

RECEIVED

JUL 25 2019

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 2019-00176

**In the Matter of:**

THE APPLICATION OF  
NEW CINGULAR WIRELESS PCS, LLC,  
A DELEWARE LIMITED LIABILITY COMPANY,  
D/B/A AT&T MOBILITY  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO CONSTRUCT A WIRELESS COMMUNICATION FACILITY IN THE  
COMMONWEALTH OF KENTUCKY  
IN THE COUNTY OF CASEY

**ELWOOD HOSKINS, SUSAN HOSKINS AND MANDY WAHL REPLY TO NEW  
CINGULAR WIRELESS PCS, LLC, A DELEWARE LIMITED LIABILITY COMPANY  
D/B/A AT&T MOBILITY' RESPONSE AND AMENDED RESPONSE TO THESE  
PUBLIC COMMENTS REQUESTING A HEARING.**

\*\*\*\*\*

Come ELWOOD HOSKINS, 136 Taylor Street, P.O. Box 406, Liberty, Kentucky, 42539,  
and SUSAN HOSKINS, 136 Taylor Street Liberty, Kentucky, 42539, and MANDY WALL, 8050  
Dry Creek Road, Liberty, Kentucky, 42539, being three of the six members of the public who  
submitted public comments requesting a hearing and who reside and own real property in Casey  
County, Kentucky, and REPLY to the Response filed by NEW CINGULAR WIRELESS PCS,  
LLC, A DELEWARE LIMITED LIABILITY COMPANY, D/B/A AT&T MOBILITY  
("AT&T"), as follows:

This Reply is submitted in support of the pending requests for a public hearing as described  
and mandated by KRS 278.650, and in opposition to the response filed by AT&T.

KRS 278.650 requires:

**KRS 278.650 Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission -- Hearing -- Building permit fee.**

If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area outside the jurisdiction of a planning commission, or outside the jurisdiction of the secretary of the Finance and Administration Cabinet pursuant to KRS 56.463(4)(a), the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.

The Public Service Commission file contains six public comments each requesting the Public Service Commission to hold a public hearing in this matter:

1. Lee Ann McDonald [PSC identified as "Lee Donald"] 331 Sunset Pointe, Liberty, KY 42539
2. Elwood Hoskins, 136 Taylor Street, Liberty, KY 42539
3. Susan Hoskins, 136 Taylor Street, Liberty, KY 42539
4. Melissa Richardson, property owner of Casey County PVA Parcel 071-03
5. Mandy Wahl, 8050 Dry Creek Road, Liberty, KY 42539
6. Cecil M. Wear [PSC identified as "C. M. Wick"] 252 Antioch Road, Liberty, KY 42539.

Where the mandates of KRS 278.650 are clear, and six interested persons, five residents of Casey County and a Casey County property owner have made the request, the PSC shall convene a local public hearing on the application.

Elwood Hoskins and Susan Hoskins live and own property in Casey County, including property that is leased to SBA Communications Corporation d/b/a SBA Towers III LLC (“SBA”). The Hoskins believe that the AT&T site that is proposed for a second cell tower in close proximity to the existing SBA cell tower is too close to their property and too close to a nearby church and graveyard/cemetery where their family members are buried.

The Hoskins, as members of the public, have standing to urge the Public Service Commission (“PSC”) to require co-location on existing towers rather than create duplicative and unneeded additional cell tower construction in an area already adequately served with the existing cell tower.

Mandy Wahl does not live in close proximity to the existing SBA cell tower and the proposed AT&T cell tower but she will be impacted where her granddaughter is buried in the cemetery that the AT&T site will impact.

As a member of the public who frequents the impacted area, Mandy Wahl has standing to urge the Public Service Commission (“PSC”) to require co-location on existing towers rather than create duplicative and unneeded additional cell tower construction in an area already adequately served with the existing cell tower.

Kentucky law and policy strongly support co-location as a requirement to reduce and avoid duplication of services and to avoid the unneeded construction of cell towers.

See 807 KAR 5:063, Section 1 concerning the required contents of an application to the PSC to construct a cell tower:

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

(s) A statement that the utility has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to co-locate, including documentation of attempts to co-locate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures, such as a telecommunications tower, or another suitable structure capable of supporting the utility's facilities; and

(t) A map of the area in which the tower is proposed to be located, that is drawn to scale and that clearly depicts the necessary search area within which a site should, pursuant to radio frequency requirements, be located.

As residents and property owners in the area of the existing SBA cell tower and the nearby proposed cell tower, Hoskins and Wahl have unique knowledge of the current and historic land uses in the area and the character of the area.

Hoskins and Wahl will give testimony that calls into question whether the applicant, AT&T has fully and accurately considered the impacts of the proposed cell tower on existing land uses and property values, and will ask the PSC to conclude that AT&T has failed to carry its burden of proof concerning this requirement.

Hoskins and Wahl urge the PSC to grant a hearing to allow Hoskins and Wahl and other members of the public the opportunity to inform the PSC about the character of the area and the need to fully implement the co-location mandates of Kentucky law and policy.

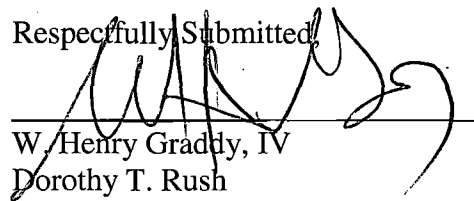
Based upon the unique and special interest of Hoskins and Wahl, Hoskins and Wahl urge the PSC to reject the reasoning set forth in the AT&T Response – opposing the requests for a public hearing. The AT&T Response is dismissive of public concerns, essentially arguing that the PSC has no need to hear from the public that will be directly impacted if two cell towers are allowed to be constructed one third of a mile apart.

Based upon their unique and direct interest in this matter, and their desire to be heard by the PSC, Hoskins and Wahl MOVE TO BE GRANTED INTERVENTION AS PARTIES, herein.

### CONCLUSION

WHEREFORE, Hoskins and Wahl reaffirm their previously filed REQUEST FOR HEARING and, now, MOVE THE PSC TO BE GRANTED INTERVENTION AS PARTIES.

Respectfully Submitted,



---

W. Henry Graddy, IV  
Dorothy T. Rush  
W. H. Graddy & Associates  
137 North Main Street  
Versailles, Kentucky 40383  
(859) 879-0020  
(859) 855-3628 – facsimile  
[hgraddy@graddylaw.com](mailto:hgraddy@graddylaw.com)  
[dtrush@graddylaw.com](mailto:dtrush@graddylaw.com)

**CERTIFICATE OF SERVICE**

I certify that on July 25, 2019, the foregoing document was served via first class mail and by email upon the following:

Hon. David A. Pike  
Pike Legal Group, PLLC  
1578 Highway 44 East, Suite 6  
PO Box 369  
Shepherdsville, KY 40165

Hon. Christopher Clendenen  
250 West Main Street, Suite 2510  
Lexington, KY 40507

Hon. Casey C. Stansbury  
Hon. Tia J. Combs  
233 Alexandria Drive, Suite 200  
Lexington, KY 40504-6759

  
\_\_\_\_\_  
W. Henry Graddy IV