

IN THE PUBLIC SERVICE COMMISSION OF  
THE COMMONWEALTH OF KENTUCKY

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MAY 18 2014

PUBLIC SERVICE  
COMMISSION

CASE NO. 2013-00427  
NEW CINGULAR WIRELESS  
CELL TOWER  
HINDMAN

REPLY TO OBJECTION OF AT&T TO APPALACHIAN WIRELESS' REQUEST AND  
MOTION FOR EXTENSION OF TIME

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Comes the Movant, East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless") by counsel and states that the Objection of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T") to the Movant's Request and Motion for Extension of Time within which to respond, intervene or otherwise plead herein (the "Motion" filed herein on the 14th day of April, 2014, Exhibit 1 hereof) should be summarily OVERRULED. As grounds, Movant states as follows:

**I. THE MOTION DEMONSTRATES SUFFICIENT GROUNDS TO JUSTIFY THE REQUESTED TIME IN WHICH TO INTERVENE.**

The Motion clearly sets out legitimate interests of the Movant that it here seeks to protect by the grant of an extension of time within which to intervene: that the Movant is 1) real property owner who is affected by the near proximity of the AT&T proposed tower, and 2) that upon such affected property Movant is in fact the owner/operator of an existing wireless tower facility, which is the subject of discussion between the parties about a co-location opportunity. The aforementioned grounds constitute "good cause" pursuant to CR 6.02 for the PSC to grant the additional time within which to allow intervention by the Movant, and further demonstrate that the Motion was not for delay purposes.

**II. MOVANT HAS NOT DELAYED THE PROGRESS OF THIS CASE. ANY DELAY RESTS WITH AT&T.**

Movant, by counsel, did in fact pursue good-faith negotiations with AT&T as to co-location on the existing site owned by Movant. Such negotiations began through and at the invitation of its counsel herein. See Letter dated April 8, 2014 from the undersigned counsel to AT&T counsel, Hon. David A. Pike (Exhibit 2), which was sent by email (Exhibit 3) to Mr. Pike on April 9, 2014 along with the Motion of Appalachian Wireless. The Letter at Exhibit 2 specifically recites information that opposing counsel required to be included in the Letter as to the RAD and ASR information that AT&T considered necessary to its purposes to facilitate its evaluation of Movant's tower site for co-location. (See Kendrick affidavit, Exhibit 4). The letter explains the Movant's objections as well as the basis for same as to AT&T's assertion in its application that Appalachian Wireless had been properly consulted regarding co-location. The Letter further states categorically that the Movant's tower facility has space available to which AT&T could indeed co-locate, and even recites that the terms of the co-location agreement should be modeled upon the parties' existing agreement as to the Movant's Rough and Tough (Brainard Site).

If the foregoing does not constitute the commencement of good faith negotiations on the part of the Movant, justifying the statements and representations set forth in its Motion for an extension of time then we do not know what does. Movant did exactly what it was asked to do by AT&T and its counsel, providing all the information requested, and a request to respond ASAP.

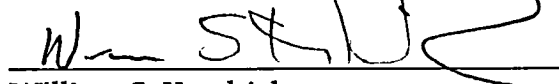
Neither the undersigned counsel nor his client heard further from AT&T or anyone on its behalf, until the filing of the within Objection from Mr. Pike. The Objection appears to have been, in part, AT&T's answer to our request of April 29, 2014 made by phone and by email about why Movant has heard nothing further as to working on the co-location agreement. (Exhibit 5). We submit that under the circumstances, AT&T should not be heard to charge Movant with delay here, where the record establishes that Movant did in fact timely enter into good-faith negotiations with AT&T as to co-location exactly as reported and set forth to the PSC in our Motion for Extension of Time for such purposes. Furthermore, such action was taken by the Movant presumably under the protection of the Motion from against any claim as to expiration of the running of time for such intervention.

Any delay here after the filing of our motion, we submit, was on the part of AT&T because it intentionally chose to ignore such proposal and failed to negotiate with Movant as to co-location, even though such is the preferred option where possible (else the regulation would not require proof of such attempts as a part of the application process). 807KAR 5:063(1) (s).

#### CONCLUSION

For the reasons stated above, the Objection of AT&T should be OVERRULED.

**FRANCIS, KENDRICK & FRANCIS**



William S. Kendrick  
P.O. Box 268  
Prestonsburg, Kentucky 41653  
606/886-2812 – Telephone  
[wkendrick@kih.net](mailto:wkendrick@kih.net)

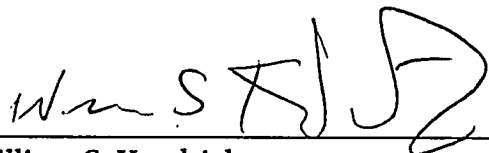
**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served, by mail, upon the following, this 9<sup>th</sup> day of May, 2014:

Hon. David A. Pike  
AT&T Mobility  
1578 Highway 44 East  
P.O. Box 369  
Shepherdsville, KY 40165-0369

Hon. Jeff Deroven  
Executive Director, PSC  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602

Hon. Richard G. Raff  
Hon. Jeb Pinney  
Division of General Counsel  
Kentucky Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602

  
\_\_\_\_\_  
William S. Kendrick

IN THE PUBLIC SERVICE COMMISSION OF  
THE COMMONWEALTH OF KENTUCKY

CASE NO. 2013-00427  
NEW CINGULAR WIRELESS  
CELL TOWER  
HINDMAN

REQUEST and MOTION FOR EXTENSION OF TIME


\*\*\*\*\*

Comes the Movant, East Kentucky Network, LLC dba Appalachian Wireless, by counsel, and moves this Honorable Commission for an extension of time within which to respond, intervene, or otherwise plead herein.

