

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

**RECEIVED**

**MAY 19 2014**

**PUBLIC SERVICE  
COMMISSION**

**CASE NO. 2014-00074  
NEW CINGULAR WIRELESS  
CELL TOWER  
INDEX**

**MOTION TO INTERVENE**

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Comes the Intervenor, East Kentucky Network, LLC d/b/a Appalachian Wireless (“EKN”), by counsel, and Moves the honorable Public Service Commission (the “PSC” or the “Commission”) for leave to intervene in this case.

The name of the Intervenor is East Kentucky Network, LLC d/b/a Appalachian Wireless, and its mailing address is 101 Technology Trail, Ivel, KY 41642.

As grounds for intervention herein, the Intervenor states that:

1. EKN is a utility regulated by this Commission. EKN is in the business of providing cellular wireless communication services throughout Eastern Kentucky, including the construction and operation of towers and facilities by which to serve the businesses, institutions, educational, governmental, health and service providers as well as the general public of the region.

2. By virtue of a Certificate of Need (the “CON”) granted by the PSC (Case No. 2008-00265) the Intervenor owns and operates a cellular tower and facilities at a location at West Liberty, Morgan County, KY having Carter Coordinates of Site LAT 37 53' 34.6" N LON 83 17' 11.2" W.

3. In the present case New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (“AT&T” or “Applicant”) has submitted its Application for a CON to construct and

operate a similar cellular tower and facilities in order to provide the same or similar services as those furnished by the Intervenor in the same general area of service at a site known as the AT&T West Liberty Site as set out in its application LAT 37 53' 33.996" N LON 83 17' 14.131" W. AT&T admits in its Application that the Intervenor "owns property within 500 feet of the proposed tower." See 807 KAR 5:063 Section 1. The affected property is in fact the Intervenor's Index.

4. The Intervenor states that its tower and facilities offer a reasonably available opportunity to the Applicant upon which to co-locate its proposed cellular equipment and facilities; that the Intervenor's site is designed to host multiple wireless service providers' facilities and is capable of hosting the services proposed by AT&T to the general service area.

5. The Intervenor further states that a comparison of the sites shows: The ground elevation of the existing EKN site is 1055 feet. The ground elevation for the AT&T proposed site is 1003 feet. The tower that AT&T is proposing to build is a 255 ft. tower, which would be located 242 feet from the existing EKN site. EKN has a space that will provide AT&T with a center of radiation for their antennas at the 235 ft. to 245 ft. range. This would result in AT&T having the advantage of placing their antennas on EKN's tower, which would give them an additional 40 ft. in antenna height over their proposed site build, which in turn will provide potentially more efficient coverage than their proposed site. See Topographic Map of site comparisons at Exhibit "A".

6. The Intervenor states that the Applicant in its Application (a) has failed to adequately consider the likely effects of the installation on nearby land uses and values

specifically with respect to the adverse impact rendered to the existing tower site owned and operated by EKN; (b) has improperly concluded that there is no more suitable location from which adequate service to the area can be provided; (c) has improperly concluded that there is no reasonable opportunity to co-locate and has shown inadequate or insufficient attempts to adequately explore and document efforts to co-locate upon the Intervenor's site (See affidavit of EKN employee Michael Johnson, Technical Operations Director (Exhibit "B").

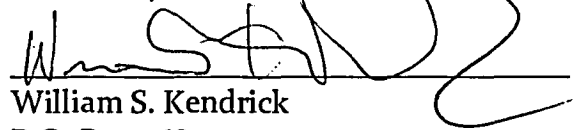
7. Upon learning for the first time of this case by receipt of the notice required by 807 KAR 5:063 Section 1.1.3 (i.e. the 500' notice rule) the Intervenor in fact made a good-faith co-location offer to AT&T to which AT&T failed to respond. (Exhibit "C", Letter dated April 8, 2014 from the undersigned counsel to AT&T counsel, Hon. David A. Pike).

8. Intervenor hereby adopts and reiterates the foregoing paragraphs, and states that, it has a special interest herein that is not otherwise adequately represented in the case, and that permitting such intervention is likely to present issues and develop facts, especially as to co-location opportunities, and impact upon the EKN site due to the planned installation, that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. We emphasize that no informal conference date has been set and no scheduling order has been entered herein.

9. By virtue of its special interests—unique to it herein-- EKN asserts that it should be made a party to in this proceeding rather than relegated to the sidelines as a mere observer.

WHEREFORE, for the reasons stated the Intervenor demands the proper orders of the PSC granting it leave to intervene in this case; that a hearing be set; that the PSC find that the existing infrastructure of EKN is sufficient to support the services sought to be offered by AT&T; that the Application of AT&T be DENIED and that it required to co-locate (if it intends to supply such services) on the facilities made available by EKN in the interest of public necessity and convenience and to avoid unnecessary construction and wasteful duplication of existing services, and all proper relief.

