

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF JOHNSON)

CASE NO.: 2014-00135

RECEIVED

MAY 2 - 2014

PUBLIC SERVICE
COMMISSION

SITE NAME: NIPPA

OBJECTION TO APPALACHIAN WIRELESS' REQUEST FOR EXTENSION OF TIME
AND
STATEMENT OF COMPLIANCE WITH ALL REGULATORY REQUIREMENTS AS TO
COLLOCATION INVESTIGATION

AT&T Mobility¹ objects to Movant's² request for an extension of time to plead further and requests that the Commission process AT&T Mobility's Application without delay. Movant is "the operator of a cellular tower" near the site that is the subject of AT&T Mobility's Application,³ and it claims that "the parties are in discussions about a *possible* co-location agreement which *may* affect the course and outcome of further proceedings in this matter."⁴ AT&T Mobility, however, is not aware of any such discussions as to this tower site. Movant's counsel has notified the undersigned of his client's purported interest in beginning such discussions, but no negotiations have occurred since such notice.

Nor should Movant be allowed to delay the Commission's consideration of AT&T Mobility's Application while Movant decides whether to "respond, intervene, or otherwise

1 New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility.
2 East Kentucky Network , LLC d/b/a Appalachian Wireless.
3 Request and Motion for Extension of Time at 1.

plead herein.” Movant already has had ample time to make that decision whether as a result of certified mail notice, posted signs, and/or newspaper publication, all pursuant to 807 K.A.R. 5:063, and has presented no grounds for being granted additional time. In proceedings before the judiciary in Kentucky, the Civil Rules provide a court may enlarge a period of time “for cause shown....” *Id.* at K.R.C.P. 6.02. The same principle should be applied to Public Service Commission proceedings. Movant has made no showing of cause for the requested delay.

AT&T Mobility has complied with all applicable regulatory requirements as to collocation investigation, and both federal and state law encourage the rapid deployment of advanced wireless communications technologies that are essential to creating the investment, jobs, and economic growth that improve the lives of Kentucky’s citizens. AT&T Mobility, therefore, respectfully requests that the Commission on the existing record deny the request of Movant, which is a competing tower company, to delay processing AT&T Mobility’s Application. In the alternative, if the Commission elects to require further proof from Movant before ruling on its Motion, AT&T Mobility requests that the Commission require Movant to submit such proof, including supporting affidavits, no later than two weeks from the date of the filing of this Objection and instruct Staff to subsequently and expeditiously conduct an informal conference with the parties and recommend to the Commission how best to proceed.

In support of this Objection and Statement of Compliance, AT&T Mobility respectfully provides and states the following information:

1. In compliance with 807 K.A.R. 5:063 Section 1(s), Applicant has considered the

likely effects of the installation of the proposed WCF on nearby land uses and values and had concluded upon filing of its Application that there is no more suitable location reasonably available from which adequate services can be provided, and that there are no reasonably available opportunities to co-locate Applicant's antennas on an existing structure. When suitable towers or structures exist, Applicant attempts to co-locate on existing structures such as communications towers or other structures capable of supporting Applicant's facilities; however, no other suitable or available co-location site was found to be located in the vicinity of the site.

2. We are not aware of any current discussions between AT&T Mobility and Appalachian Wireless about a possible co-location agreement for this site and so there is no basis to delay processing of the pending Application.

3. Unsubstantiated assertions of Appalachian Wireless should not delay the processing of the Application. If Appalachian Wireless has purportedly relevant information it wishes to present to the Public Service Commission, including any basis for intervention, it should be required to file such information no later than two weeks from the filing of the within Objection and should include an appropriate supporting affidavit in connection with an appropriate Motion for intervention.

