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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF)	
NEW CINGULAR WIRELESS PCS, LLC)	
AND AMERICAN TOWERS LLC)	
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.: 2015-00404
CONVENIENCE AND NECESSITY TO CONSTRUCT)	
A WIRELESS COMMUNICATIONS FACILITY)	
IN THE COMMONWEALTH OF KENTUCKY)	
IN THE COUNTY OF WOLFE)	

SITE NAME: PEA RIDGE

**RESPONSE OF APPLICANTS NEW CINGULAR WIRELESS PCS, LLC AND
AMERICAN TOWERS LLC AS TO FIRST REQUEST FOR INFORMATION**

Come New Cingular Wireless PCS, LLC, and American Towers LLC (hereinafter "Applicants"), by counsel, and hereby object, reserve all rights, and provide responses under protest, as to the Commission Staff's June 10, 2016 First Request for Information to applicants ("Staff Requests"). Applicants' objection and associated Motions in Limine and to Quash are attached hereto and incorporated by reference as Exhibit A. An Alternative Site Analysis Report and Radio Frequency Analysis are attached hereto and incorporated, respectively as Exhibits B and C. Said Exhibits B and C are true and accurate to the best of the undersigned's knowledge, information, and belief formed after a reasonable inquiry.

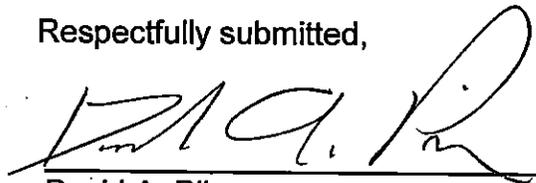
Ultimately, as detailed in Exhibit A, the Staff Requests are not expressly or impliedly within the limited statutory authority of the PSC to regulate the permitting of cellular towers. On all of the facts, circumstances, and applicable law, Applicants' Objection and Reservation of Rights should be preserved of record. In addition,

Applicants' attached Motion in Limine, or, in the alternative, their Motion to Quash the Staff Requests and Submit the Application for Decision should be granted and Applicants should be granted any other relief to which they are entitled

CERTIFICATE OF SERVICE

It is hereby certified that on Friday June 24, 2016, a true and correct original of the foregoing and five copies was filed with the Filings Division, Kentucky Public Service Commission, 211 Sower Blvd, Frankfort, KY 40602 via hand delivery and that an additional copy in a separate envelope was hand delivered to the attention of Jeb Pinney, Staff Attorney, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602. It is further certified, although Applicants maintain they have no duty to do so, that 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; Raymond Banks, P.O. Box 173, Compton, KY 41301; and Garrett Denniston, 154 Back St., Compton, KY 41301.

Respectfully submitted,



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Objection and Motion in LimineA

Alternate Site Analysis Report.....B

Radio Frequency Analysis.....C

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IN THE COUNTY OF WOLFE)

SITE NAME: PEA RIDGE

**OBJECTION, RESERVATION OF RIGHTS, MOTION IN LIMINE, AND MOTION
TO QUASH AND SUBMIT FOR DECISION THE APPLICATION OF NEW CINGULAR
WIRELESS PCS, LLC AND AMERICAN TOWERS LLC AS TO FIRST REQUEST
FOR INFORMATION ("STAFF REQUESTS")**

1.0 INTRODUCTON

Come New Cingular Wireless PCS, LLC, and American Towers LLC (hereinafter
"Applicants"), by counsel, and hereby:

(1) Object, reserve all rights, and provide responses under protest, as to the Commission Staff's June 10, 2016 First Request for Information to applicants ("Staff Requests") as to alternative new tower and collocation locations; and

(2) Make a Motion in Limine to prevent responsive information to the Staff Requests as to alternative new tower and/or collocation sites from being included in evidence or otherwise used in the ultimate decision of the Public Service Commission ("PSC") as being beyond the jurisdiction or other authority of the agency; and

(3) Make a Motion to Quash the Staff Requests and Submit the Application for Decision based upon the Application being pending beyond the 150 day Federal Communications Commission ("FCC") Shot Clock.¹

¹ See *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, FCC 09-99 (Nov. 18, 2009).

The PSC has previously granted Motions in Limine to keep administrative proceedings within appropriate statutory, regulatory, and evidentiary boundaries.² Applicants' objection to submission of Responses to the Staff Requests is preserved. Applicants request their Motion in Limine, or, in the alternative, their Motion to Quash and for Decision, be granted and/or that they receive any other relief to which they are entitled.

2.0 FACTUAL BACKGROUND

On December 14, 2015, Applicants New Cingular Wireless PCS, LLC d/b/a AT&T Mobility and American Towers, LLC, by counsel, pursuant to (i) KRS §§ 278.020, 278.040, 278.650, 278.665, and other statutory authority, and the rules and regulations applicable thereto, and (ii) the Telecommunications Act of 1996 (the "TCA"), submitted an Application requesting issuance of a Certificate of Public Convenience and Necessity ("CPCN") from the Kentucky Public Service Commission ("PSC") to construct, maintain, and operate a Wireless Communications Facility ("WCF") to serve the customers of AT&T Mobility with wireless communication services.

