

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE APPLICATION OF )  
BELLSOUTH MOBILITY, LLC, )  
D/B/A CINGULAR WIRELESS - KENTUCKY )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY AT )  
ROUGH AND TOUGH ROAD )  
PRESTONSBURG, KENTUCKY 41653 OR, IN THE )  
ALTERNATIVE, AN ORDER REQUIRING CO-LOCATION )  
ON REASONABLE TERMS AND CONDITIONS )  
IN THE WIRELESS COMMUNICATIONS )  
LICENSE AREA IN THE COMMONWEALTH OF )  
KENTUCKY IN THE COUNTY OF FLOYD )

CASE NO.: 2004-00413

SITE NAME: BRAINARD

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**ORDER**

By this Order, the Commission grants the motion of BellSouth Mobility, LLC, d/b/a Cingular Wireless – Kentucky (hereinafter, “BellSouth Mobility” or “Applicant”), accepts for filing the Memorandum of Law filed with the motion, makes East Kentucky Network Limited Liability Company (“East Kentucky Network”) a party to this case, and schedules an informal conference and other preliminary procedures to explore the legal and policy issues implicated by East Kentucky Network’s alleged refusal to permit co-location of another carrier’s antennas on its existing towers.

On October 22, 2004, BellSouth Mobility filed an Application requesting issuance of a Certificate of Public Convenience and Necessity (“CPCN”) to construct, maintain, and operate a Wireless Communications Facility (the “WCF”) in Floyd County, Kentucky.

However, BellSouth Mobility asks that its request for a CPCN be considered only after the Commission has first reached a determination as to whether East Kentucky Network should be required to permit BellSouth Mobility to co-locate its antennas, on reasonable terms and conditions, on East Kentucky Network's 325' tower located in Prestonsburg, Floyd County, Kentucky (the "Rough-N-Tuff Tower"). East Kentucky Network's Ruff-N-Tuff Tower is located approximately 982 feet from the WCF that BellSouth Mobility proposes to construct if it is not permitted to co-locate.

The East Kentucky Network Rough-N-Tuff Tower was constructed pursuant to a CPCN granted by this Commission on July 7, 2004.<sup>1</sup>

In its Application and motion, BellSouth Mobility alleges that its attempts to discuss co-location have been rebuffed without reason by East Kentucky Network. BellSouth Mobility further claims that it is entitled to co-locate its antennas on the Rough-N-Tuff Tower by virtue of both state and federal law. It cites in support of its arguments KRS 278.020; KRS 278.280; KRS 278.650; 807 KAR 5:063; the competitive goals of the Telecommunications Act of 1996; and various other authorities. BellSouth Mobility further cites the General Assembly's policy of avoiding unnecessary tower proliferation; Governor Fletcher's stated goals to make efficient use of existing infrastructure to bring technological choices and innovations to Kentucky's rural communities; and this Commission's statutory mandates to prohibit duplicative utility construction and to ensure that utility practices are reasonable. BellSouth Mobility also indicates that co-location should be required as a matter of law only when it is feasible for both parties and when terms and conditions of

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<sup>1</sup> Case No. 2004-00190, The Application of East Kentucky Network Limited Liability Company for the Issuance of a Certificate of Public Convenience and Necessity to

such co-location are reasonable.

BellSouth Mobility further asks this Commission to order East Kentucky Network to cease its alleged policy and practice of refusal to permit co-location and to require it to enter into co-location agreements that are reasonable and consistent with industry practice.

The Commission finds that the threshold issue in this case is BellSouth Mobility's claim that East Kentucky Network, as a utility providing wireless communications service to the public, must be required to permit another wireless utility providing service to the public to co-locate its antennas on its existing towers, on reasonable terms and conditions consistent with industry practice. It is necessary that this issue be fully explored prior to further procedures on the Application.

Accordingly, an informal conference should be set for purposes of discussing the co-location issues raised in this case. At the conference, the parties shall be prepared to discuss settlement and, if no settlement is reached, the parties shall proffer dates upon which they will be available for formal hearing, the date for which will be set subsequent to the discovery proceedings prescribed herein.

IT IS THEREFORE ORDERED that:

1. East Kentucky Network Limited Liability Company is hereby made a party to this case;
2. The Memorandum of Law filed by BellSouth Mobility with its motion is hereby accepted for filing;

3. On \_\_\_\_\_, East Kentucky Network Limited Liability Company and BellSouth Mobility shall appear at an informal conference at the Commission's offices at \_\_\_\_\_, at \_\_\_ a.m., for the purposes of discussing with Commission Staff the issues described herein. Each party shall be represented at the conference by a person knowledgeable on the issues presented and authorized to enter into settlement negotiations, and shall be prepared to discuss dates upon which the parties will be available for hearing;
4. If the parties do not settle the case at the informal conference, the following procedures shall apply:
  - A. Data requests shall be filed with the Commission and served upon the opposing party no later than ten (10) days after the date of the informal conference.
  - B. The parties shall file responses to the data requests no later than forty (40) days after the date of the informal conference.

Done at Frankfort, Kentucky

Tendered by:

David A. Pike  
Pike Legal Group, PLLC  
Attorney for  
Cingular Wireless