BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Appeal of American Towers, Inc. from the October 5, 2000 decision of the Department of Consumer and Regulatory Affairs regarding 4623 41st Street, N.W.	))))	BZA Appeal No. 16990

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' OPPOSITION TO REQUEST FOR STAY

The District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") opposes the request of American Towers, Inc. ("American Towers"), that this appeal be "stayed and that no hearings be scheduled pending resolution of all judicial proceedings." Letter dated Jan. 14, 2003, from Robert Clayton Cooper, Esq., to Jerrily R. Kress, FAIA, Director, Office of Zoning (BZA Case No. 16990, Exhibit No. 15).

Nothing prevents the Board of Zoning Adjustment ("BZA") from fully resolving this administrative appeal without awaiting the outcome of further judicial proceedings. The decision from which American Towers appeals is DCRA's October 10, 2000 decision rescinding permits for American Towers to proceed with construction of a 756-foot tower at 4623 41st Street, N.W. No decision or order has been issued by DCRA or by any court that in any way stays or overturns DCRA's decision to rescind these permits. Moreover, there is no agreement among the parties to stay this appeal.

By contrast, the appeal filed on behalf of Advisory Neighborhood Commission 3-E ("ANC") on September 18, 2000, was a challenge to DCRA's earlier decision to *issue* permits for construction of the proposed tower. BZA Case No. 16649. As explained in DCRA's Memorandum in support of its Motion to Dismiss (BZA Case No. 16990, Exhibit No. 16), the ANC's appeal became moot as a result of DCRA's October 10, 2000

BZA
Case No. 16990
Exhibit No. 23

Board of Zoning Adjustment
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CASE NO. 16990
EXHIBIT NO. 23

decision to rescind the permits. It was clear that the ANC's appeal would continue to be moot unless DCRA's decision to rescind the permits was either modified or overturned. Accordingly, on September 6, 2001, the scheduling of the ANC's appeal was "postponed" pending a resolution of American Towers' court challenge to DCRA's decision. (BZA Case No. 16990, Exhibit No. 16, Attachment D) Two years later, the ANC's appeal was withdrawn "without prejudice in the event the permits in question were ever reactivated." (BZA Case No. 16990, Exhibit No. 16, Attachment E)

Unlike the ANC's appeal, American Towers' appeal is not moot and need not be stayed. American Towers' decision to seek relief in federal district court and in D.C. Superior Court in no way relieves the company of its obligation to pursue its administrative remedies. As the U.S. Court of Appeals for the District of Columbia Circuit stated in its October 30, 2002 decision affirming in part and reversing in part the U.S. District Court's dismissal of American Towers' amended complaint: "American Towers has not yet secured appellate decisions from the District's Board of Zoning Adjustment and Board of Appeals and Review, as D.C. law entitles it to do, nor has it offered any explanation of its failure to do so." (BZA Case No. 16990, Exhibit No. 11, p.2)

Respectfully submitted,

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Attorneys for the District of Columbia

April 24, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2003, copies of the foregoing Opposition and the attached Proposed Decision and Order were mailed, first-class postage prepaid, to:

Robert Clayton Cooper, Esq. (and faxed to Mr. Cooper at 202-457-1678)
Jackson & Campbell, P.C.
1120 20th Street, N.W.
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American Towers, Inc.
690 Canton Street
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Ms. Ellen McCarthy
Office of Planning
Room 4000
801 N. Capitol Street, N.E.
Washington, DC 20002

Jill Diskan
ANC 3E
P.O. Box 9953
Washington, DC 20016

and hand-delivered to:

Lori Monrow
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441 4th Street, N.W., 6th Floor-N
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Bennett Rushkoff

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of American Towers, Inc.	)	
from the October 5, 2000 decision of the	)	BZA Appeal No. 16990
Department of Consumer and Regulatory	)	
Affairs regarding 4623 41st Street, N.W.	)	

PROPOSED DECISION AND ORDER

American Towers, Inc. filed this appeal on January 10, 2003, challenging the October 10, 2000 decision of the Department of Consumer and Regulatory Affairs ("DCRA") to rescind permits for the construction of a 756-foot tower at 4623 41st Street, N.W. By letter from its counsel dated January 14, 2003, American Towers requests that this appeal be "stayed and that no hearings be scheduled pending resolution of all judicial proceedings." DCRA opposes the request for a stay.

The Board is not aware of any decision or order issued by DCRA or by any court that in any way stays or overturns DCRA's decision to rescind the permits at issue in this appeal. Therefore, nothing prevents this Board from fully resolving this administrative appeal without awaiting the outcome of further judicial proceedings.

For this reason, it is hereby **ORDERED** that the request for a stay is **DENIED**.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE IN TEN DAYS AFTER IT BECOMES FINAL.