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January 12, 2010

PARTIES OF RECORD

Re: Case No. 2009-00384

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within seven days of receipt of this letter. If you have any questions, please contact Tiffany Bowman at 502/564-3940, Extension 465 or by email at TiffanyJ.Bowman@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

JD/tb

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Tiffany Bowman
Staff Attorney

DATE: January 12, 2010

SUBJECT: Case No. 2009-00384

Application of East Kentucky Network Limited Liability Company for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in Clay County, Kentucky

Informal Conference Memorandum

An informal conference ("IC") was held in this matter on Friday, January 8, 2010. A copy of the conference attendance list is attached. The purpose of the IC was to discuss concerns and objections of the intervenor, Manchester Rentals, LLC, to the proposed tower construction.

During the course of the IC, the parties and Commission Staff discussed the following issues:

- The Attorney for the intervenor, Mr. Joseph White, is also a managing member of the company. Mr. White stated that he believes the company maintains 3 residential mobile homes and lots within the 500 foot radius of the track for the proposed tower.
- Manchester Rentals would like to receive information on the dimensions and the exact location of the tower. Manchester Rentals has concerns on how the construction of the tower will affect the marketability of its properties, as well as the health risks that may be associated with the tower's construction.
- Manchester Rentals stated that it is willing to work through its concerns with East Kentucky and is not completely objecting to the tower's construction.
- Commission Staff outlined the federal and state statutes which define state and local jurisdiction over cell tower construction applications (47 U.S.C. § 332 and KRS 278.650). Commission Staff noted that federal law prohibits state and local commissions from specifically considering health and environmental effects of radio frequency emissions from the constructed tower; however, the Commission can consider the character of the general area where the construction will occur, and whether tower will have an the effect on land use and values.

- Commission Staff also discussed an intervenor's burden to provide evidence of feasible, alternative construction sites if it objects to the construction of the tower at the proposed site. Commission Staff noted that if this case were to proceed to a formal hearing and the intervenor were to provide evidence of alternative sites for construction, the Commission cannot tell East Kentucky specifically where to build its tower, but only to say if it can or cannot build at the site outlined within its application. Commission Staff noted that any evidence of alternative sites submitted by an intervenor must take the service coverage objectives and radio frequency needs of the cell tower company into consideration.

- East Kentucky discussed the requirements for Manchester Rentals to propose alternate sites for the construction. East Kentucky noted that the proposed tower will be 17.5 feet at the base, 4 feet wide at the top, 170 feet in height and will be a non-lighted tower and non-painted (a tree bark color).

- Manchester requested to see a Visual Survey Report from East Kentucky. East Kentucky stated it created a profile drawing and will submit it to the Commission and to Manchester.

- Manchester stated that it has consulted real estate professionals regarding land values and marketability related to cell tower construction, but has not found any who are experienced on those issues. Manchester stated that it does not intend maintain a specific and ongoing objection to the tower construction solely on the questions of land values or health risks.

- By January 15, 2010, East Kentucky agreed to submit the Visual Survey Report to Manchester, with 5 copies to the Commission. East Kentucky will also provide a diagram of the proposed tower and an explanation on why East Kentucky picked the proposed site in Clay County.

- By January 27, 2010, Manchester will provide a written statement to East Kentucky, with 5 copies to the Commission, indicating if it will withdraw as an intervenor in this proceeding or if it continues to have objections to the tower and will move forward as a party.

- Commission Staff stated that if Manchester decides to move forward as a party, a 2nd IC will be scheduled so the parties and Staff can discuss developing a procedural schedule for the submission of testimony and evidence.

The informal conference then adjourned.