As grounds, Movant, states that it is in receipt of a Notice which identifies it as a property owner which may be affected by the proposed tower site. Movant, in fact, is the operator of a cellular tower adjacent to the Hindman Site pursuant to a Certificate of Need granted in Case No. 2001-00109. Currently the parties are in discussions about a possible co-location agreement which may affect the course and outcome of further proceedings in this matter. Accordingly, Movant requests twenty (20) days within which to file further pleadings herein.

WHEREFORE, the Movant requests the appropriate Order of the Commission.

FRANCIS, KENDRICK & FRANCIS



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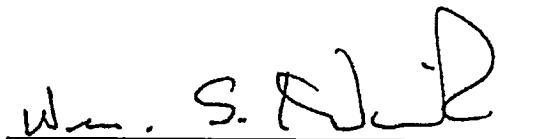
William S. Kendrick  
P.O. Box 268  
Prestonsburg, Kentucky 41653  
606/886-2812 - Telephone  
[wkendrick@kih.net](mailto:wkendrick@kih.net)

**CERTIFICATE OF SERVICE**

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Hon. David A. Pike  
AT&T Mobility  
1578 Highway 44 East  
P.O. Box 369  
Shepherdsville, KY 40165-0369

Hon. Jeff Deroven  
Executive Director, PSC  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602

  
\_\_\_\_\_  
William S. Kendrick

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

**CASE NO. 2013-00427  
NEW CINGULAR WIRELESS  
CELL TOWER  
HINDMAN**

**ORDER**

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This matter having come before the Commission upon Movant's, East Kentucky Network, LLC dba Appalachian Wireless, Motion for Extension of Time within which to respond, intervene or otherwise plead, and the Commission being sufficiently advised,

**IT IS HEREBY ORDERED** that the Movant is GRANTED an extension of twenty (20) days from the date of entry of this Order within which to respond, intervene or otherwise plead.

**By the Commission**

**ATTEST:**

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**Executive Director**

LAW OFFICES  
**FRANCIS, KENDRICK AND FRANCIS**

SUITE 504  
FIRST COMMONWEALTH BANK BUILDING  
311 NORTH ARNOLD AVENUE  
P. O. Box 268  
PRESTONSBURG, KENTUCKY 41653-0268  
TELEPHONE 606-886-2812 TELECOPIER 606-886-8833  
TOLL FREE 1-887-881-2812

WILLIAM G. FRANCIS  
e-mail: bfrancis@kih.net

WILLIAM S. KENDRICK  
e-mail: wkendrick@kih.net

FRED G. FRANCIS  
1916-2003

April 8, 2014

Hon. David A. Pike  
Attorney At Law  
AT&T Mobility  
1578 Highway 44 East  
P.O. Box 369  
Shepherdsville, KY 40165-0369

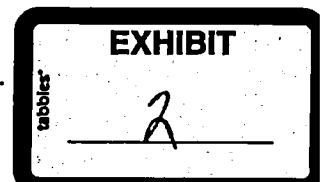
Re: Case No. 2013-427, Public Service Commission of Kentucky  
Perkins Branch (Hindman) – Knott County  
FKF File No. 171-103

Dear Sir:

We represent East Kentucky Network LLC d/b/a Appalachian Wireless. Our client has furnished us with a copy of the attached notice received by it on the 17<sup>th</sup> of March, 2014 with respect to the above referenced application by New Cingular Wireless PCS, LLC (“New Cingular”) for the construction and operation of a cellular tower at Hindman, Knott County, Kentucky 41822. As you are no doubt aware, our client operates its own cellular tower at its Hindman site pursuant to a certificate of need granted by the PSC in Case No. 2001-00109. Relevant information: Perkins Branch (Hindman) – LAT 37-19-32.4 LON 82-58-32.6 – RAD 240’ – ASR 1229140. In fact, the above referenced notice admits on its face that our client’s property is within 500 feet of New Cingular’s proposed tower site.

Our client must respectfully disagree that it was properly consulted by New Cingular regarding co-location upon the existing site now operated by Appalachian Wireless. Our client finds no written documentation of any such request from New Cingular. If any telephone conversation as described in the New Cingular application took place, such would have been at least 18 months ago when Appalachian Wireless was unsure about how much space was needed to add 4G/LTE capabilities to its tower.

