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May 27, 2014

MAY 28 2014

PUBLIC SERVICE
COMMISSION

VIA EXPRESS MAIL

Linda Faulkner
Division of Filings
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602-0615

Re: Response to Request for Intervention
PSC Case No.: 2014-00108
Site Name: Pea Ridge

Dear Linda:

Please accept this letter and the attached document as an official filing in the above-referenced Public Service Commission action. If you have any questions or comments concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "D. Pike".

David A. Pike

Attorney for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

Enclosure

cc: J.E.B. Pinney, Div. of General Counsel

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

RECEIVED

MAY 28 2014

**PUBLIC SERVICE
COMMISSION**

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2014-00108
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF WOLFE)

SITE NAME: PEA RIDGE

RESPONSE TO REQUEST FOR INTERVENTION

Applicant New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("Applicant"), by counsel, makes this Response to the request for intervention submitted by David Graham in the within proceeding. Applicant respectfully states, as follows:

1. David R. Graham, by letter to the Kentucky Public Service Commission, has requested to be granted intervention in this proceeding.
2. As the basis for his request for intervention, Mr. Graham states "I believe the proposed Tower would not be safe or healthy for people living near by (sic)."
3. By correspondence dated May 12, 2014, a copy of which was filed with the Commission on May 13, 2014, Applicant has responded to Mr. Graham's concern as to the safety of the proposed tower. Said correspondence included a report dated January 10, 2014 prepared by Nitesh Ahuja, a Kentucky licensed professional engineer, explaining the tower's safety design features, which report includes certifications from said engineer that the tower would be constructed in compliance with the National

Tower code and that the predicted mode of wind-induced failure would affect a “zero fall zone’ at ground level.”

4. In accordance with KRS Chapter 100 and the Telecommunications Act of 1996, the environmental effects of radio frequency emissions are not at issue in this case and may not be considered by the Public Service Commission in its evaluation of the proposed facility. Radio frequency emissions are the subject of federal regulation, and the Telecommunications Act of 1996 expressly prohibits state regulation of wireless communications facilities on the basis of environmental effects or radio frequency emissions. Specifically, the Federal Telecommunications Act of 1996, as codified at 47 U.S.C. Section 332(7)(B)(iv), provides:

“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's regulations concerning such emissions.”

5. Applicant is licensed by the Federal Communications Commission (“FCC”) to provide wireless communications services to the area to be served by the proposed wireless communications facility, and a copy of the relevant FCC license granted to Applicant New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility was filed as part of the subject Application. Accordingly, Applicant, is subject to the FCC regulation referenced at 47 U.S.C. Section 332(7)(B)(iv).

6. The U.S. Court of Appeals for the Sixth Circuit has upheld the prohibition of consideration of the environmental effects of radio frequency emissions in Kentucky Public Service Commission proceedings regarding wireless communications facilities.

Specifically, in Telespectrum, Inc. v. Public Service Commission, 227 F.3d 414 (6th Circuit 2000), the Court held:

"[C]oncerns of health risks due to the emissions may not constitute substantial evidence in support of denial by statutory rule, as no state or local government or instrumentality thereof may regulate the construction of personal wireless facilities "on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.' 47 U.S.C. § 332(c)(7)(B)(iv)." *Id* at 425.

WHEREFORE, Applicant respectfully requests the Kentucky Public Service Commission:

- (a) Accept this Response for filing;
- (b) Implement affirmative measures to prevent introduction and consideration of testimony and other evidence on radio frequency issues at the public hearing and from its deliberations on the subject application for approval of a wireless telecommunications facility, pursuant to KRS Chapter 100 and the Telecommunications Act of 1996; and,
- (c) Grant Applicant any other relief to which it is entitled.

Respectfully submitted,



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Attorneys for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27 day of May 2014, a true and accurate copy of the foregoing was sent by U.S. Postal Service first class mail, postage prepaid, to David R. Graham, P.O. Box 553, Campton, KY 41303.



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