



**BERCHEM, MOSES & DEVLIN, P.C.**  
ATTORNEYS & COUNSELORS AT LAW

MARIO F. COPPOLA, ESQ.  
BERCHEM, MOSES & DEVLIN, P.C.  
1221 POST ROAD EAST  
WESTPORT, CT 06880  
Tel: (203) 227-9545  
mcoppola@bmdlaw.com

October 17, 2014

**VIA ELECTRONIC MAIL AND  
VIA FEDERAL EXPRESS**

Melanie Bachman, Esq.  
Executive Director  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

Re: Docket No. 448 – 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 831 Derby  
Milford Road, Orange, Connecticut

Dear Ms. Bachman and Mr. Stein:

Enclosed please find the original and fifteen (15) copies of the Intervenors' Reply Brief to Cellco's Objection To Intervenors' Motion To Order To Compel Production Of Documents dated October 17, 2014. Copies of this filing were sent via electronic and regular mail, postage prepaid, to all parties and intervenors of record.

If you have any questions please feel free to contact me.

Very truly yours,



Mario F. Coppola

MFC/kaa  
Enclosure

cc: Kenneth Baldwin, Esq.  
Senator Gayle Slossberg  
State Representative Paul Davis  
State Representative Themis Klarides  
State Representative James Maroney

**CONNECTICUT SITING COUNCIL**

**APPLICATION OF CELLCO PARTNERSHIP )**  
**d/b/a VERIZON WIRELESS TO THE ) DOCKET NO. 448**  
**CONNECTICUT SITTING COUNCIL FOR A )**  
**CERTIFICATE OF ENVIRONMENTAL )**  
**COMPATIBILITY AND PUBLIC NEED )**  
**FOR THE CONSTRUCTION MAINTENANCE )**  
**AND OPERATION OF A TELE- )**  
**COMMUNICATIONS FACILITY LOCATED )**  
**AT ORANGE TAX ASSESSOR MAP 77, ) OCTOBER 17, 2014**  
**BLOCK 3, LOT 1, 831 DERBY MILFORD )**  
**ROAD, ORANGE, CT )**

**REPLY BRIEF TO CELLO’S OBJECTION TO INTERVENORS’ MOTION FOR  
ORDER TO COMPEL PRODUCTION OF DOCUMENTS**

**I. Preliminary Statement**

The intervenors, ALBERT SUBBLOIE, JACQUELINE BARBARA, GLENN MACINNES, and JILL MACINNES (collectively, the “Intervenors”), hereby respectfully submit this brief in reply to the “opposition” filed by the applicant, CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS (“Cellco”), dated October 14, 2014, regarding the Intervenors’ Motion For Order to Compel Production Of Documents, dated October 10, 2014, and in further support thereof. The Intervnors, on grounds of fundamental fairness and due process, seek an order compelling Cellco to produce its withheld records/data within the context of a confidentiality order and/or under seal by a date certain, or have its application denied with prejudice. Such an order and/or dismissal of the contested application is necessary because of Cellco’s assertion that

the Intervenors, nor their expert witness, David Maxson, cannot accurately evaluate Cellco's application since they do not possess the "confidential" data and records that Cellco has intentionally withheld from them and this Honorable Council. Cellco's opposition, if sustained by the Council, will violate the Intervenors' constitutional and due process rights to a fair hearing, as well as the requirements of the Uniform Administrative Practices Act, Conn. Gen. Stat. §§ 4-166, *et. seq.*

Cellco has refused to disclose this data and records based solely on its interest to keep any such propriety data and records confidential. Cellco could be assured that any propriety information that it seeks to protect will be kept confidential and not be subject to disclosure to any third parties, because the production of such information and records could be filed under seal. Furthermore, all interested parties will execute a confidentiality agreement that does not permit them to disclose the data and records to any third parties. Therefore, Cellco will not be prejudiced in any way whatsoever by the disclosure of such information and records.

## II. Law and Legal Argument

"In all its proceedings, a regulatory agency must act strictly within its statutory authority, within constitutional limitations, and in a lawful manner." (Internal quotations omitted; citation omitted.) *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 536 (1987). "Hearing before administrative agencies," such as this Council, "although informal and conducted without regard to the strict rules of evidence, must be conducted so as not to violate the fundamental rules of natural justice. . . . Due process of law requires not only that there be due notice of the hearing but that at the hearing the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, to

cross-examine witnesses and to offer rebuttal evidence.” (Internal quotations omitted; citations omitted.) *Id.* A fundamental principle of due process is that each party has the right to receive notice of a hearing, and the opportunity to be heard at a meaningful time and in a meaningful manner. *Harkless v. Rowe*, 232 Conn. 599, 627 (1995). “An integral premise of due process is that a matter cannot be properly adjudicated ‘unless the parties have been given a reasonable opportunity to be heard on the issues involved ....’” *Bryan v. Sheraton-Hartford Hotel*, 62 Conn.App. 733, 741 (2001), quoting *Bloom v. Zoning Board of Appeals*, 233 Conn. 198, 205 (1995). The Intervenors and the Council, thus far, have been denied an opportunity to know the facts on which this Council is requested to act.

