

IN THE PUBLIC SERVICE COMMISSION OF  
THE COMMONWEALTH OF KENTUCKY

CASE NO. 2014-00087  
NEW CINGULAR WIRELESS  
CELL TOWER  
STAFFORDSVILLE

RECEIVED

MAY 19 2014

PUBLIC SERVICE  
COMMISSION

**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. 2004-00063) the Intervenor owns and operates a cellular tower and facilities known as its Little Mudlick Site at a location at Staffordsville, Johnson County, KY having Carter Coordinates of Site LAT 37 50' 42.0" N LON 82 50' 32.0" 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 Staffordsville, Johnson County, Kentucky Site as set out in its application LAT 37 49' 44.631" N LON 82 50' 24.326" W.

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 1024 feet. The ground elevation for the AT&T proposed site is 785 feet. The tower that AT&T is proposing to build is a 255 ft. tower, which would be located 1.1 mile 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 225 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 of this case by an online search of the PSC's website the Intervenor did on the 28<sup>th</sup> day of April, 2014, the Intervenor file its Motion for an Extension of Time in order to protect its interest and to attempt co-location discussions with Applicant. Based upon the Objection filed by the Applicant herein on May 2, 2014, it is clear that further attempts at negotiations with Applicant are fruitless.

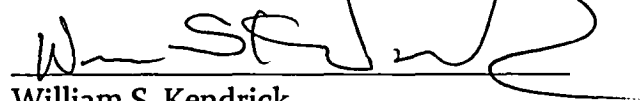
8. Intervenor hereby adopts and reiterates the foregoing paragraphs, and states that, it has a special interest herein that is not otherwise adequately represented in the case, and that permitting such intervention is likely to present issues and develop facts, especially as to co-location opportunities, 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 be 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**



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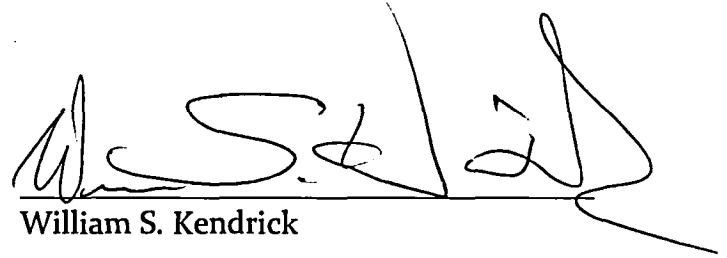
#### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served, by mail, upon the following, this 15<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  
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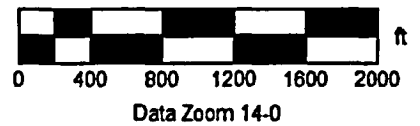


William S. Kendrick



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**EXHIBIT**  
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**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.

Laura Haney  
NOTARY PUBLIC  
COMMISSION EXPIRES: July 14, 2015

