

COMMONWEALTH OF KENTUCKY RECEIVED
BEFORE THE PUBLIC SERVICE COMMISSION

MAR 07 2005

In the Matter of:

PUBLIC SERVICE
COMMISSION

THE APPLICATION OF)
BELLSOUTH MOBILITY, LLC,)
D/B/A CINGULAR WIRELESS - KENTUCKY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2004-00053
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY AT)
630 SUGGS ROAD, CARLISLE, KENTUCKY 40311)
IN THE WIRELESS COMMUNICATIONS LICENSE AREA)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF NICHOLAS)

SITE NAME: BLUE LICKS

**MOTION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(TO EXTEND TIME TO COMMENCE CONSTRUCTION)**

Comes New Cingular Wireless PCS, LLC, as successor to BellSouth Mobility, LLC, d/b/a Cingular Wireless – Kentucky (“Cingular Wireless”), by counsel, and moves the Kentucky Public Service Commission (“PSC”) to amend its Order granting a Certificate of Public Convenience and Necessity (“CPCN”) to Cingular Wireless for the construction and operation of a wireless telecommunications facility to extend the time to exercise the authority granted therein.

In support of this motion, Cingular Wireless submits the following information:

1. On March 25, 2004 the PSC issued a CPCN for the construction and operation of a wireless telecommunications facility to be located at 630 Suggs Road, Carlisle, Kentucky 40311 (38° 23' 41.34" North latitude, 84° 01' 54.43" West longitude).

2. Pursuant to KRS § 278.020(1), Cingular Wireless is required to exercise said CPCN “within one (1) year from the grant thereof, exclusive of any delay due to the ... failure to obtain any necessary grant or consent(.)”

3. Cingular Wireless has not exercised the subject CPCN by commencing construction and does not anticipate that it will be able to exercise the CPCN in advance of the March 25, 2005 expiration date because of pending of grants or consents in the form of the Federal Communications Commission (“FCC”) approval of an environmental assessment for the site.

4. Cingular Wireless, as a licensee of the FCC, is required to receive FCC approval of an environmental assessment for the site prior to commencing construction of the subject facility pursuant to a Memorandum of Agreement among the FCC, the Kentucky Heritage Council (as the Kentucky State Historic Preservation Officer) and Cingular Wireless. A copy of the Memorandum of Agreement is attached as **Exhibit A** to this Motion.

5. FCC approval of the environmental assessment is being pursued diligently by Cingular Wireless, and Cingular Wireless is prepared to commence construction of the facility within a reasonable time following receipt of the required FCC approval.

6. Cingular Wireless states that the requested extension is warranted to allow additional time for Cingular Wireless to allow for completion of public notice requirements attendant to the FCC approval process and to receive the necessary approval from the FCC to commence construction of the subject facility.

7. Cingular Wireless states that it shall begin construction of the facility within a reasonable and not more than 30 days following receipt of the necessary FCC approval.

8. There were no intervenors in opposition to the application in the PSC proceedings in this case.

9. Cingular Wireless states that the requested extension is necessary to effectuate the CPCN and to provide adequate utility service, and that it has no reason to believe such extension shall cause hardship to any party.

WHEREFORE, Cingular Wireless, by counsel, moves the PSC to amend its Order dated March 25, 2004, granting a CPCN to Cingular Wireless for the construction and operation of a wireless telecommunications facility, to prescribe an extension of the time for Cingular Wireless to exercise the authority granted therein. Cingular Wireless further requests that such extension be for a period of 30 days from the date approval to commence construction is received from the FCC by Cingular Wireless or, in the alternative, extension up to and until July 25, 2005. Cingular Wireless shall provide notice to the PSC upon commencement of construction.

Respectfully submitted,



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ATTORNEY FOR NEW CINGULAR WIRELESS PCS,
LLC

EXHIBIT A
COPY OF MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION,
THE KENTUCKY HERITAGE COUNCIL AND
BELLSOUTH MOBILITY LLC, A GEORGIA LIMITED LIABILITY COMPANY
d/b/a CINGULAR WIRELESS
REGARDING THE CONSTRUCTION OF A COMMUNICATIONS TOWER AT
630 SUGGS ROAD, CARLISLE, NICHOLAS COUNTY, KENTUCKY

WHEREAS, Bellsouth Mobility LLC, a Georgia Limited Liability Company, d/b/a Cingular Wireless (Cingular) proposes to construct a 400-foot guyed communications tower at 630 Suggs Road in Carlisle, Nicholas County, Kentucky; and

WHEREAS, Cingular is a licensee of the Federal Communications Commission (“FCC”) and intends to use the tower in connection with the provision of its licensed service; and

WHEREAS, the FCC has determined that the construction of the tower is a federal undertaking; and

WHEREAS, Cingular, pursuant to delegation from the FCC, initiated the National Historic Preservation Act (“NHPA”) Section 106 review for the site as required by the FCC rules, 47 C.F.R. § 1.1307(a)(4); and

WHEREAS, the FCC and Cingular have consulted with the Kentucky Heritage Council, which is the Kentucky State Historic Preservation Officer (“Kentucky SHPO”), pursuant to 36 C.F.R. Part 800, regulations implementing Section 106 of the NHPA, and Cingular has been invited to participate in this Memorandum of Agreement between the FCC and the Kentucky SHPO; and

WHEREAS, the FCC and the Kentucky SHPO have determined the Area of Potential Effects (“APE”) for the proposed project is the area encompassed within a one mile radius of the tower site; and

WHEREAS, the FCC and the Kentucky SHPO have determined that the tower construction would have an adverse effect on three historic farmsteads (Ni-161, Ni-164, and Ni-159) which have been determined eligible for listing in the National Register of Historic Places (“National Register”); and

WHEREAS, the FCC and the Kentucky SHPO have determined that these sites are the only historic properties within the APE that would be adversely affected by the project; and

WHEREAS, Cingular, consistent with the FCC’s requirements for environmental review, has considered and evaluated a number of alternate sites for locating the proposed tower and has concluded that all of the sites considered are either unavailable for Cingular’s use or unsatisfactory from a technical radio

frequency perspective for the coverage needs of the communications systems supported by the antennas to be located on the facility; and

WHEREAS, members of the general public and other interested parties were afforded the opportunity to participate in and comment on this proceeding during public zoning hearing meetings held via the Public Service Commission, application made February 25, 2004, and Certificate of Public Convenience and Necessity granted as of March 25, 2004; and

WHEREAS, the FCC has consulted with the Kentucky SHPO and other consulting parties to ensure that historic properties affected by the construction of the tower are taken into account; and

WHEREAS, Cingular has made a reasonable and good faith effort to identify and contact Indian tribes that might attach religious and cultural significance to historic properties within the APE; and

WHEREAS, the Advisory Council on Historic Preservation (“Advisory Council”) has declined to participate in the negotiation of this Memorandum of Agreement;

NOW THEREFORE, the FCC, the Kentucky SHPO, and Cingular agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and that these measures shall constitute full, complete and adequate mitigation measures under the NHPA and the implementing regulations of the Advisory Council and the FCC.

STIPULATIONS

The FCC, through coordination with Cingular, will ensure that the following measures are carried out:

I. SITE DESIGN

The tower will be a 400 foot guyed tower, with an overall height including all appurtenances not to exceed 420’ as approved by the Federal Aviation Administration (“FAA”) on February 20, 2004, under Aeronautical Study No. 2004-ASO-643-OE. The tower shall be light gray in color, with a chain link fence surrounding the tower compound.

II. CULTURAL RESOURCES STUDY

In consultation with the Kentucky SHPO, Cingular will obtain the services of a Kentucky SHPO approved consultant to develop a comparative context of the three farm complexes (Ni-161, Ni-164, and Ni-159) and relate that to the overall scheme of agriculture in Nicholas County. This historic context will be of sufficient detail to make National Register evaluations of eligibility and ineligibility for the context of agriculture for similar historic properties in this area of Nicholas County. Research will include but is not necessarily limited to site-specific deed research, site-specific research into the agricultural production of the individual farms utilizing manuscript census of agriculture, and general statistics on agriculture in Nicholas County from the US Census of Agriculture, and from other documents that might relate to this topic. Generalized descriptions of the various resources will be drawn from the original report prepared by Cultural Resource Analysts, Inc. Upon completion, a draft of the historic context will be submitted to the Kentucky SHPO for review and approval. The consultant will incorporate any SHPO recommended changes or corrections. Upon approval of the final manuscript by the Kentucky SHPO, the consultant will submit three bound copies to the Kentucky SHPO, and two bound copies for public use by a library or historic society in Carlisle.

III. REMOVAL

Once the tower has exceeded its useful life for telecommunications purposes, Cingular or its successor shall disassemble the tower and associated facilities within 90 days and notify the Kentucky SHPO and FCC.

IV. DISPUTE RESOLUTION

Should the Kentucky SHPO object within 30 days to any actions taken pursuant to this Memorandum of Agreement, the FCC shall consult with the Kentucky SHPO to resolve the objection. If the FCC determines that the objection cannot be resolved, the FCC shall request further comments or recommendations of the Advisory Council concerning the dispute pursuant to 36 C.F.R. Part 800. Any Advisory Council comment provided in response to such a request will be taken into account by the FCC in accordance with 36 C.F.R. Part 800 with reference only to the subject of the dispute. The FCC's responsibility to carry out all actions under this Memorandum of Agreement that are not the subject of the dispute will remain unchanged.

V. ENFORCEMENT

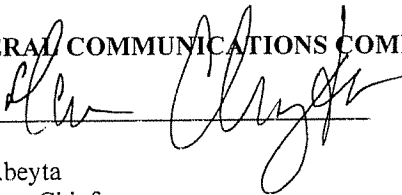
Failure to carry out the terms of this Memorandum of Agreement will require that the FCC again request the comments of the Advisory Council, in accordance with 36 C.F.R. Part 800. If the terms of this Memorandum of Agreement are not implemented, the FCC shall provide the Advisory Council with the opportunity to comment on the effects and mitigation alternatives.

VI. OTHER REQUIREMENTS

Cingular will file with the FCC an application and environmental assessment within thirty (30) days of the effective date of this Memorandum of Agreement. Cingular will not initiate construction of the tower until the FCC has approved the environmental assessment.

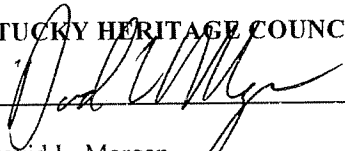
Execution of this Memorandum of Agreement and implementation of its terms evidence that the FCC has afforded the Advisory Council a reasonable opportunity to comment on the Cingular tower and that the FCC has taken into account the effects of this undertaking on historic properties. This Memorandum of Agreement shall be effective upon notice from the FCC that all parties have agreed to and signed this Memorandum of Agreement.

FEDERAL COMMUNICATIONS COMMISSION

By:  Date: 1/28/05

Dan Abeyta
Assistant Chief
Spectrum and Competition Policy Division,
Wireless Telecommunications Bureau

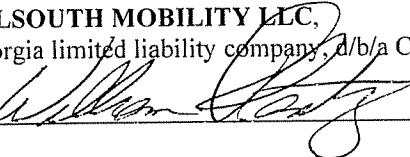
KENTUCKY HERITAGE COUNCIL

By:  Date: 1-14-05

Mr. David L. Morgan
Director, Kentucky Heritage Council, and
State Historic Preservation Officer

BELLSOUTH MOBILITY LLC,

a Georgia limited liability company, d/b/a Cingular Wireless

By:  Date: 12/16/2004

William Plantz
Executive Director – Network
Cingular Wireless