

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF)
BELLSOUTH MOBILITY, LLC,)
D/B/A CINGULAR WIRELESS - KENTUCKY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2004-00413
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY AT)
ROUGH AND TOUGH ROAD)
PRESTONSBURG, KENTUCKY 41653 OR, IN THE)
ALTERNATIVE, AN ORDER REQUIRING CO-LOCATION)
ON REASONABLE TERMS AND CONDITIONS)
IN THE WIRELESS COMMUNICATIONS)
LICENSE AREA IN THE COMMONWEALTH OF)
KENTUCKY IN THE COUNTY OF FLOYD)

SITE NAME: BRAINARD

**MOTION FOR JOINDER OF AN ADDITIONAL PARTY,
ACCEPTANCE FOR FILING OF THE ATTACHED
MEMORANDUM OF LAW, AND FOR A PRELIMINARY PROCEDURAL
SCHEDULE INCLUDING AN INFORMAL CONFERENCE**

By this motion, BellSouth Mobility, LLC, d/b/a Cingular Wireless – Kentucky (hereinafter, “BellSouth Mobility” or “Applicant”), requests that the Commission make East Kentucky Network Limited Liability Company (“East Kentucky Network”), a utility subject to the Commission’s jurisdiction pursuant to KRS 278.010 and 278.040, a party to this case; accept for filing the Memorandum of Law submitted herewith; and enter the proposed order, attached hereto, scheduling certain procedures in this case, including an informal conference for the purpose of discussing East Kentucky Network’s obligation as a public utility to permit co-location. BellSouth Mobility also requests that, if settlement on the co-

location issue is not reached at such conference, the parties and Commission Staff present dates upon which a public hearing concerning East Kentucky Network's obligation to permit co-location may be held.

This case raises key policy issues that are vital to Kentucky's economic development and to the promotion of efficient and timely deployment of telecommunications technology, particularly in rural and mountainous areas of the Commonwealth served by East Kentucky Network. BellSouth Mobility respectfully urges the Commission to ensure that all aspects of applicable law and policy are fully explored by granting this motion.

On October 22, 2004, BellSouth Mobility filed, pursuant to (i) KRS §§ 278.020, 278.040, 278.650, and 278.665 and applicable regulations, and pursuant to the Telecommunications Act of 1996, an Application requesting issuance of a Certificate of Public Convenience and Necessity ("CPCN") to construct, maintain, and operate a Wireless Communications Facility (the "WCF") in Floyd County, Kentucky. However, because of the existence of a suitable co-location alternative, BellSouth Mobility's request for a CPCN should be considered only after the Commission has first reached a determination as to whether East Kentucky Network should be required to permit BellSouth Mobility to co-locate its antennas, on reasonable terms and conditions, on East Kentucky Network's 325' tower located in Prestonsburg, Floyd County, Kentucky (the "Rough-N-Tuff Tower"). East Kentucky Network's Ruff-N-Tuff Tower is located a mere 982 feet from the WCF that BellSouth Mobility must construct if it is not permitted to co-locate.

The East Kentucky Network Rough-N-Tuff Tower was constructed pursuant to a

CPCN granted by this Commission on July 7, 2004.¹

East Kentucky Network has rebuffed without reason BellSouth Mobility's numerous attempts to discuss co-location, despite state and federal law and policy and Commission precedent. East Kentucky Network's refusal to permit co-location on its Rough-N-Tuff Tower has already delayed the provision of service to BellSouth Mobility's customers. East Kentucky Network should be required to enter into negotiations to permit BellSouth Mobility to co-locate its antennas on the Rough-N-Tuff Tower on reasonable terms and conditions consistent with industry practice and pursuant to the legal authorities cited in the Memorandum of Law tendered herewith.

Consequently, BellSouth Mobility respectfully requests that the Commission:

1. Make East Kentucky Network a party to this case;
2. Accept for filing BellSouth Mobility's Memorandum of Law submitted herewith; and
3. Enter the attached proposed order scheduling, at the Commission's earliest convenience, certain procedures, including an informal conference among Commission Staff, BellSouth Mobility, and East Kentucky Network, for the purpose of discussing East Kentucky Network's obligation as a public utility to permit other carriers to co-locate their antennas on East Kentucky Network's existing towers.

¹ Case No. 2004-00190, The Application of East Kentucky Network Limited Liability Company for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Tower in Floyd County, Kentucky (Final Order dated July 7, 2004).

Respectfully submitted,




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Attorney for BellSouth Mobility, LLC,
d/b/a Cingular Wireless - Kentucky

CERTIFICATE OF SERVICE

I hereby certify that, on January 12, 2005, a true and accurate copy of the foregoing Motion, attached Memorandum of Law, and Proposed Order were sent, by First Class Mail, postage prepaid, to East Kentucky Network, LLC d/b/a Appalachian Cellular, P.O. Box 405, Prestonsburg, Kentucky, 41653.


David A. Pike