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ATTORNEYS-AT-LAW

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June 3, 2009

Mr. Jeff Derouen, Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40602-0615

RECEIVED

JUN 05 2009

PUBLIC SERVICE
COMMISSION

RE: **PSC Case No. 2009-00006**
(The "9LV1109/Rough 1" Facility)

Dear Mr. Derouen:

Enclosed please find one (one) original and ten (10) copies of Applicant's Response to Intervenors' List of Proposed Alternative Locations and Motion To Submit Application For Approval On The Record in the above-referenced case before the Commission. Please file same with the Commission at your earliest convenience.

Thank you for your assistance in this matter.

Sincerely,



W. Brent Rice
Counsel for Powertel/Memphis, Inc.

WBR/dkw
Enclosures

cc: Mr. and Mrs. James August Henning, Intervenors

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 05 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF POWERTEL/MEMPHIS, INC.)
d/b/a T-MOBILE FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT AN ADDITIONAL) CASE NO. 2009-00006
CELL FACILITY AT LEO BOWLDS ROAD,)
HARDINSBURG, BRECKINRIDGE COUNTY,)
KENTUCKY)

(THE ROUGH 1 FACILITY)

APPLICANT'S RESPONSE TO INTERVENORS'
LIST OF PROPOSED ALTERNATIVE LOCATIONS AND MOTION
TO SUBMIT APPLICATION FOR APPROVAL ON THE RECORD

Comes Powertel/Memphis, Inc. ("Applicant"), by counsel, and hereby responds to the Intervenor's list of proposed alternate locations pursuant to the Commission's Orders dated April 22, 2009, and May 22, 2009.

In the Commission's Order dated April 22, 2009, it requested the Applicant include its view of each location, supported by information of a technical nature and evidence concerning the availability of such location proposed by the Intervenor. The Applicant states it has carefully considered the proposed three (3) alternative locations submitted by the Intervenor, James A. and Nancy E. Henning, and has additionally provided the proposed alternative locations to Applicant's landlords, Robert T. and Phillipa Gahagan, for their review and comments.

The landlord, Robert T. Gahagan has prepared a summary of his evaluation and comments in regard to the Intervenor's three (3) proposed alternative locations. Mr. Gahagan's letter is attached hereto as **Exhibit A**. In summary, it is Mr. Gahagan's position all three (3) proposed alternative sites provided by the Intervenor can be seen

from the Intervenor's property. Further, Mr. Gahagan has commented all three (3) proposed alternative sites would require substantial road construction at a significant additional cost given the old roadbed referenced by the Intervenor's in their letter to the Commission, has lain dormant for many years. Mr. Gahagan states that alternative Site No. 1 and Site No. 2 are not acceptable to him, however, Site No. 3 is marginally acceptable.

The Applicant further states its radio frequency engineer, Raffi Achiba, has reviewed and considered the three proposed alternative locations. Mr. Achiba has determined these locations and the selected location submitted by the Applicant would provide similar coverage, and all would meet the coverage objectives necessary for the Applicant's construction of the cell facility in Breckinridge County. A copy of Mr. Achiba's determination via e-mail to counsel for the Applicant is attached hereto as **Exhibit B**. With this determination having been made by the Applicant's radio frequency engineer, it is clear there is no justification for relocating the original location proposed in order to improve coverage.

The Applicant respectfully states that it does respect the opinion and position of the Intervenor's. It is well aware the proposed facility will be visible from their property as well as from other property owners in the vicinity of the proposed cell facility. The fact of the matter is most cell facilities are visible to adjoining property owners. The Commission and the Intervenor's should be apprised the Applicant has relocated its cell facilities previously when it was appropriate to do so. It is not appropriate to do so in this case as there is no safety issue, or other significant reason to relocate the cell facility whatsoever. As referenced by Mr. Gahagan, the three proposed alternative sites would be visible from the Intervenor's property, although perhaps not as visible as from

the current location. Applicant further points out to the Commission the Intervenors do not currently have a residence, or any structures whatsoever situated on the parcel owned by them adjoining the Gahagan's. Thus, there is no possibility of any safety issue, due to possible tower failure, or ice debris.


As referenced previously, Mr. Gahagan stated that alternative Site No. 3 was "marginally acceptable" to him. However, this proposed location is not acceptable to the Applicant for various reasons. First and foremost, Site No. 3 as described by the Intervenors, is in excess of 750' from the Applicant's selected location, and as with all of the Intervenors' proposed locations, it would require a new application filing by the Applicant. A new filing would require new engineering, surveys, geotechnical studies, 500' and contiguous property owner determinations, Federal Aviation Administration filings, Kentucky Airport Zoning Commission filings, and legal services as required by applicable statutes. Relocation from Applicant's selected location in excess of forty feet (40') would require these substantial unnecessary expenses, and will result in significant time delay. The delay would prohibit Applicant from providing enhanced service to its many customers in this area, many of which are vital to its community. Any relocation would also require substantial costs to extend the access and utility service to the site.