4. One purpose of the federal Telecommunications Act of 1996 is to "... encourage the rapid deployment of new telecommunications technologies." (Public Law 104–104, 104th Congress). In addition, the Kentucky General Assembly has adopted KRS 278.546 providing in pertinent part that "... state-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky's citizens, to

create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000." These compelling pronouncements of federal and state policy weigh heavily against delaying consideration of AT&T Mobility's pending application merely because the owner of one or more other towers suggests that "a **possible** co-location agreement" that "**may** affect" the Application could be the subject of discussion. The fact that 807 K.A.R. 5:063, Section 1(s) speaks in terms of a "**reasonably** available opportunity to collocate...." further discredits Movant's speculative references.

5. Appalachian Wireless has likewise not justified any delay in processing of the Application considering the public convenience and necessity interests which are the basis for the Application pursuant to KRS 278.020, KRS 278.650 and implementing regulations authorized by KRS 278.665. Much more than a mere business transaction is involved. Movant only represents its own proprietary interest in connection with potential intervention in the Application proceedings in that it has no standing to represent the interests of potential wireless customers which Applicant seeks to provide service or the public interest in collocation as reflected by 807 K.A.R. 5:063 Section 1(s). As stated in the Application, the public convenience and necessity require the construction of the proposed Wireless Communications Facility ("WCF"). The construction of the WCF will bring or improve the Applicant's services to an area currently not served or not adequately served by the Applicant by increasing coverage or capacity and thereby enhancing the public's access to innovative and competitive wireless communications services. The WCF will provide a necessary link in the Applicant's communications network that is designed to meet the increasing demands for wireless services in Kentucky's wireless communications service

area. The WCF is an integral link in the Applicant's network design that must be in place to provide adequate service.

WHEREFORE, Applicant AT&T Mobility respectfully requests the Kentucky Public Service Commission:

(a) accept this Objection and Statement of Compliance/ for filing based on all of the foregoing argument, the interests of AT&T Mobility as an FCC-licensed wireless carrier, and the public interest in wireless service reflected in applicable law as discussed above;

(b) deny the request for extension of time of Appalachian Wireless, or, in the alternative, require filing of any Motion for Intervention with substantiated basis attached and supported by affidavit within two weeks of the filing of this Objection; and instruct Staff to subsequently and expeditiously conduct an informal conference with the parties and recommend to the Commission how best to proceed.

(c) take the Application under submission on the existing record;

(d) AT&T Mobility having met the requirements of KRS §§ 278.020(1), 278.650, and 278.665 and all applicable rules and regulations of the PSC, after due consideration, grant a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth in the Application without delay; and/or

(e) to grant AT&T Mobility any other relief to which it is entitled.

CERTIFICATE OF SERVICE

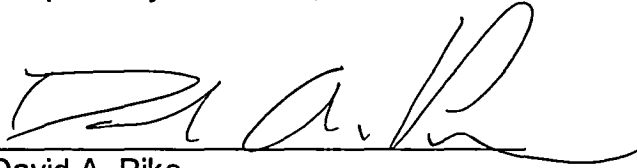
The undersigned hereby certifies the within was mailed by U.S. Postal Service first class mail postage prepaid to the following on this 2ND day of MAY 2014:

William S. Kendrick
Francis, Kendrick & Francis
P.O. Box 268
Prestonsburg, Kentucky 41653
(Attorney for East Kentucky Network, LLC, d/b/a Appalachian Wireless)

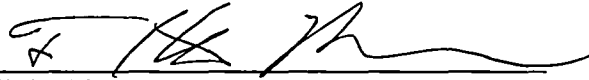
Jeff Derouen
Executive Director, PSC
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602

Richard G. Raff
Jeb Pinney
Division of General Counsel
Kentucky Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfront, KY 40602

Respectfully submitted,



David A. Pike
and



F. Keith Brown
Pike Legal Group, PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369
Telephone: (502) 955-4400
Telefax: (502) 543-4410
Email: dpike@pikelegal.com
Email: kbrown@pikelegal.com

and

Patrick W. Turner
General Attorney - Kentucky
AT&T Kentucky
1600 Williams Street
Suite 5200
Columbia, South Carolina 29201
Telephone: (803) 401-2900
Telefax: (803) 254-1731
Email: pt1285@att.com
Attorneys for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility