

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

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In the Matter of:

NOV 16 2005

THE APPLICATION OF BELL SOUTH MOBILITY, LLC,)	
D/B/A CINGULAR WIRELESS - KENTUCKY)	PUBLIC SERVICE
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)	COMMISSION
CONVENIENCE AND NECESSITY TO CONSTRUCT)	
A WIRELESS COMMUNICATIONS FACILITY AT)	CASE NO. 2004-00413
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

RESPONSE TO MOTION TO COMPEL

East Kentucky Network, LLC ("East Kentucky Network"), by counsel, and in response to the motion to compel of Cingular Wireless, PCS, LLC d/b/a Cingular Wireless ("New Cingular"), states as follows.

On November 7, 2005, in accordance with the October 17, 2005 Procedural Order issued by the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), East Kentucky Network submitted its responses to the data requests of New Cingular. In Interrogatories 3, 4, 5 and 6, New Cingular sought specific, detailed information regarding cellular equipment co-located on East Kentucky Network's towers, information that is not readily available to the public, and could detrimentally affect East Kentucky Network should the information be disclosed to competitors, such as New Cingular, absent a confidentiality and non-use agreement. Specifically,

New Cingular requested the following information for each co-location to which East Kentucky Network is a party.

1. The street address of the cellular tower;
2. The coordinates of the cellular tower;
3. The amount of per month rental;
4. The per month co-location fee;
5. The fees per month for each antenna installed or maintained on the tower of property;
6. The fees per month or rate per foot for each coaxial cable installed;
7. The monthly fee for each satellite dish installed or maintained;
8. The member, employee, officer, director, managing agent, or other persons with knowledge of the subject matter;
9. The master license co-location agreement between the parties, if any;
10. The amount of any lump sum up front fees;
11. The amount of any fees for access, utility easements;
12. Any other fees not previously set out hereinabove; and
13. Any written documents related to the terms of the co-location.

East Kentucky Network responded to these interrogatories as follows. "EKN objects to this interrogatory on the grounds that is it unduly burdensome, outside the scope of discovery, and seeks confidential and proprietary information. Subject to and without waiving these objections, **EKN responds by stating that it will provide information responsive to this interrogatory once New Cingular has executed an appropriate confidentiality and non-use agreement.**"

In addition to indicating in its responses that it would provide responsive information once New Cingular executed a confidentiality and non-use agreement, counsel to East Kentucky Network

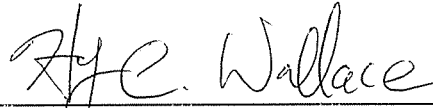
informed counsel to New Cingular that East Kentucky Network is ready to provide the information once New Cingular executes the confidentiality and non-use agreement. East Kentucky Network provided counsel to New Cingular with a copy of the confidentiality and non-use agreement on Monday, November 14, 2005. New Cingular's motion to compel, therefore, is without merit. East Kentucky did respond to New Cingular's requests.¹ East Kentucky Network indicated in those responses, and in conversations with counsel, that it is ready and willing to provide responsive information to the data requests once New Cingular executes a confidentiality and non-use agreement.

With regard to New Cingular's allegations concerning East Kentucky Network's responses to Interrogatories 7-9, New Cingular unnecessarily focuses on the word "written" in East Kentucky Network's response to Interrogatory No. 7, and alleges East Kentucky Network's response was "non-responsive or otherwise unduly restrictive." To clarify, East Kentucky Network does not have a co-location policy, written or otherwise. Therefore, with regard to Interrogatories 8 and 9, East Kentucky Network cannot identify any documents relating to the co-location policy or employees knowledgeable of the co-location policy, because there is no co-location policy. Thus, New Cingular's motion to compel is without merit.

In sum, New Cingular need only sign the confidentiality and non-use agreement provided by East Kentucky Network to receive information responsive to its data requests. The ball is in New Cingular's court. Accordingly, New Cingular's motion to compel is without merit and should be denied by the Commission.

¹ Thus, it did not violate 807 KAR 5:001 which prohibits a party from **failing to respond** on the basis of confidentiality.

Respectfully submitted,

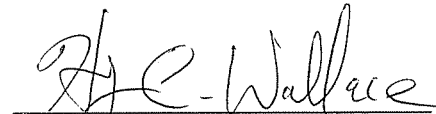


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CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served by hand delivery this 6th day of November, 2005, upon the following:

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