Cellco’s expert witnesses have attempted to argue that the Intervenors are not able to have an accurate opinion regarding the Cellco’s application precisely because they do not possess all of the data and records that Cellco has intentionally decided not to submit into the record of this proceeding. Cellco’s expert witness, Juan Latorre, testified that **“Mr. Maxson [the Intervenors’ expert] does not have all the data that is available to [Cellco] that could allow him to make a[n] accurate and truthful depiction on what potential coverage and capacity benefits of this site could be.”** Hearing Transcript, September 16, 2014, at p. 503.

Cellco misses the point entirely when it argues that “the Intervenors seek to compel Cellco to produce yet more evidence in support of its application.” (Opposition, at p. 2.) Neither the Intervenors, nor this Council, are in a position to know, first, if Cellco’s application is supported in light of the secret data and records that Cellco refuses to submit, and second, whether the withheld data and records even supports Cellco’s application. It may completely undermine the same, particularly when the Intervenor’s expert, Mr. Maxson disputes certain of

Cellco's conclusions. More critically, Cellco argues to this Council that the Intervenors and their expert are not able to validly criticize Cellco's application because of their lack of access to Cellco's secret data and records. This assertion is untenable and, if allowed to stand by this Council, will fundamentally violate the rules of natural justice of all parties that have an interest in Docket No. 448.

Cellco argues that the Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-166, *et. seq.* (the "Act"), permits the Council to limit the participation of the Intervenors in this proceeding. (Opposition, at pp. 2-3.) However, C.G.S. § 4-177a(d) of the Act does not under any circumstances allow the Council to conduct the hearing in a manner that violates the Intervenors' rights of due process. *Huck, supra*, at 536. Further, the Intervenors' participation in this matter was not limited by this Council when they successfully moved to intervene. Section 4-177b of the Act also permits the Council to subpoena and require the production of records. Certainly, information and records which Cellco claims are absolutely necessary before one may accurately consider its application are worthy of production.

Furthermore, contrary to Cellco's assertion, the Intervenors do not rely on due process principles alone. Section 4-177c of the Act grants the Intervenors the statutory right to inspect and copy the applicant's data.

**In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents, not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.**

In *Office of Consumer Counsel v. Dep't of Pub. Util. Control*, 44 Conn. Supp. 21, 27 (Conn. Super. Ct. 1994), the court stated that Section 4-177c, "unambiguously requires parties and agencies in administrative proceedings to provide other parties to the proceedings access to relevant documents... The public policy of this state, therefore, as expressly enunciated by the legislature, strongly favors prehearing discovery of relevant documents by the plaintiff." (Emphasis added). In that case, Connecticut Light and Power Company was compelled to produce records of an internal investigation of a sixty-nine day shutdown at its nuclear power generating facility because the records were *relevant* to the proceeding, notwithstanding its argument that the records were privileged and of a safety sensitive nature.

Similarly here, Cellco does not claim that the requested information and records are not relevant. To the contrary, Cellco's expert witness actually claims that it is impossible for another radio frequency expert to accurately evaluate the application without reviewing the requested information and records. Cellco instead withholds the information pursuant to the unilateral assertion that it is "competitively sensitive information that Cellco cannot share publicly." There is no such assertion recognized in law for failing to disclose relevant information in a contested proceeding and Cellco cites to no federal law or state statute precluding its production of the withheld records and/or data. The information is certainly "relevant," moreover, as Cellco argues that Mr. Maxson's expert report and critical analysis of its application is invalid because he does not possess the same. It is also uncontested that a confidentiality agreement can address any and all legitimate confidentiality concerns voiced by Cellco. Such agreements are a common part of a contested case and even litigation between competitors.

III. Conclusion

For all of the foregoing reasons, as well as those set forth in its underlying Motion to Compel, the Intervenor respectfully move for an order compelling Cellco to produce its withheld information/records within the context of a confidentiality order and/or under seal by a date certain, or have its application denied with prejudice.

Respectfully submitted,

**THE INTERVENORS**

BY:  \_\_\_\_\_

Mario F. Coppola, Esq.  
Berchem, Moses, and Devlin, P.C.  
1221 Post Road East, Suite 301  
Westport, CT 06880  
Tel: 203-227-9545; Fax: 203-226-1641  
Email: [mcoppola@bmdlaw.com](mailto:mcoppola@bmdlaw.com)  
THEIR ATTORNEYS

**CERTIFICATE OF SERVICE**

This is to certify that on this 17<sup>th</sup> day of October date a true copy of the foregoing has been sent by U.S. Mail, first-class, postage pre-paid, to the following parties of record:

Melanie Bachman, Esq., Executive Director, Connecticut Siting Council, 10 Franklin Sq., New Britain, CT 06051 (1 original, 15 copies, plus 1 electronic)

Cellco Partnership d/b/a Verizon Wireless, Kenneth Baldwin, Esq.; Robinson & Cole, 280 Trumbull Street, Hartford, CT 06103

State Senator Gayle Slossberg, Legislative Office Building Room 2000, Hartford, CT 06106

State Representative Paul Davis, Legislative Office Building, Room 4045, Hartford, CT 06106

State Representative Themis Klarides, Legislative Office Building, Room 4200, Hartford, CT 06106

State Representative James Maroney, Legislative Office Building, Room 5006, Hartford, CT 06106

  
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Mario F. Coppola, Esq.