

December 13, 2011

To:

**Robert Stein, Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051**

From:

**The Berkshire-Litchfield Environmental Council
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Re: Proposed Revisions to CSC Regulations

Dear Chairman Stein,

Thank you for the opportunity to comment on the Proposed Revisions to the CSC Regulations. We are The Berkshire-Litchfield Environmental Council, a 501 (3)(c) non-profit organization that focuses on environmental issues affecting the Northwest Corner of Connecticut and the Berkshire region of Massachusetts. Founded in 1970, we have a membership of 560 and have addressed our efforts to diverse subjects, including a proposed hydroelectric pumped storage power plant, water and air contamination, land preservation, zoning controls, vernal pools protection, and most recently the subject of the environmental effects associated with the siting of telecommunications towers.

BLEC has sponsored educational forums on cell tower siting in 1996 (Falls Village) and 2000 (Litchfield). BLEC co-sponsored cell towers forums in 2007 (Sheffield, MA.) and 2008 (Cornwall). All have been very well attended. Our goal was to provide local communities with more information than what was readily available through the telecom companies or regional planners. Toward that end, we have brought in expertise from the Federal Communications Commission; U.S. Fish and Wildlife Service; U.S. Environmental Protection Agency; the Connecticut Siting Council; renowned research scientists; physicists; RF engineers; and environmental/land-use attorneys. Eight other environmental organizations co-sponsored the 2000 forum with BLEC, including The Nature Conservancy, The Housatonic Valley Association, The Berkshire Natural Resources Council, Orion Afield, Sharon Audubon, Scenic Hudson, Lake Watch Educational Institute; and the E.F. Schumacher Society. We produced a book from that forum entitled, **Cell Towers, Wireless Convenience? or Environmental Hazard? Proceedings of the "Cell Towers Forum," State of the Science/State of the Law**, edited by former New York Times writer, author, and BLEC Communications Director, B. Blake Levitt. The book is considered a solid resource on this subject across the country, providing information that is not easily available to the public. Joel Rinebold, former director of the Connecticut Siting Council (CSC), has a chapter in the book and Derek Phelps, another former CSC director, used many of the same slides contained in the book in his presentations.

BLEC History with the CSC:

BLEC has a long history of addressing the CSC.

- . 1992: BLEC intervened in, and successfully opposed, a communications tower proposed by the Department of Public Safety on Canaan Mountain.
- . 2005: (Docket # 306) BLEC intervened in, and unsuccessfully opposed, a cell tower proposed in the town of Salisbury within 1000 feet of our office.
- . 2006: (Docket #763) BLEC provided expert advice to Carl Bornemann, Beebe Hill Rd., Falls Village, on a proposed Nextel antenna mount on high tension lines. The application was withdrawn because Nextel did not have a legal right to build at that site. That case was litigated against the CSC which ultimately won.
- . 2007: Docket #332) BLEC provided expert advice to the town of Washington in the successful siting of a Verizon cell tower on RT 202.
- . 2008: BLEC provided expert advice to the town of Washington in a pre-application on Rabbit Hill Rd. that was ultimately not filed with the CSC.
- . 2008: (Docket #353) BLEC filed comments on behalf of residents in the town of Kent on a cell tower that was approved there. We partnered with the Sharon Audubon on environmental information submitted in that application.

. 2008: (Docket #360) BLEC provided expert advice to Falls Village resident Dina Jaeger, and spoke against a cell tower proposed in that town during the public comment period at the CSC. In that application, we assisted in gathering information from The Nature Conservancy, the US Fish and Wildlife Service and others regarding environmental information submitted into the record. That application was approved and challenged. The CSC ultimately won.

. 2009: (Docket #378) BLEC provided expert advice to the towns of Warren and Washington on Rabbit Hill Rd. for an SBA cell tower application that was withdrawn because the applicant had no legal right to build. We partnered with the State Attorney General's office and with the US Fish and Wildlife Service among others on that application.

. 2010: BLEC provided expert advice to the Montessori School in the town of Washington on a cell tower proposal near the school's property line that ultimately did not go to the CSC. AT&T withdrew its lease agreement with the landowner afterward. That site was near wood turtle habitat registered at the Department of Energy and Environmental Protection (DEEP).

