

**JESSE A. LANGER**

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December 1, 2011

**VIA FEDERAL EXPRESS**

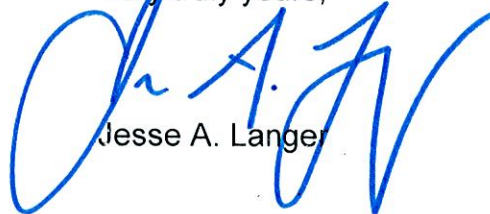
Ms. Linda Roberts, Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

**Re: Docket No. 421 – Application by T-Mobile Northeast LLC for a Certificate of Environmental Compatibility and Public Need for a Telecommunications Facility at 158 Edison Road, Trumbull, Connecticut**

Dear Ms. Roberts:

I write on behalf of the Applicant, T-Mobile Northeast LLC ("T-Mobile"), regarding the above-captioned matter. T-Mobile respectfully submits a Motion for Order of Compliance regarding the objections and/or responses disclosed by the Intervenor, Citizens Against Trumbull Tower ("CATT"), dated November 29, 2011, in response to T-Mobile's First Set of Interrogatories to CATT, dated November 18, 2011. I have enclosed T-Mobile's Motion and fifteen copies.

Very truly yours,



Jesse A. Langer

JAL/tc  
Enclosures

cc: Service List

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: APPLICATION BY T-MOBILE  
NORTHEAST LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED  
FOR A TELECOMMUNICATIONS FACILITY  
AT 158 EDISON ROAD IN THE  
TOWN OF TRUMBULL, CONNECTICUT

DOCKET NO. 421

Date: December 1, 2011

**MOTION FOR ORDER OF COMPLIANCE**

The Applicant, T-Mobile Northeast LLC ("T-Mobile"), respectfully submits this Motion for Order of Compliance regarding the objections and/or responses disclosed by the Intervenor, Citizens Against Trumbull Tower ("CATT"), dated November 29, 2011, in response to T-Mobile's First Set of Interrogatories, dated November 18, 2011.

Although CATT interposed objections or incomplete responses to many of T-Mobile's interrogatories, T-Mobile seeks compliance only as to Interrogatories 1 and 23-28. T-Mobile requests more complete responses to these interrogatories prior to the hearing or, alternatively, T-Mobile requests that the Council (1) preclude CATT from admitting any evidence regarding the subject matter of any of the aforementioned interrogatories or (2) issue any other order as justice may require pursuant to General Statutes §§ 4-177b, 4-177c and 4-178, as well as the guiding principles of Practice Book § 13-14.<sup>1</sup> Each Interrogatory and response by CATT is addressed in turn below.

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<sup>1</sup> Practice Book 13-14 (a) and (b) provide in part: "(a) If any party has failed to answer interrogatories or to answer them fairly, or has intentionally answered them falsely or in a manner calculated to mislead, or has failed to respond to requests for production . . . the judicial authority may, on motion, make such order as the ends of justice require. (b) Such orders may include the following: (1) The entry of a nonsuit or default against the party failing to comply; (2) The award to the discovering party of the costs of the motion, including a reasonable attorney's fee; (3) The entry of an order that the matters regarding which the discovery was sought or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; (4) The entry of an order prohibiting the party who has failed to comply from introducing designated matters in evidence; (5) If the party failing to comply is the plaintiff, the entry of a judgment of dismissal." (Emphasis added.)

1. Please provide the names and addresses of each member of the purported voluntary association called Citizens Against Trumbull Tower ("CATT").

**Objection: This request is irrelevant and not reasonably calculated to lead to discovery of admissible evidence in these proceedings. The identity of CATT's members is irrelevant under CEPA as there does not need to be a showing of aggrievement. . . . Interventions are about the impact of the Applicant's activity, not the Intervenor. Notwithstanding the objection, CATT discloses its Executive Committee as follows:**

**Lois Gillern, 20 Merwin St., Trumbull, CT 06611  
Carole Lefcort, 23 Chestnut Hill Rd., Trumbull, CT 06611  
Henry Lefcort, 23 Chestnut Hill Rd., Trumbull, CT 06611  
Danielle McCain, 72 Killian Ave., Trumbull, CT 06611  
Frank MacPhail, 183 Edison Rd., Trumbull, CT 06611**

CATT's objection should be overruled for several reasons.<sup>2</sup> First, it contravenes the Council's regulations. Section 16-50j-15a (b) of the Regulations of Connecticut State Agencies requires a prospective intervenor to include that intervenor's name and address. Since the intervenor is a voluntary association, the Application to Intervene should have included the names and addresses of all of CATT's members. Second, due process requires that T-Mobile know the identity (in this case identities) of its opponents. Finally, the identity of CATT's members is important in determining aggrievement. CATT argues to the contrary because it intervened under General Statutes § 22a-19, which does not require a showing of "classical" aggrievement. This argument, however, ignores the fact that CATT also intervened under General Statutes § 16-50n, which does require a showing of aggrievement. *Goldfisher v. Connecticut Siting Council*, 95 Conn. App. 193, 199, 895 A.2d 286 (2006)(affirming trial court dismissal of appeal by property owner from approval of telecommunications facility for lack of aggrievement).

