



Office of the People's Counsel District of Columbia

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Elizabeth A. Noël
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November 19, 2002

Chairperson Carol J. Mitten
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, D.C. 20001

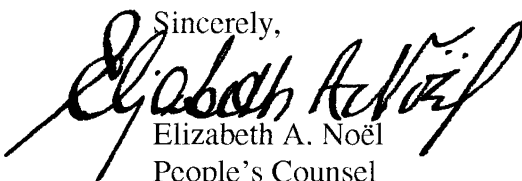
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D.C. OFFICE OF ZONING
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Re: Supplemental Statement of the Office of the People's Counsel on the
Amended Regulations for Wireless Telecommunications Infrastructure

Dear Chairperson Mitten:

As you are aware, representatives from the Office of the People's Counsel ("OPC" or "Office") attended the Zoning Commission's Public Hearing held on October 17, 2002, as well as the roundtable discussions held on March 5 and 19, 2001. In accordance with OPC's request for an extension, the Office is submitting the attached supplemental statement.

Please contact Consumer Services Manager, Herbert Jones or Attorney, Joy Ragsdale at 202-727-3071 if the Office can be of further assistance to you.

Sincerely,

Elizabeth A. Noël
People's Counsel

Att.

cc: Vice-Chair Anthony Hood
Commissioner Kwasi Holman
Commissioner Herbert Franklin
Commissioner John Parsons

ZONING COMMISSION
District of Columbia
Case 01-02
Exhibit 126

**SUBMISSION OF
THE OFFICE OF THE PEOPLE'S COUNSEL'S
SUPPLEMENTAL STATEMENT
ON DEVELOPING STANDARDS IN THE DISTRICT OF COLUMBIA TO
REGULATE ANTENNAS, TOWERS, AND ASSOCIATED INFRASTRUCTURE
IN RESPONSE TO ZONING COMMISSION
PUBLIC HEARING ON OCTOBER 17, 2002**

(D.C.M.R. August, 9, 2002)

Elizabeth A. Noël
People's Counsel
November 19, 2002

Office of the People's Counsel
for the District of Columbia
1133 Fifteenth Street, NW, Suite 500
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TABLE OF CONTENTS

I. BACKGROUND	1
II. DISCUSSION	2
A. <u>OPC Recommends the Zoning Commission Establish a Fiduciary Treasury Fund That Will Allow Community Residents to Adequately Develop a Case to Present to the Commission</u> ..	2
B. <u>OPC Submits A Cooperative Plan Developed Jointly By Industry and Community Representatives May Minimize Community Opposition</u>	3
III. CONCLUSION	3

**BEFORE THE
ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA**

IN THE CASE OF	)	
	)	
(Text Amendment) REGULATION	)	Case No. 01 - 02
OF ANTENNAS, ANTENNA TOWERS	)	
AND MONOPOLES	)	

**THE OFFICE OF THE PEOPLE’S COUNSEL’S
SUPPLEMENTAL STATEMENT**

I. BACKGROUND

On October 16, 2002, OPC filed a statement in response to the Commission’s request for comments on the proposed amendments to existing regulations on antennas and associated infrastructure. OPC recommended the Commission:

- 1) *provide the public an opportunity to comment on all antenna siting applications notwithstanding Federal Communications Commission exemptions;*
- 2) *require an applicant to file jointly an Environmental Assessment or Environmental Impact Statement with an application filed; and*
- 3) *incorporate historical institutions and preservation societies in the application approval process.*

On October 17 and 21, 2002s the Commission held a public hearing to receive comments on proposed amendments to existing regulations governing antennas and associated infrastructure. The Commission informed the participants that the record of this proceeding would remain open until November 8, 2002. On November 8, 2002, OPC filed a motion requesting an extension until November 19, 2002 in which to file a supplemental statement. Accordingly, OPC submits the following recommendations in its supplemental statement:

1. OPC Recommends the Zoning Commission establish a fiduciary treasury fund that will allow

community residents to develop a comprehensive case;

2. OPC submits a cooperative plan developed jointly by industry and community representatives will minimize community opposition.

II. DISCUSSION

A. OPC Recommends the Zoning Commission Establish a Fiduciary Treasury Fund That Will Allow Community Residents to Develop a Comprehensive Case

OPC is the statutory representative of District of Columbia ratepayers in public utility matters and is often approached by community residents for legal representation and technical assistance on telecommunications issues, including wireless communication issues. However, OPC often finds itself in a quandary because while it is mandated to protect consumer interests on telecommunications issues, OPC cannot represent D.C. citizens on cellular tower issues due to jurisdictional and statutory boundaries. Consumers and community associations are often not financially capable of hiring technical consultants, such as attorneys and technical expert witnesses to assist them in presenting a case to the Commission and as a result are often swallowed by industry giants in presenting their case to the Commission. OPC submits it is necessary that a fund is created that would allow D.C. residents to husband resources and develop a legally sufficient case to the Commission. Accordingly, OPC recommends the Commission consider initiating legislative action that would create a source of funding for community groups.¹

Another option would be to create a fund apportioned from licensing or application fees paid by an applicant to assist D.C. citizens in bearing the expenses of litigation.² The Commission can

¹ For example, OPC and the Public Service Commission for the District of Columbia (“PSC”) litigation expenses are paid through a treasury fiduciary fund established pursuant to District of Columbia Code Section 34-912 and subchapter V of Chapter 3 of Title 47. Public Utilities are assessed through a special franchise tax that is deposited into each agency fund. *See*, D.C. CODE ANN. § 34-912 (2001).

² D.C. CODE ANN. § 6-661.01(a) (West 2001).

allocate an appropriate amount to each citizen or community association to offset the expenses of preparing a case for presentment to the Commission or developing an Environmental Assessment or Impact Statement by expert consultants. OPC submits there is a need for a creative legislative initiative by state legislators and industry members to address a continuing concern that public interests of the community are adequately presented to the Commission.

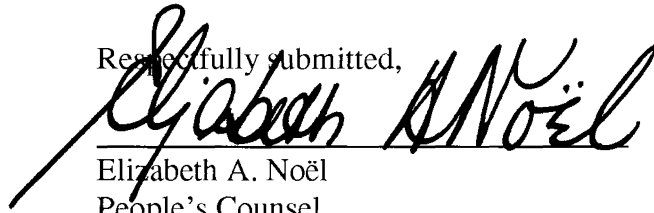
B. OPC Submits A Cooperative Plan Developed Jointly By Industry and Community Representatives May Minimize Community Opposition

The siting of personal wireless facilities requires cooperation from the industry, federal and state legislators, as well as community residents. OPC submits a comprehensive plan using a community participatory process should be developed to involve residents in determining the appropriate site for cell towers or personal wireless facilities in their community prior to an application filing before the Commission. More often than not, residents are not involved in determining the appropriate site location for a cellular tower until an application has been filed with the Commission. This often results in opposition from the affected community. OPC submits involving community residents in the initial stages of a cellular tower siting may allay fears related to health-related issues and other environmental concerns.

III. CONCLUSION

In summary, OPC submits a fiduciary treasury fund established by the Zoning Commission will assist community representatives in developing a comprehensive record for the Commission's review and consideration in public hearings. Additionally, a comprehensive plan using a community participatory process involving residents in the initial stages of determining an appropriate site for cell towers or personal wireless facilities in their community may reduce community opposition of a proposed cellular tower siting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth A. Noël", written over a horizontal line.

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Dated: November 19, 2002