

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
APPLICATION OF CELCO PARTNERSHIP : DOCKET NO. 471
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 :
208 KIRK ROAD (a/k/a 1075 PARADISE :
AVENUE) IN HAMDEN, CONNECTICUT : MARCH 28, 2017

**RESPONSE OF CELCO PARTNERSHIP D/B/A VERIZON WIRELESS
TO OBJECTION TO MOTION FOR PROTECTIVE ORDER**

Cellco Partnership d/b/a Verizon Wireless (“Cellco”) opposes Patricia Sorrentino’s March 24, 2017 objection to Cellco’s Motion for Protective Order and renews its request that the Connecticut Siting Council (“Council”) issue a Protective Order with respect to certain terms of a Land Lease Agreement, dated July 6, 2015, between Joseph Vignola and Denise Courtmanche Vignola and Cellco (the “Agreement”), submitted to the Council in connection with the above-referenced proceeding.

I. Background

On March 3, 2017, Cellco submitted its application in the above-referenced docket, including a redacted copy of the Agreement.¹ The redacted Agreement retains many of the significant provisions of the Agreement, including the initial lease term, provisions for extensions, requirements for governmental approvals, requirement that Cellco maintain

¹ Application of Cellco Partnership d/b/a Verizon Wireless, Hamden 8, 208 Kirk Road, Hamden, Connecticut (Mar. 3, 2017), Attachment 17.

insurance, removal at the end of the term, environmental compliance, and procedures in the event of fire or other casualty. Modest amounts of commercially sensitive, confidential financial information, including the exact amount of rent (the “Confidential Information”) was redacted. In its March 15, 2017 Motion for Protective Order, Cellco agreed, pursuant to Conn. Gen. Stat. § 16-50o to submit into the record the full text of the Agreement, provided that the Council issue Protective Order that would limit disclosure of the Confidential Information to the Council and its staff.

II. Legal Standard

The Council has consistently held that the Agreement’s financial terms redacted by Cellco, including the exact amount of rent, are “proprietary information” and “trade secrets” not subject to disclosure. Conn. Gen. Stat. § 16-50o(c) provides as follows:

The applicant [before the Council] 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.

In response to a municipality’s argument that the exact amount of a telecommunications land lease must be publicly disclosed, the Council concluded that the exact amount of rent was a trade secret subject to disclosure to the Council only, under a protective order.² Specifically, the City of Danbury had argued that Conn. Gen. Stat. § 16-50o(c) mandated public disclosure of the exact rent amount of a land lease for a telecommunications facility.³

² Docket 366, Conclusions of Law Re Motion for Protective Order to Not Disclose the Exact Monthly Rent in Lease Agreement (Apr. 23, 2009), at 4.

³ *Id.* at 2.

Citing Connecticut case law and Department of Public Utility Control (now Public Utilities Regulatory Authority, or “PURA”) precedent on proprietary information and trade secrets, the Council adopted a six-part test for determining whether given information is a trade secret:

1. The extent to which the information is known outside 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.⁴

Based upon an analysis of the above six factors, the Council concluded that the exact rent amount qualifies as a trade secret and need not be publicly disclosed.⁵ Since its decision in Docket No. 366, the Council has made forty (40) similar determinations over more than six (6) years that the exact amount of rent (and, since 2014, other financial terms) disclosed in a lease agreement with a property owner for the development of a

⁴ *Id.* at 3 (citing *Dept. of Public Utilities of the City of Norwich v. Freedom of Information Commission*, 55 Conn. App. 527, 530 (1999)).

⁵ *Id.* at 4.

telecommunications facility is confidential.⁶ In fact, Cellco is aware of no instance over the last eight (8) years in which the Council denied a request for protective treatment for the exact amount of rent disclosed in a lease agreement.

III. Argument

The Confidential Information constitutes trade secrets that need not be publicly disclosed, according to the test adopted by the Council. Specifically:

1. The Confidential Information related to this particular location is not publicly known.
2. A limited number of persons within the business have knowledge of the Confidential Information.
3. Cellco has used best efforts to maintain the Confidential Information as secret.⁷
4. The Confidential Information is commercially valuable, confidential, proprietary, and market-sensitive information that constitutes trade secrets.⁸
5. Cellco expends a significant amount of time and resources setting and negotiating rent amounts and other financial terms.

⁶ See, e.g., Rulings in Docket 375 (May 12, 2009); Docket 376 (May 12, 2009); Docket 384 (Nov. 6, 2009); Docket 386 (Nov. 6, 2009); Docket 387 (Dec. 8, 2009); Docket 388 (Oct. 23, 2009); Docket 390 (Nov. 23, 2009); Docket 391 (Dec. 23, 2009); Docket 392 (Dec. 23, 2009); Docket 393 (Dec. 23, 2009); Docket 396 (Jan. 8, 2010); Docket 397 (Feb. 25, 2010); Docket 399 (Mar. 26, 2010); Docket 402 (Jul. 16, 2010); Docket 405 (Nov. 5, 2010); Docket 409 (Nov. 5, 2010); Docket 408 (Nov. 8, 2010); Docket 410 (Jan. 21, 2011); Docket 413 (Jan. 21, 2011); Docket 414 (Jan. 21, 2011); Docket 416 (Mar. 18, 2011); Docket 417 (Jun. 24, 2011); Docket 420 (Sep. 23, 2011); Docket 422 (Sep. 12, 2011); Docket 423 (Jan. 24, 2012); Docket 427 (Jun. 22, 2012); Docket 428 (Nov. 16, 2012); Docket 434 (Feb. 19, 2013); Docket 436 (May 17, 2013); Docket 444 (Mar. 21, 2014); Docket 445 (Apr. 15, 2014); Docket 446 (Mar. 21, 2014); Docket 449 (Jun. 16, 2014); Docket 452 (Oct. 31, 2014); Docket 453 (Dec. 12, 2014); Docket 454 (Jan. 9, 2015); Docket 455 (Jan. 23, 2015); Docket 456 (Mar. 6, 2015); Docket 458 (Apr. 17, 2015); Docket 462 (Sep. 16, 2015).

⁷ Affidavit of Anthony R. Befera, Manager – Real Estate & Project Implementation for Cellco (Mar. 13, 2017), and ¶ 7.


⁸ Id. at ¶ 6.

6. While the exact lease amount for some *other sites* may be publicly known or ascertainable, the exact lease amount for *this site* remains confidential. The Confidential Information, specific to this particular site in Hamden, could not be properly acquired or duplicated by comparison to other leases related to other sites (especially those in other states).

Therefore, the Confidential Information meets the Council's standards for "proprietary information" or "trade secrets" under Conn, Gen. Stat. §16-50o(c). Patricia Sorrentino's objection has not articulated any reason for the Council change its clear and consistent precedent of protecting such information.

Based on the foregoing, Cellco respectfully requests that the Council deny Patricia Sorrentino's objection and grant Cellco protective treatment for the Confidential Information.

Respectfully submitted,
CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS

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CERTIFICATION OF SERVICE

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