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<sup>2</sup> T-Mobile omitted a portion of CATT's response for purposes of brevity. The omitted portion included legal citations regarding voluntary associations generally.

23. Please state whether CATT (or someone retained by CATT or by someone affiliated with CATT) conducted any studies, tests, analyses or reports concerning T-Mobile's needs for the Facility or T-Mobile's coverage objective.

**Response: CATT's RF engineer (Kevin Plumb) analyzed T-Mobile's need for the Facility and T-Mobile's coverage objective. Verbal reports were presented to CATT.**

T-Mobile objects to this response because it fails to provide any detail about the "verbal reports" regarding T-Mobile's need for the Facility and T-Mobile's coverage objective. In its interrogatories, T-Mobile expressly requested that CATT describe (1) the nature and type of each study, test, analysis or report; (2) who conducted each study, test, analysis or report; (3) when each study, test, analysis or report occurred; and (4) the results of each study, test, analysis or report. CATT's response fails to provide any of this integral information. For its part, T-Mobile provided this information for each study, test, analysis or report it conducted in support of its Application for a Certificate of Environmental Compatibility and Public Need ("Application").

Additionally, Mr. Plumb's pre-filed testimony is devoid of any statements regarding the purported "verbal reports." CATT, therefore, has not provided any information regarding its analysis of T-Mobile's need for the Facility or T-Mobile's coverage objective even though it suggests that such an analysis was conducted by Mr. Plumb, a purported radio frequency ("RF") engineer.

Accordingly, T-Mobile cannot fairly assess whatever conclusions Mr. Plumb reached regarding T-Mobile's need or T-Mobile's coverage objective or the process Mr. Plumb undertook to reach those conclusions. T-Mobile cannot challenge those conclusions or processes adequately without this information. "The rules of discovery are designed to make a trial less a game of blindman's [bluff] and more a fair contest

with the basic issues and facts disclosed to the fullest [practicable] extent.” *Sturdivant v. Yale New Haven Hospital*, 2 Conn. App. 103, 106, 476 A.2d 1074 (1984)(limiting expert testimony to subject matter disclosed in response to interrogatories and precluding expert from testifying as to matters not properly disclosed).

T-Mobile respectfully requests that this information be provided prior to the hearing or that CATT be precluded from admitting any evidence regarding T-Mobile’s need for the Facility and T-Mobile’s coverage objective. Practice Book § 13-14.

24. Please state whether CATT (or someone retained by CATT or by someone affiliated with CATT) conducted any studies, tests, analyses or reports concerning alternative deployment technologies for the Facility or T-Mobile’s coverage objective.

**Response: CATT’s RF engineer analyzed alternative deployment technologies for the Facility and T-Mobile’s coverage objective. Verbal reports were presented to CATT.**

T-Mobile objects to this response because it does not provide any detail about the “verbal reports” concerning alternative deployment technologies. In its interrogatories, T-Mobile expressly requested that CATT describe (1) the nature and type of each study, test, analysis or report; (2) who conducted each study, test, analysis or report; (3) when each study, test, analysis or report occurred; and (4) the results of each study, test, analysis or report. CATT’s response fails to provide any of this information. For its part, T-Mobile disclosed this information with each study, test, analysis or report it conducted in support of its Application.

Additionally, Mr. Plumb’s pre-filed testimony is devoid of any statements regarding these “verbal reports.” The pre-filed testimony includes conclusory statements about the preference for a flagpole configuration. CATT, therefore, has not provided any information regarding its analysis of alternative deployment technologies

that T-Mobile could deploy to meet its coverage objective even though it suggests that such an analysis was conducted by Mr. Plumb, a purported RF engineer.

Accordingly, T-Mobile cannot fairly assess whatever conclusions Mr. Plumb reached regarding alternative deployment technologies or the process Mr. Plumb undertook to reach those conclusions. T-Mobile cannot challenge those conclusions or processes adequately without the information prior to the hearing. "The rules of discovery are designed to make a trial less a game of blindman's [bluff] and more a fair contest with the basic issues and facts disclosed to the fullest [practicable] extent." *Sturdivant v. Yale New Haven Hospital, supra*, 2 Conn. App. 106 (1984).