We are now authorized to tell you that Appalachian Wireless does have space available on its tower to which you may co-locate through a negotiated agreement at current rates. In this regard, we believe that a co-location agreement may be arranged along the lines by which the PSC approved your co-location upon our Rough & Tough (Brainard) site.





April 8, 2014  
Hon. David A. Pike  
Page -2-

We request that you please acknowledge receipt of this letter by contacting our office ASAP. Unless an agreement can be worked out as to co-location within ten (10) days, we will have no choice but to intervene in the above styled action upon behalf of our client in order to fully protect its interest as well as that of the public.

Very truly yours,

FRANCIS, KENDRICK & FRANCIS

  
William S. Kendrick

WSK/tbf

cc:

Ms. Lynn Haney  
[Lhaney@ekn.com](mailto:Lhaney@ekn.com)  
East Kentucky Network, LLC  
101 Technology Trail  
Ivel, Kentucky 41642

**Will Kendrick**

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**From:** Will Kendrick [wkendrick@kih.net]  
**Sent:** Wednesday, April 09, 2014 11:26 AM  
**To:** david a. pike (dpike@pikelegal.com)  
**Cc:** tblawson@kih.net; 'Lynn Haney'  
**Subject:** Emailing: EKN Pike ltr Mtn for Time (New Cingular Hindman Site)  
**Attachments:** EKN Pike ltr Mtn for Time.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

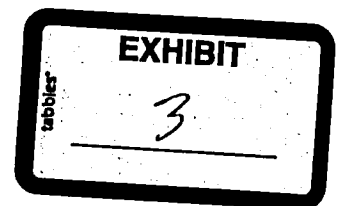
Sir: See attached letter per our discussions yesterday along with our motion for extension of time with the PSC.

Feel free to contact me if you desire to discuss. WSK

The message is ready to be sent with the following file or link attachments:

EKN Pike ltr Mtn for Time

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



## AFFIDAVIT OF WILLIAM S. KENDRICK

The undersigned affiant states after being duly sworn, states as follows:

That he is a member of the KBA, I.D. #38120 and practices with the law firm of Francis, Kendrick & Francis, of Prestonsburg, Kentucky 41653, and that he represents the Movant, EKN, LLC dba App. Wireless in this matter;

That upon receiving instructions from his client as to the pendency of this action before the PSC, he proceeded on the 8<sup>th</sup> day of April, 2014 to contact by telephone AT&T counsel herein, Hon. David A. Pike. Respective counsel discussed the matter generally, including the undersigned's intention with respect to a possible motion for extension of time as well as the availability of space for co-location on the Appalachian Wireless site located nearby;

That Mr. Pike spoke favorably as to co-location and indicated such to be a welcome break from past dealings with Appalachian Wireless. Counsel, personally, has never dealt with Mr. Pike on behalf of Appalachian Wireless or any client for that matter.

That Mr. Pike specifically requested certain specs to be included in any proposal for co-location as necessary for his client's purposes;

That Mr. Pike specifically requested that such information be supplied by counsel rather than by direct contact by him or his client to Appalachian Wireless.

That as a result of such request counsel obtained the information from his client and such specs are set out in the "Relevant Information" section of counsel's Letter dated April 8, 2014 to Mr. Pike, which along with the Motion for Extension of time was sent email to Mr. Pikes office on 9<sup>th</sup> day of April, 2014.

That the undersigned felt that any negotiations henceforth were to proceed "through the lawyers" rather than the clients working together and exchanging the necessary technical information between themselves.

Consequently, counsel waited to hear from Mr. Pike directly as to further negotiations. Counsel received no further contact from Mr. Pike or AT&T as to the proposal set forth in the Letter of April 8, 2014.

That counsel again contacted Mr. Pike's office by phone on April 29, 2014 and by email sent to him on the same date requesting that he contact counsel regarding work on the proposed co-location agreement. Counsel received no responses to such requests. \_\_\_\_\_

Further, Affiant sayeth naught, this 07 day of May, 2014.

Wm S Kendrick  
William S. Kendrick

STATE OF KENTUCKY  
COUNTY OF FLOYD

Subscribed and sworn to before me by William S. Kendrick, this 7<sup>th</sup> day of May,  
2014.

Tim B. Francis  
NOTARY PUBLIC  
COMMISSION EXPIRES: 7-6-2017

## Will Kendrick

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**From:** Will Kendrick [wkendrick@kih.net]  
**Sent:** Tuesday, April 29, 2014 9:50 AM  
**To:** david a. pike (dpike@pikelegal.com)  
**Cc:** 'William Kendrick'  
**Subject:** Index, Ky and Hindman, KY AT&T sites, PSC apps

I left a message with your sec'y to contact me re above. We have not heard from you or your client about working on a collocation agreement. Plz update me on this asap. You can call my cell too at 606-791-2812. Thanks! wsk

William S. Kendrick, Esq.  
Francis, Kendrick & Francis  
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P.O. Box 268  
Prestonsburg, Kentucky 41653  
606/886-2812 - Telephone  
606/886-8833 - Facsimile

