

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

In the Matter of:

THE APPLICATION OF)	
NEW CINGULAR WIRELESS PCS, LLC)	
D/B/A CINGULAR WIRELESS)	
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 COLLOCATION)	
ON REASONABLE TERMS AND CONDITIONS)	
IN THE WIRELESS COMMUNICATIONS)	
LICENSE AREA IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF FLOYD)	
SITE NAME: BRAINARD)	

RECEIVED

JUL 25 2005

PUBLIC SERVICE
COMMISSION

**MOTION TO SCHEDULE A PUBLIC HEARING
AND PROCEDURAL ORDER**

By this motion, New Cingular Wireless PCS, LLC, d/b/a Cingular Wireless (hereinafter, "Applicant"), requests that the Commission schedule a public hearing and receive evidence concerning the feasibility of the collocation of Applicant's facilities at the Rough-N-Tuff Site owned by East Kentucky Network, LLC d/b/a Appalachian Wireless ("EKN"), including evidence of the industry standards for the reasonable terms and conditions of collocation agreements. Applicant also requests that the Commission receive evidence concerning EKN's current policy and practices related to the collocation of other providers' facilities upon its towers and receive public comment on the obligation of recipients of a CPCN for the construction, maintenance, and operation of a WCF to negotiate the terms and conditions of collocation with other carriers in good faith on reasonable terms and conditions consistent with industry practice, in order to

avoid unnecessary proliferation of wireless telecommunications towers and wasteful duplication of facilities.

In support hereof, Applicant states that by Order of the Commission dated March 1, 2005 this matter was held in abeyance while the parties engaged in negotiations regarding the collocation of Applicant's antennas on a tower owned by EKN and subject to a CPCN issued by the Commission. However, EKN has not negotiated with the Applicant in good faith by failing to offer collocation on reasonable terms and conditions consistent with industry practice. Specifically, EKN proposed rental terms in excess of \$104,000 per annum. Applicant routinely collocates its equipment in the Kentucky market on towers owned by a wide variety of owners at an average annual rental of \$17,000. EKN's proposal of annual rent in excess of \$104,000 far exceeds the industry standard. This behavior is in derogation of the public interest and EKN has routinely utilized this and other tactics to prevent the collocation Applicant's equipment on its towers.

On October 22, 2004, Applicant 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 collocation alternative, Applicant's request for a CPCN should be considered only after the Commission has first reached a determination as to whether EKN should be required to permit Applicant to collocate its antennas, on reasonable terms and conditions, on EKN's 325' tower located in

Prestonsburg, Floyd County, Kentucky (the "Rough-N-Tuff Tower"). EKN's Ruff-N-Tuff Tower is located a mere 982 feet from the WCF that Applicant must construct if it is not permitted to collocate. The EKN's Rough-N-Tuff Tower was constructed pursuant to a CPCN granted by this Commission on July 7, 2004.¹

This case raises key policy issues that are vital to Kentucky's economic development and the promotion of efficient and timely deployment of telecommunications technology, particularly in rural and mountainous areas of the Commonwealth served by EKN. Applicant respectfully urges the Commission to ensure that all aspects of applicable law and policy are fully explored by granting this motion including its mandate to: [1] avoid wasteful duplication of facilities pursuant to KRS § 278.020 and *Kentucky Utilities Co. v. Public Service Comm'n*, Ky., 252 S.W.2d 885 (1952); [2] ensure adequate and reasonable utility practices pursuant to KRS § 278.280 specifically and KRS Chapter 278 generally; [3] require complete analysis of collocation opportunities pursuant to 807 KAR 5:063 §1(1)(s); [4] oversee Kentucky telecommunications utilities' compliance with the Telecommunications Act of 1996 and PSC precedent, prohibiting anti-competitive behavior in derogation of the public interest; [5] support Governor Fletcher's policy of developing vital and innovative technology in Kentucky's rural communities, including high speed wireless data transfer, through the efficient use of existing telecommunications infrastructure; and [6] implement the Kentucky General Assembly's intent to avoid unnecessary proliferation of wireless telecommunications towers and wasteful duplication of facilities.