T-Mobile respectfully requests that this information be provided prior to the hearing or that CATT be precluded from admitting any evidence regarding alternative deployment technologies for the Facility and T-Mobile's coverage objective. See Practice Book § 13-14.

25. Please state whether CATT (or someone retained by CATT or by someone affiliated with CATT) conducted any studies, tests, analyses or reports concerning the Town of Trumbull's communications needs.

**Response: CATT's RF engineer conducted analyses of the Town of Trumbull's communications needs. Verbal reports were presented to CATT.**

T-Mobile objects to this response because it fails to provide any detail about the "verbal reports" concerning the Town of Trumbull's ("Town") communications needs. In its interrogatories, T-Mobile expressly requested that CATT describe (1) the nature and type of each study, test, analysis or report; (2) who conducted each study, test, analysis or report; (3) when each study, test, analysis or report occurred; and (4) the results of each study, test, analysis or report. CATT's response fails to provide any of this

important information. For its part, T-Mobile provided this information with each study, test, analysis or report it conducted in support of its Application.

Additionally, Mr. Plumb's pre-filed testimony is devoid of any statements regarding these "verbal reports." CATT, therefore, has not provided any information regarding its analysis of the Town's communications needs even though it suggests that such an analysis was conducted by Mr. Plumb, a purported RF engineer.

Accordingly, T-Mobile cannot fairly assess whatever conclusions Mr. Plumb reached regarding the Town's communications needs or the process Mr. Plumb undertook to reach those conclusions. T-Mobile cannot challenge those conclusions or processes adequately without the information prior to the hearing. "The rules of discovery are designed to make a trial less a game of blindman's [bluff] and more a fair contest with the basic issues and facts disclosed to the fullest [practicable] extent." *Sturdivant v. Yale New Haven Hospital, supra*, 2 Conn. App. 106 (1984).

T-Mobile respectfully requests that this information be provided prior to the hearing or that CATT be precluded from admitting any evidence regarding alternative the Town's communications needs. See Practice Book § 13-14.

26. Please state whether CATT (or someone retained by CATT or by someone affiliated with CATT) conducted any studies, tests, analyses or reports to determine whether the proposed Facility has or is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the natural resources of the state.

**Response: CATT has analyzed whether the proposed Facility is reasonably likely to have the effect of unreasonably destroying the natural resources of the state. Please refer to #5.**

T-Mobile objects to this response because it fails to provide any detail about the "analysis" conducted concerning the "natural resources" of the State. In its

interrogatories, T-Mobile expressly requested that CATT describe (1) the nature and type of each study, test, analysis or report; (2) who conducted each study, test, analysis or report; (3) when each study, test, analysis or report occurred; and (4) the results of each study, test, analysis or report. CATT's response fails to provide any of this important information. For its part, T-Mobile provided this information with each study, test, analysis or report it conducted in support of its Application.

The reference to CATT's response to Interrogatory 5 is equally uninformative. CATT's response is an opinion, without any legal support, about the breadth of the term "natural resources" as that term is used under § 22a-19. Nor does the response provide or reference any scientific data in support of the stated opinion. Ultimately, the response fails to set forth any study, test, analysis or report even though it suggests that CATT conducted an "analysis."

Accordingly, T-Mobile cannot fairly assess whatever conclusions CATT reached regarding the impact of the proposed Facility on the "natural resources" of the State as determined by CATT's "analysis" or the process CATT undertook to reach those conclusions. T-Mobile cannot challenge those conclusions or processes adequately without the information prior to the hearing. "The rules of discovery are designed to make a trial less a game of blindman's [bluff] and more a fair contest with the basic issues and facts disclosed to the fullest [practicable] extent." *Sturdivant v. Yale New Haven Hospital, supra*, 2 Conn. App. 106 (1984).

T-Mobile respectfully requests that this information be provided prior to the hearing or that CATT be precluded from admitting any evidence regarding alternative the Town's communications needs. See Practice Book § 13-14.



27. Please state whether CATT (or someone retained by CATT or by someone affiliated with CATT) conducted any studies, tests, analyses or reports concerning the proposed Facility which are not addressed by any of the proceeding interrogatories.