Applicant moves the Commission to submit the Application herein for approval on the record. It believes that a Hearing would serve no useful purpose as the Intervenors have had an opportunity to express themselves at both the informal conference and in their submissions to the Commission. A Hearing would only restate the positions of all of the parties and would result in unnecessary additional costs, and delay the Applicant in providing enhanced coverage to its customers. It further states in support of said Motion, it has met all filing requirements under the Kentucky Revised Statutes, and the

Kentucky Administrative Regulations applicable to this proceeding.

WHEREFORE, the Applicant respectfully requests the Commission issue a Certificate of Public Convenience and Necessity as applied for herein.

Respectfully submitted,



W. Brent Rice
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KIRKLAND, PLLC
201 East Main Street, Suite 1000
Lexington, KY 40507
Phone: 859/231-8780
COUNSEL FOR POWERTEL/MEMPHIS, INC.
d/b/a T-MOBILE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, postage prepaid to the following:

Mr. and Mrs. James August Henning
10362 S. Hwy. 259
McDaniels, KY 40152

on this the 31st day of June, 2009.



W. Brent Rice
COUNSEL FOR POWERTEL/MEMPHIS, INC.
d/b/a T-MOBILE

May 26, 2009

From: COL (R) Robert T. Gahagan
Owner/Operator
Shamrock Hills Farm & Stables
P.O. Box 362
McDaniels, KY 40152

To: Brent Rice
McBrayer, McGinnis, Leslie & Kirkland PLLC
201 East Main St., Suite 1000
Lexington, KY 40507

Subject: Case No. 2009-00006

Dear Mr. Rice,

Pursuant to your earlier request, I have reviewed the alternative sites provided by Mr. and Mrs. Henning and have the following comments:

ALT site #1: This site can be seen from the Henning's property. The open field immediately adjacent to the site and to the North East also belongs to the Henning's.

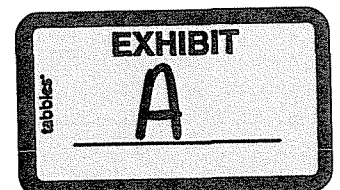
So while this site would not be seen as extensively from the field immediately adjacent to the current surveyed site, it would still be visible from Henning owned property.

Furthermore, given the lay of the land, this site would also be visible from my house.

That said I believe that for purposes of consistency, their current argument should stand for both sections of their property given both present equal potential for selection as future home sites should that ever become their decision. Therefore, I find this site

NOT Acceptable.

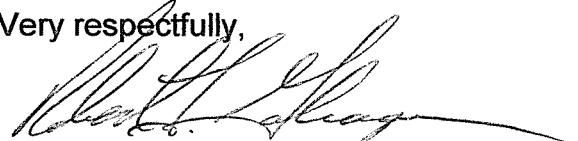
ALT site #2: This site is on substantially higher ground than the current surveyed site and would put the tower in direct line of sight of my house. With this in mind, I have already built my home and I do not have the option of choosing a new house site. To the contrary, the Henning's have nearly 1.5 miles of road frontage along HWY 1740 from which to choose a prospective home site should that ever become their intent. For these reasons, I also find this site NOT Acceptable.



ALT site #3: I find this site marginally acceptable. It would however put the tower in site of the Henning property albeit less so than the current surveyed site due to partial masking by trees in the spring and summer months.

Summary: All three of the proposed sites provided by Mr. and Mrs. Henning can be seen from the Henning's property albeit at differing levels of fidelity given their elevation, neighboring forest composition, and time of the year. Additionally, all three proposed alternate sites would require substantial road construction at a significant additional cost given the old Monastery's Road has lain dormant for many years. Given the fact that Breckinridge County is already fiscally stretched to maintain its current roads to standard, I find the notion that they would be amenable to resurrecting this road for one party highly unlikely.

Very respectfully,

A handwritten signature in black ink, appearing to read 'Robert T. Gahagan', with a long horizontal flourish extending to the right.

COL (R) Robert T. Gahagan

Brent Rice

From: Achiba, Raffi [Raffi.Achiba@T-Mobile.com]
Sent: Thursday, May 28, 2009 9:08 AM
To: Brent Rice
Cc: Achiba, Raffi
Subject: 9LV1109
Attachments: 9LV1109 Rough 1-henning response alternate locations.pdf

Brent and I have reviewed the three proposed site locations in the attached file for the Rough 1 site. All three proposed locations and the current primary candidate provide similar coverage; either one of the four locations will provide the coverage objective of the 9LV1109-Rough 1 search ring.

Regards,

Raffi Achiba
Roaming Overbuild, KY
Cell: 571-201-4843