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).

Consequently, Applicant respectfully requests that the Commission enter the attached proposed order establishing discovery procedures and scheduling a public hearing to receive evidence concerning the feasibility of the collocation of Applicant's facilities at the Rough-N-Tuff site owned by East Kentucky Network, LLC d/b/a Appalachian Wireless ("EKN"), including evidence of the industry standards for the reasonable terms and conditions of collocation agreements. Applicant also requests that the Commission receive evidence concerning EKN's current policy and practices related to the collocation of other providers' facilities upon its towers and to receive public comment on the obligation of recipients of a CPCN for the construction, maintenance, and operation of a WCF to negotiate the terms and conditions of collocation with other carriers in good faith on reasonable terms and conditions consistent with industry practice, in order to avoid unnecessary proliferation of wireless telecommunications towers.

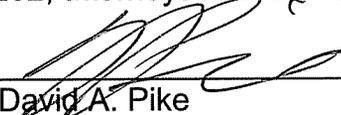
Respectfully submitted,



David A. Pike
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
Attorney for New Cingular Wireless PCS, LLC

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion To Schedule A Public Hearing and Procedural Order was mailed this 25th day of July, 2005, to John E. Selent and Holly C. Wallace, Dinsmore & Shohl, LLP, 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, attorneys for East Kentucky Network LLC.



David A. Pike

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

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC)
F/D/B/A BELL SOUTH MOBILITY, LLC,)
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 COLLOCATION)
ON REASONABLE TERMS AND CONDITIONS)
IN THE WIRELESS COMMUNICATIONS)
LICENSE AREA IN THE COMMONWEALTH OF)
KENTUCKY IN THE COUNTY OF FLOYD)

SITE NAME: BRAINARD

* * * * *

ORDER

On October 22, 2004, New Cingular Wireless PCS, LLC, f/d/b/a BellSouth Mobility, LLC (hereinafter, "Cingular Wireless" or "Applicant"), pursuant to KRS §§ 278.020, 278.040, 278.650, 278.665, the rules and regulations applicable thereto, and the Telecommunications Act of 1996, filed an application seeking the issuance of a Certificate of Public Convenience and Necessity ("CPCN") from the Kentucky Public Service Commission ("PSC") to construct, maintain, and operate a Wireless Communications Facility (the "WCF") to serve the customers of the Applicant with wireless telecommunications services.

In the alternative, Applicant requested that the PSC implement, on an expedited basis, the following procedures to enforce its mandate to: [1] avoid wasteful duplication

of facilities pursuant to KRS § 278.020 and *Kentucky Utilities Co. v. Public Service Comm'n*, Ky., 252 S.W.2d 885 (1952); [2] ensure adequate and reasonable utility practices pursuant to KRS § 278.280 specifically and KRS Chapter 278 generally; [3] require complete analysis of collocation opportunities pursuant to 807 KAR 5:063 §1(1)(s); [4] oversee Kentucky telecommunications utilities' compliance with the Telecommunications Act of 1996 and PSC precedent, prohibiting anti-competitive behavior in derogation of the public interest; [5] support Governor Fletcher's policy of developing vital and innovative technology in Kentucky's rural communities, including high speed wireless data transfer, through the efficient use of existing telecommunications infrastructure; and [6] implement the Kentucky General Assembly's intent to avoid unnecessary proliferation of wireless telecommunications towers and wasteful duplication of facilities.

Specifically, Applicant requested that the PSC issue an order [1] making East Kentucky Network, LLC d/b/a Appalachian Wireless ("EKN"), a utility under PSC jurisdiction pursuant to KRS 278.010, a party to this case; [2] requiring EKN to respond to Applicant's inquiries regarding collocation of Applicant's facilities at EKN's Rough-N-Tuff Site (Ky. PSC Docket 2004-00190, July 7, 2004); and [3] setting a hearing to receive evidence concerning the feasibility of collocation of Applicant's facilities at the Rough-N-Tuff Site. Applicant further requested that, if the evidence received pursuant to the procedures described above so warrants, the PSC require EKN to enter into an agreement, on reasonable terms and conditions consistent with industry practice, permitting Applicant to co-locate its facilities at the Rough-N-Tuff site rather than constructing the WCF proposed in this Application.

