information is known outside of the business; 2) the extent to which it is known by others involved in the business; 3) the extent of measures taken to guard the secrecy of the information; 4) the value of the information to the business and competitors; 5) the amount of effort expended in developing the information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others."[14]

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[11] BLACK'S LAW DICTIONARY 1235 (7th ed. 1999).
[12] CONN. GEN. STAT. §1-210(b)(5)(A) (2009).
[13] *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission,* 55 Conn. App. 527, 530 (Conn. App. 1999), citing *Town & Country House & Homes Service, Inc. v. Evans*, 150 Conn. 314, 318-19 (1963).
[14] *Id.*

Applying the criteria to this docket, it is found that: 1) the applicant, as well as telecommunications industry representatives responding to the Council's request for comment, view the information as confidential; 2) persons in the business with knowledge of the exact rent amount in the lease agreement are Charles Regulbuto, Optasite's Director of Northeast Development, who negotiated the lease, James H. Ross, III, Optasite's President and COO, who executed the lease, and Christopher Fisher, Optasite's counsel, who submitted a redacted version of the lease to the Council; 3) Optasite's counsel filed a Notice of Lease on the City of Danbury Land Records that complied with the recording requirements under C.G.S. §47-19 and submitted a redacted version of the lease to the Council as part of Optasite's application;[15] 4) the rent amount in the lease agreement has independent economic value that, if generally known, would be a disadvantage to the applicant and would be an advantage to market competitors and future site hosts; 5) Optasite incurred transaction costs in Charles Regulbuto's negotiations and execution of the lease agreement; and 6) the exact rent amount is not contained or required in the Notice of Lease that is recorded on the City of Danbury Land Records.

Based on the criteria, the exact rent amount in the lease agreement between Optasite and the Church qualifies as a trade secret.

As such, pursuant to C.G.S. §16-50o(c), the exact rent amount in the subject lease agreement shall be disclosed to the Council under a protective order.

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[15] CONN. GEN. STAT. §47-19 (2009) ("No lease of any... land... for a term exceeding one year... shall be effectual against any persons other than the lessor and the lessee and their respective heirs, successors, administrators and executors, unless it is in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land, provided a notice of lease in writing, executed, attested, acknowledged and recorded in the same manner as a deed of land and containing (1) the names and addresses, if any are set forth in the lease, of the parties to the lease, (2) a reference to the lease, with its date of execution, (3) the term of the lease with the date of commencement and the date of termination of such term, (4) a description of the property contained in the lease, (5) a notation if a right of extension or renewal is exercisable, (6) if there is an option to purchase, a notation of the date by which such option must be exercised, and (7) a reference to a place where the lease is to be on file shall be sufficient").

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
	:	
APPLICATION OF CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY AT 16 BELL ROAD EXT., CORNWALL, CONNECTICUT	:	DOCKET NO. 402
	:	JUNE 28, 2010

PROTECTIVE ORDER

WHEREAS, Cellco Partnership d/b/a Verizon Wireless ("Cellco") is willing to submit an unredacted copy of the Land Lease Agreement, dated September 29, 2008, between Ralph J. Gulliver, Jr. and Cellco (the "Agreement") to the Council in connection with the above-captioned matter;

WHEREAS, Cellco considers the amount of the rent to be paid by Cellco during the term of the Agreement to be confidential, market-sensitive and proprietary information that Cellco has prior to this point, used its best efforts to keep secret ("Confidential Information");

WHEREAS, Cellco has indicated its willingness to provide the Confidential Information to the Council subject to a Protective Order;

NOW, THEREFORE, it is hereby ordered, that the following procedure is adopted for the protection of the Confidential Information:

1. The Confidential Information shall be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies or otherwise.

2. All Confidential Information shall be subject to this Order and shall be given solely to the Council and its staff. It is understood and agreed that said information is confidential, market-sensitive and proprietary in nature and shall in no event be disclosed to any other person, entity, corporation or association, and shall neither be used nor discussed except for the purposes of this proceeding. All persons in receipt of any Confidential Information pursuant to this Order shall maintain a written log of all individuals granted access to the Confidential Information.

3. Confidential Information shall be marked as such and delivered in a sealed envelope to the Council.

4. All recipients shall be bound by the terms of this Order.

5. In the event that the Confidential Information is to be used in any manner in any proceeding or hearing before the Council, such proceeding or hearing shall not be held before, nor any record of it made available, to any other party, intervenor, or other person or entity. Presence at such proceeding or hearing shall be limited to the Council, its staff and representatives of Cellco. No record shall be disclosed or communication made of the information at any time to any person or entity. Any transcript or other recording of the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form placed on such envelope or container:

CONFIDENTIAL INFORMATION

This envelope is not to be opened nor the contents thereof to be displayed or revealed except pursuant to the Protective Order issued in Docket No. 402.

6. No copies shall be made of the Confidential Information unless expressly ordered by the Council.

7. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing or trial. Moreover, nothing herein shall be considered a waiver of any party's right to assert at a later date that the material is or is not proprietary or privileged. A party seeking to change the terms of the Order shall by motion give every other party five (5) business days' prior written notice. No information protected by the Order shall be made public until the Council rules on any such motion to change the terms of the Order. Confidential Information otherwise properly discovered, even though also subject to the terms of the Order, shall not be considered protected by the Order.

8. No Recipient shall use or disclose the Confidential Information for purposes of business or competition, or for any other purpose, other than the purpose of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall in good faith take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order.

9. All copies of such Confidential Information shall be returned to Cellco no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

CONNECTICUT SITING COUNCIL

By: Daniel F. Caruso

Dated: 7/15/10, 2010

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	☒ E-mail ☒ U.S. Mail	Cellco Partnership d/b/a Verizon Wireless	Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8345 (860) 275-8299 kbaldwin@rc.com Sandy Carter Regulatory Manager Verizon Wireless 99 East River Drive East Hartford, CT 06108
Intervenor (granted 06/17/2010)	☒ U.S. Mail	Town of Cornwall	The Honorable Gordon M. Ridgway First Selectman Town of Cornwall P.O. Box 97 Cornwall, CT 06753 (860) 672-4959 (860) 672-4068 cwlselectmen@optonline.net
Intervenor (granted 06/17/2010)	☒ U.S. Mail	Frederic I. Thaler Kathleen Mooney 66 Popple Swamp Road Cornwall Bridge, CT 06754 (860) 672-0052 fthaler@snet.net	
Intervenor (granted 07/15/2010)	☒ U.S. Mail	Nicholas and Caroline Daifotis 239 Brushy Ridge Road New Canaan, CT 06840 (203) 972-2820 Nicholas.daifotis@rbccm.com	