. 2011: (Docket #409) During the public comment period, BLEC spoke on behalf of the Falls Village Conservation/Inland Wetlands Commission in opposition of a Verizon/Cellco tower proposed for Cobble Hill – an application denied by the CSC and currently being challenged by the applicant.

. 2011: (Docket 422) BLEC filed expert comments in a cell tower proposed in Watertown on Bassett Rd. – decision pending.

. BLEC has partnered with numerous environmental organizations, municipalities and citizens groups on other applications before the CSC and other state agencies, such as the Yale Farm development proposed for Norfolk and industrial-scale wind turbines in Colebrook.

BLEC Concerns with the Proposed Changes:

1. The main area in the proposed changes that concerns BLEC is 16-50j-15b, Status of Limited Appearance, which states that:

“ No person who is a party or intervenor, including those who are members of non-profit organizations and those who are witnesses for a party or intervenor, may also make an oral limited appearance statement during the public comment session of the hearing or submit a written limited appearance statement to the Council.”

BLEC believes that this provision would unduly restrict the rights of local environmental organizations and vested municipal commissions such as inland/wetland/conservation commissions, which are often far better repositories of important environmental information of significance to all CSC application. Clearly from the timeline mapped out above regarding BLEC's participation in CSC hearings – both as an intervenor and as an expert environmental non-profit submitting information during the public comment session in oral and written form,

we would be adversely affected by this change. So would other expert organizations such as the Housatonic Valley Association which has participated in CSC review in both capacities. In addition, it would adversely affect organizations like The Nature Conservancy and The Audubon Society which have participated as non-parties/intervenors through both BLEC and HVA. Such a restriction could also affect a federal agency such as the U.S. Fish & Wildlife Service from filing statements through environmental groups, municipalities or citizen groups.

BLEC also believes that this provision would require all local non-profits and/or vested municipal commissions to file for party or intervenor status or be excluded from participation in any given application. It would preclude BLEC from submitting expert information on behalf of citizens who are not intervenors or parties in a proceeding. It would also require that other expert non-profits providing support in contested cases for intervenors or parties to also file as parties, too. That creates an additional barrier among normally cooperative but resource-stretched environmental groups. It also requires them to hire legal counsel to represent their interests in the evidentiary process – a burden that many will shy away from for financial reasons. This will also impact the CSC itself as it makes it all the more difficult to gather the full range of information needed to make a reasoned judgment.

The CSC review process is already daunting enough for most citizens and municipalities – so much so that many never step up at all. Many feel resentful and powerless in the face of an overarching state entity with the ability to affect personal lives and entire towns unlike any other in the state agency. Very few municipal commissions have the wherewithal, time, resources or stamina to rise to the level of professional participation that, for instance, the Falls Village Conservation/Inland Wetlands Commission was able to do in the ongoing Cobble Hill cell tower proposal now in litigation by Celco after the CSC's refusal. That small, all-volunteer group devoted months of time and had the benefit of pro bono legal counsel with expertise in addressing the CSC to guide them. Most town commissions are not in that category. Nor do most municipal attorneys not have the specific skills required to participate at CSC hearings – skills that are a cross between environmental law and litigation. The timelines and pre-interrogatories alone are enough to exclude most people and municipalities.

Citizens and municipalities seek information from experts in cell tower proposals, for instance, on RF coverage overlaps, historic significance, visual aesthetics, property devaluation, health issues, tower height, wetland impacts, road runoff, effects to endangered or species of special concern, and a range of sometimes esoteric issues that they do not normally regulate for. It is important that this expert information be accessible through both the formal CSC channels as parties/intervenors, but also through the less formal one where the public is more comfortable. This entire proposed change section unduly restricts those rights and will serve to further undermine the public's confidence in the CSC's review process. That process already appears stacked in various industries' favor since they are the ones with teams of attorneys on retainer and consulting firms with long experience in coming before the CSC. The public and municipal entities have precious little ground where they are comfortable addressing you. The proposed regulation change would force intervenors, parties, and non-profits to pre-file formal testimony and be subject to cross examination under oath, at significant inconvenience, time, and expense that would always depend on their available resources. Or they would be forced to abandon the opportunity to comment altogether in violation of due process. This is especially true in light of

the fact that the CSC will not allow new information in briefs that go outside the formal record, and reserves all rights to determine the relevance of any oral or documentary evidence received as a matter of policy, providing for the exclusion of irrelevant, immaterial or unduly repetitious evidence. The CSC process already determines who, what, when and how citizens and towns can participate in applications of great importance to the quality of lives. This provision will narrow that participation beyond what most can countenance.