Applicant also requested that the PSC receive evidence concerning EKN's current policy and practice of refusing to permit collocation of other providers' facilities upon its towers and issue findings that [1] such policy and practice is in contravention of Kentucky law and policy; [2] the public convenience and necessity require that the recipient of a duly-issued CPCN for the construction of a WFC capable of supporting the facilities of additional collocating carriers shall not deny collocation on reasonable terms and conditions consistent with industry practice.

Having reviewed the application of New Cingular Wireless PCS, LLC and finding that the scope and complexity of the issues presented require further proceedings to investigate whether East Kentucky Network, LLC d/b/a Appalachian Wireless has engaged in behavior in derogation of the public interest in refusing to negotiate in good faith on reasonable terms and conditions consistent with industry practice the collocation of Applicant's equipment on its facilities; and further finding that a public hearing is necessary for the purpose of receiving public comment on the inherent obligation of recipients of a CPCN for the construction, maintenance, and operation of a WCF to negotiate the terms and conditions of collocation with other carriers in good faith on reasonable terms and conditions consistent with industry practice, in order to avoid unnecessary proliferation of wireless telecommunications towers and wasteful duplication of facilities.

IT IS THEREFORE ORDERED that:

1. East Kentucky Network LLC d/b/a Appalachian Wireless, a utility under PSC jurisdiction pursuant to KRS 278.010, is hereby made a party to this case. EKN shall be entitled to the full rights of a party and shall be served with the Commission's Orders

and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order. Should EKN file documents of any kind with the Commission in the course of these proceedings, said EKN shall also serve a copy of said documents on all other parties of record.

2. The procedural schedule set forth in Appendix A, which is attached hereto and incorporated herein, shall be followed.

3. The Commission shall receive evidence concerning the feasibility of the collocation of Applicant's facilities at the Rough-N-Tuff Site, including evidence of the industry standards for the reasonable terms and conditions of collocation agreements. The Commission shall also receive evidence concerning EKN's current policy and practices related to the collocation of other providers' facilities upon its towers and receive public comment on the obligation of recipients of a CPCN for the construction, maintenance, and operation of a WCF to negotiate the terms and conditions of collocation with other carriers in good faith on reasonable terms and conditions consistent with industry practice, in order to avoid unnecessary proliferation of wireless telecommunications towers and wasteful duplication of facilities.

4. All requests for information and responses thereto shall be appropriately indexed and 7 copies shall be filed with the Commission, with copies to all parties of record. Any request for information by letter from the Commission Staff shall be responded to as if set forth in a Commission Order. All responses shall include the name of the witness who will be responsible for responding to questions related to the information provided.

5. Any party filing testimony shall file an original and 10 copies.

6. Applicant shall give notice of the hearing in accordance with the provisions set out in 807 KAR 5:011, Section 8(5). At the time publication is requested, Applicant shall forward a duplicate of the notice and request to the Commission.

7. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

8. Any objections or motions relating to discovery or procedural dates shall be filed upon 4 business days' notice or explain why such notice was not possible.

9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

10. The procedural schedule set forth in Appendix A provides for the completion of this examination within the 6-month requirement.

Done at Frankfort, Kentucky, this ____ day of _____, 2005.

By the Commission

APPENDIX A
APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. : 2004-00413
DATED _____, 2005

All initial requests for information shall be filed no later than _____

The parties shall file responses to initial requests for information no later than _____

All supplemental requests for information, including notices to take depositions, shall be filed no later than _____

The parties shall file responses to supplemental requests for information, and all depositions shall be completed, no later than _____

EKN pre-filed testimony, if any, in verified prepared form shall be filed no later than _____

Cingular may file with the Commission the testimony of its rebuttal witnesses in written verified form no later than _____

Last day for Applicant to publish notice of hearing no later than _____

Public Hearing is to begin at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Cingular and EKN on _____

Briefs, if any, shall be filed by _____