

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS PCS,)	
LLC AND AMERICAN TOWERS LLC FOR ISSUANCE)	
OF A CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY TO CONSTRUCT A WIRELESS)	2015-00404
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE COUNTY)	
OF WOLFE)	

ORDER

On January 11, 2016, David R. Graham, a resident of Campton, Wolfe County, Kentucky, filed a request to intervene in the instant case. As a basis for his request, Mr. Graham states that he opposes the construction of the proposed wireless communications facility ("cell tower") at 395 Miller Ridge Road, Pine Ridge, Kentucky, for "health, safety and environmental reasons" and that "the people in this community should be protected from the radiation of a cell phone tower, especially the children." Mr. Graham further argues that the proposed cell tower is located within 175 feet from Daniel Boone National Forest.

On February 1, 2016, joint applicants, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility and American Towers LLC ("Applicants") filed a response in opposition to Mr. Graham's request to intervene. Applicants assert that they have provided expert testimony regarding the proposed cell tower's safety design features, while Mr. Graham offers only his lay opinion regarding safety issues. Applicants contend that his lay opinion regarding safety issues is not substantial evidence supporting the denial of a

cell tower application.¹ Applicants argue that Mr. Graham fails to cite to any law that requires the proposed cell tower to be a particular distance from Daniel Boone National Forest, and note that Applicants provided the requisite notice to the federal agency with oversight of the Daniel Boone National Forest. Additionally, Applicants maintain that, to the extent the proposed cell tower complies with Federal Communication Commission's ("FCC") regulations regarding emissions, the Commission is prohibited from considering the environmental effects of radio frequency emissions in the evaluation of a proposed cell tower.² Applicants assert that the proposed cell tower complies with FCC regulations, as evidenced by the FCC license to provide wireless communications services by the proposed cell tower that Applicants filed in this case.

For the above reasons, Applicants contend that Mr. Graham's request to intervene is contrary to 807 KAR 5:001, Section 4(11)(b), which provides that the Commission grant leave to intervene where intervention is likely to present issues or develop facts that assist the Commission in considering the matter. Applicants assert that Mr. Graham's request to intervene should be denied because Mr. Graham raises issues that the Commission is prohibited from considering, and therefore, is unlikely to present issues or develop facts that assist the Commission.

Pursuant to 807 KAR 5:001, Section 5(3), a party shall file a reply no later than five days of the filing of the most recent response to the party's motion. To date, Mr. Graham has not filed a reply to Applicants' response. Accordingly, the Commission

¹ See *Cellco P'ship v. Franklin Cnty.*, 553 F.Supp. 2d 838 (E.D. Ky. 2008).

² See 47 U.S.C. Section 332(7)(B)(iv); *T-Mobile Central v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 800 (6th Cir. 2012).

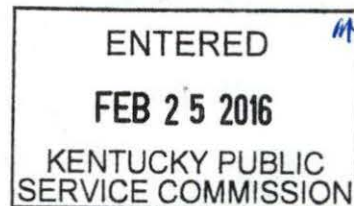
finds that Mr. Graham should be afforded an opportunity to file a reply to Applicants' response within seven days. Should Mr. Graham fail to submit a response, his request to intervene will stand submitted for a decision.

IT IS THEREFORE ORDERED that:

1. Within seven days of the date of this Order, Mr. Graham shall file a reply, if any, to the Applicant's response in opposition to Mr. Graham's request for intervention.

2. Upon the expiration of the seven-day period afforded to Mr. Graham for filing a reply, if any, his request for intervention shall stand submitted for a decision based on the record.

By the Commission



ATTEST:


Acting Executive Director

*Honorable David A Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*New Cingular Wireless PCS, LLC dba AT&T
1010 N St Mary's Street, 9th Floor
San Antonio, TX 78215