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 <sup>15<sup>th</sup></sup> day of May, 2014:

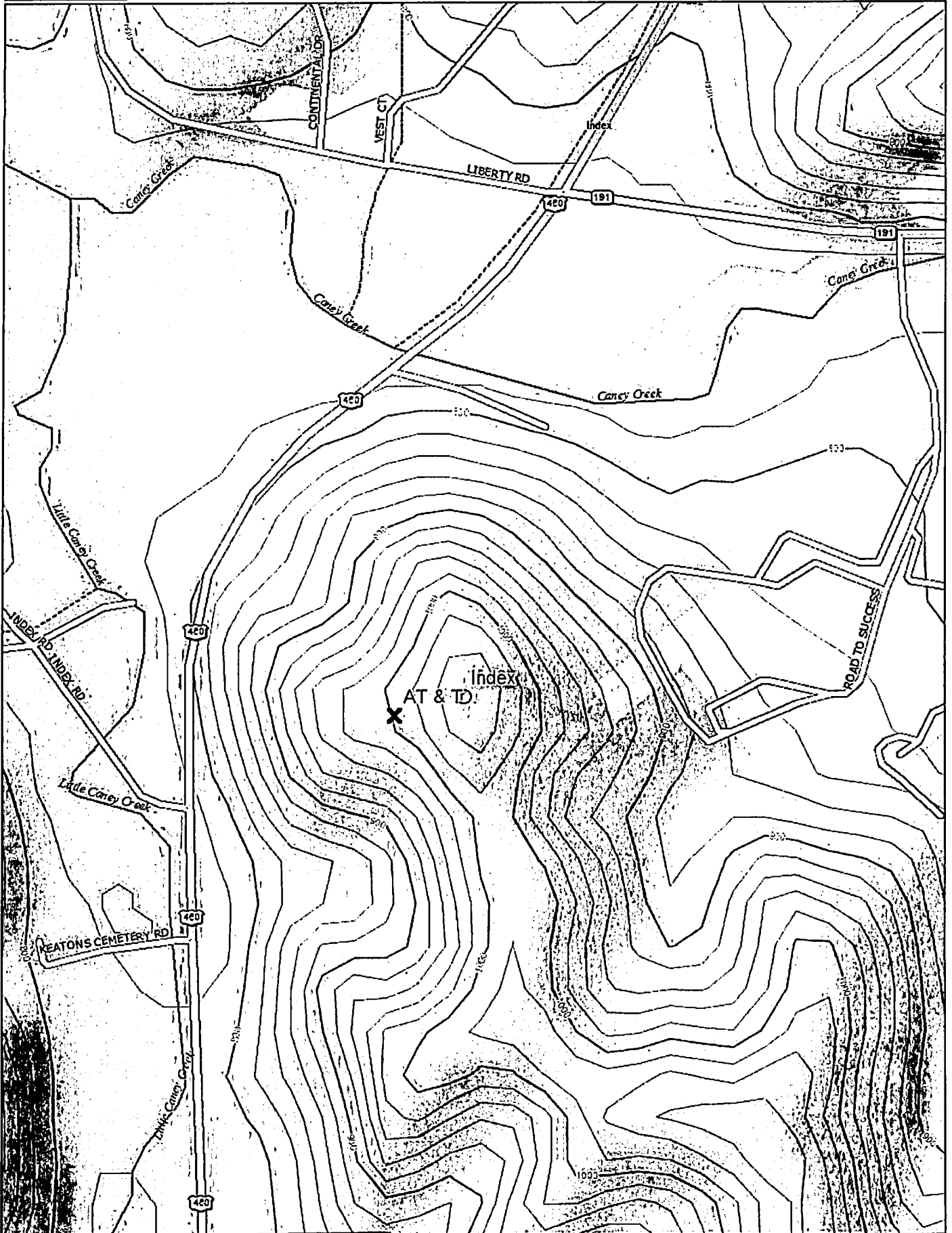
Hon. David A. Pike  
AT&T Mobility  
1578 Highway 44 East  
P.O. Box 369  
Shepherdsville, KY 40165-0369

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

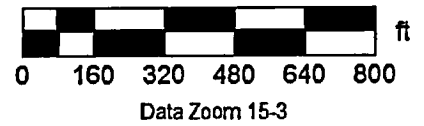


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**EXHIBIT**

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    A    



**AFFIDAVIT OF MICHAEL JOHNSON**

Comes the Affiant, Michael Johnson, being first duly sworn states as follows:

That the only recollection that I have of being contacted by AT&T for co-location on an EKN tower, was concerning our Evarts site, approximately in early 2011. At that point we were uncertain of what type equipment would be deployed in our build out of LTE, and stated that we would probably not know until December 2011 - January 2012. I do not recall any other contact from AT&T concerning co-location on any other EKN sites.

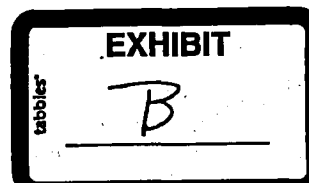
Further, Affiant sayeth naught, this 15<sup>th</sup> day of May, 2014.

Michael Johnson  
Michael Johnson

**STATE OF KENTUCKY  
COUNTY OF FLOYD**

Subscribed and sworn to before me by Michael Johnson, this 15<sup>th</sup> day of May,  
2014.

Lynne Hainey  
NOTARY PUBLIC  
COMMISSION EXPIRES: July 14, 2015



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

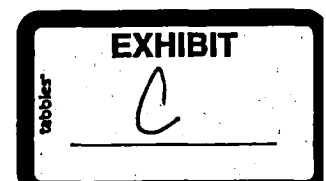
**Re: Case No. 2014-00074, Public Service Commission of Kentucky  
Index - Morgan County  
FKF File No. 171-102**

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 Index, West Liberty, Morgan County, Kentucky 41472. As you are no doubt aware, our client operates its own cellular tower at its Index site pursuant to a certificate of need granted by the PSC in Case No. 2008-00265. Relevant Information: Index - Coordinates - LAT 37-53-34.6 LON 83-17-11.2 - RAD 240' - ASR 1265239. 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.





April 8, 2014  
Hon. David A. Pike  
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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.

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