BLEC urges you to strike section 16-50j-15b.

2. BLEC is also concerned with section 16-50j-22a(d) Protective Orders. Our organization's founding impetus in 1970 was an industrial-scale pond and release proposal that would have effectively flooded the environmentally critical Robbins Swamp and devastated all of Wagon Valley in Falls Village. This is the site of endangered flora and fauna found nowhere else in the state or country as verified by the CT DEEP, The Nature Conservancy, and U.S. Fish & Wildlife Service. Some of the restrictions contained in the critical infrastructure and proprietary information exemptions would have precluded BLEC from gaining significant information from that applicant today. Many utilities now hide behind proprietary information exclusions in the name of national security, including cell tower applicants regarding coverage and leasing contracts that have nothing to do with national security issues. This claim has been abused to the detriment of needed public information. There is less full and fair examination of facts in applications now, hence less ability to make reasoned decisions.

BLEC urges the CSC to clarify the language in this section.

3. Lastly, BLEC is especially concerned about any further codification in the CSC process of the use of the Department of Energy and Environmental Protection's (DEEP) Natural Diversity Database (NDDDB) as contained in the D&M, section 16-50j-61-7 and (c) 2C. The DEEP's wildlife inventory database is woefully inadequate and that agency does not have the resources to conduct wildlife inventory. The database is mostly a compilation of reported sightings by recognized professionals, sometimes verified by DEEP during follow-up. Unfortunately, most applicants to the CSC use that proforma DEEP letter, which itself contains the disclaimer that it should not be used in lieu of wildlife inventory at a particular site, as the final word. A case in point is what BLEC experienced during Docket 306 in 2005 when we intervened in the Salisbury cell tower application. BLEC president, Starling W. Childs, a licensed forester and a lecturer at the Yale School of Forestry who teaches how to conduct wildlife inventory to each year's incoming graduate forestry students, identified a Bobolink within mere feet of the tower site in an adjacent unmowed field the day of the CSC's public hearing. Communications Director, B. Blake Levitt, saw the bird too. Bobolinks are listed as species of special concern in CT. Mr. Childs testified under oath as having seen one that day, yet that information never made it into the public record other than in audio tapes. BLEC subsequently filed that sighting with the then DEP and c/c'd the CSC on that filing. That, too, never made it into the record. BLEC filed additional information during the 30-day period requesting a wildlife inventory at the site to

determine if that was a one-time sighting or a nesting habitat requiring verification by DEP but it, too, never made it into the record. The tower application was approved. The takeaway from Docket 306 is that the DEEP's database is incomplete and that it isn't easy to get something registered there, or noted on record.

While it may be important to include at least reference of the NDDDB as a framework for the CSC's protective environmental obligations, some mention of its inherent incompleteness should also be included, with recommendations for further investigation by any given applicant when warranted. This would be especially advisable if a professionally respected environmental organization or recognized expert provides information regarding the presence of endangered or species of special concern not listed in the NDDP. As currently used, the NDDP does not establish the absence of sensitive species and at best may only indicate a likelihood of such presence. And even then, the NDDP is used for "mitigation" of a site during buildout, not a refusal to build altogether. There is no environmental follow-up by the CSC or DEEP for sites approved in sensitive areas and all enforcement shifts to local entities after-the-fact. There is something profoundly unfair in this. Further codification of the use of the NDDDB in the proposed changes without clarifying language as to its inherent limitations serves neither the environment, nor the CSC nor Connecticut's remarkable natural resources – especially in the rural Northwest corner – very well.

Conclusion:

Many of the proposed changes do seem positive and well-intended. BLEC cannot imagine the pressures the CSC faces on any given day. But BLEC is concerned that what the CSC may see as beneficial to streamlining the review process may be at the inadvertent expense of public participation and accurate environmental assessment. Please try to see it from the established environmental organization's point of view – we are your natural allies -- as well as that of the towns which, of necessity, must interact with you. The process needs to be made easier for us, too, not more impenetrable and daunting.

Thank you.

Respectfully Submitted,,

Starling W. Childs, President

B. Blake Levitt, Communications Director