**Response: CATT has analyzed the impact on the residents in the immediate neighborhood of the Facility with regard to several issues: property values, salability of homes, negative impact of aesthetics on the community, and the overall rating by the media of Trumbull as one of the best towns under 35,000 population in which to live.**

T-Mobile objects to this response because it fails to provide any detail about the “analysis” conducted concerning the subjects listed in the response. In its interrogatories, T-Mobile expressly requested that CATT describe (1) the nature and type of each study, test, analysis or report; (2) who conducted each study, test, analysis or report; (3) when each study, test, analysis or report occurred; and (4) the results of each study, test, analysis or report. CATT’s response fails to provide any of this important information. For its part, T-Mobile provided this information with each study, test, analysis or report it conducted in support of its Application.

Accordingly, T-Mobile cannot fairly assess whatever conclusions CATT reached regarding the impact of the proposed Facility on the listed subjects, as determined by CATT’s “analysis,” or the process CATT undertook to reach those conclusions. T-Mobile cannot challenge those conclusions or processes adequately without the information prior to the hearing. “The rules of discovery are designed to make a trial less a game of blindman’s [bluff] and more a fair contest with the basic issues and facts disclosed to the fullest [practicable] extent.” *Sturdivant v. Yale New Haven Hospital*, *supra*, 2 Conn. App. 106 (1984).

T-Mobile respectfully requests that this information be provided prior to the hearing or that CATT be precluded from admitting any evidence regarding alternative the Town's communications needs. See Practice Book § 13-14.

28. Please identify each person whom CATT expects to call as an expert witness to testify at any hearing related to the Facility and for each expert identified . . .

e. state the qualifications of said expert, and identify all resumes or CVs used by said expert in the preceding four years;

**Response: e) Please be referred to the pre-filed testimony of Kevin Plumb.**

T-Mobile objects to CATT's response as to subsection (e) of this interrogatory because CATT did not provide the *curriculum vitae* or resume for Kevin Plumb. It is appropriate to provide *curriculum vitae* or resume of a purported expert, particularly if that expert has not testified before the Council previously. For its part, T-Mobile provided the *curriculum vitae* or resume of Eric Fine, even though he has testified before the Council previously. Additionally, this background information affords T-Mobile the opportunity to examine Mr. Plumb about his qualifications.

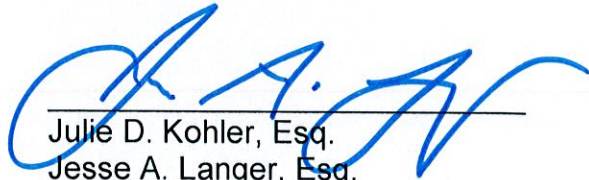
#### **IV. CONCLUSION**

T-Mobile respectfully requests that the Council order CATT to provide an adequate response to Interrogatories 1 and 23-29 prior to the hearing. Alternatively, T-Mobile requests that CATT be precluded from admitting any evidence regarding the subject matter of any of the aforementioned interrogatories.

Respectfully Submitted,

T-MOBILE NORTHEAST LLC

By:

A handwritten signature in blue ink, appearing to be 'J. A. Langer', written over a horizontal line.

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Jesse A. Langer, Esq.  
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**ORDER**

The forgoing Motion for Order of Compliance, having been heard, it is hereby ORDERED:

That the Motion for Order of Compliance is GRANTED and that the Intervenor, Citizens Against Trumbull Tower, provide an adequate response to Interrogatories 1 and 23-29 prior to the hearing; OR

That the Motion for Order of Compliance is GRANTED and that the Intervenor, Citizens Against Trumbull Tower, is precluded from admitting any evidence regarding the information sought in Interrogatories 1 and 23-29; AND/OR

That the Motion for Order of Compliance is GRANTED and that the Intervenor, Citizens Against Trumbull Tower, \_\_\_\_\_ so that the ends of justice may be met; OR

That the Motion for Order of Compliance is DENIED.

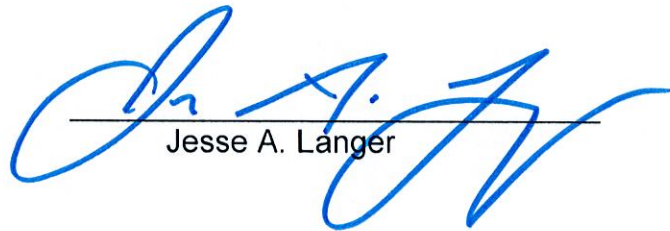
\_\_\_\_\_

Robert Stein  
Chairman, Connecticut Siting Council

**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:

Keith R. Ainsworth, Esq.  
Evans Feldman & Ainsworth, L.L.C.  
261 Bradley Street  
P.O. Box 1694  
New Haven, CT 06507-1694  
**(Via Email: [krainsworth@snet.net](mailto:krainsworth@snet.net))**

  
\_\_\_\_\_  
Jesse A. Langer