² See *In the Matter of: Petition of Se. Tel., Inc., for Arbitration of Certain Terms and Conditions Proposed Agreement with BellSouth Commc'n Inc., Concerning Interconnection Under the Telecomm. Act of 1996*, Case No. 2006-00316, Order (Aug. 30, 2006); *In the Matter of: Petition by AT&T Commc'n of the S. Cent. States, LLC and TCH Ohio, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecomm., Inc. Pursuant to 47 U.S.C. Section 252*, Case No. 2004-00234, Order (July 2, 2004); *In the Matter of: Petition of Se. Tel. Inc. for Arbitration of Certain Terms and Conditions of the Proposed Agreement with Ky. Alltel, Inc. Pursuant to the Commc'n Act of 1934, as Amended by the Telecomm. Act of 1996*, Case No. 2003-00115, Order (Oct. 27, 2003). See also KRE 103(d) authorizing circuit courts to grant motions in limine.

A December 18, 2015 letter ("No Deficiency Letter") from the PSC Filing Divisions Director states: "The Commission staff has reviewed the application ... and finds that it meets the minimum filing requirements and has been accepted for filing." As of the within filing, one hundred ninety-three (193) days have passed since the filing of the Application and one hundred eighty-nine (189) days have passed since the "No Deficiency" letter from the Filing Divisions Director.

Applicants have themselves filed no motions prior to today and have not otherwise taken any steps to postpone final decision in this proceeding.

Applicants are the only private parties to this proceeding. The PSC has denied requests for intervention by multiple persons in this proceeding including an Order entered March 31, 2016. The PSC denied one intervention request and explained the attempting intervener "... fails to identify how the location of the Pea Ridge cell tower is impacted by the distance to the forest or what laws are violated by the location." Id. at March 31, 2016 PSC Order, p 5. The same PSC Order also states "... the record reflects that the United States Department of Agriculture, U.S. Forestry Division, who owns and administers the Daniel Boone National Forest, received notice of the proposed cell tower" and "has not intervened in this matter." Id. An April 11, 2016 PSC Order in response to a Motion for Reconsideration further explains: "Pursuant to relevant case law, unsupported lay opinion testimony regarding whether there are other suitable locations for a cell tower is not sufficient evidence on which to base a denial of a cell tower CPCN application (footnote omitted)." Id. at p. 3

On June 10, 2016, one hundred and seventy five (175) days after the aforementioned "no-deficiency" letter, the PSC sent Applicants a Request for

Information pursuant to 807 KAR 5:063, Section 1(1)(s) and required response within 14 days. This was the first Request for Information tendered in the proceeding.

3.0 LEGAL ARGUMENT

The Public Service Commission's authority to regulate permitting of new cellular towers outside the jurisdiction of a planning commission is not without limitation. The Staff Requests - which may only be interpreted as intended to transform this proceeding into an evaluation of alternative new tower and/or collocation sites - goes beyond limitations of PSC authority pursuant to applicable law.

Federal Telecommunications Act of 1996 ("TCA") Implications for PSC Authority. The TCA imposes certain limitations on regulation of permitting of new cellular towers. Section 332(c)(7)(B)(iii) mandates that "[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. § 332(c)(7)(B)(iii). It would violate the TCA and be arbitrary under Section 2 of the Kentucky Constitution for the PSC to require submission of and rely upon information to deny a tower application which did not meet the "substantial evidence" standards of the TCA.

In determining whether a denial satisfies the "substantial evidence" requirement, courts employ the traditional standard employed by courts for review of agency actions. *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 798 (6th Cir. 2012). To evaluate a denial under this standard the court must first determine whether the reasons the locality identifies for the denial are authorized by the applicable local or state regulations. See *id.*; *New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir.

2002)(concluding that zoning board's decision was not supported by substantial evidence because, among other reasons, the applicant's failure to show lack of alternatives did not "go to any of the criteria set out in the Zoning Code"); *T-Mobile Cent. LLC v. City of Fraser*, 675 F. Supp. 2d 721, 738 (E.D. Mich. 2009); see also *T-Mobile Cent. LLC v. Unified Government of Wyandotte Cnty.*, 546 F.3d 1299, 1308 (10th Cir. 2008) ("In order [to] be supported by substantial evidence, the proffered reasons must comport with the objective criteria in existence Governing bodies cannot simply arbitrarily invent new criteria in order to reject an application."). The TCA's substantial evidence requirement "surely refers to the need for substantial evidence under the criteria laid down by the zoning law itself." *Cellco P'ship v. Franklin Cnty, KY.*, 553 F. Supp. 2d 838 (E.D. Ky. 2008) (quoting *Town of Amherst, N.H. v. Omnipoint Communications*, 173 F.3d 9, 14 (1st Cir. 1999)).

Evaluation of potential alternative sites without objective criteria in statute or regulation risks that aesthetic considerations will be determinative of the agency decision. Federal courts have found subjective aesthetic concerns which "... could be made by any resident in any area where a tower was proposed" do not constitute substantial evidence to sustain a denial of a proposed tower pursuant to the TCA. *Cellco Partnership v. Franklin County*, 553 F.Supp. 2d 838, 852 (E.D. Ky. 2008).

Unwarranted agency preference for tower site location on governmental property over private property in the absence of statutory or lawful regulatory authority raises equal protection implications as well. *USCOC of Greater Missouri, LLC v. Village of Marlborough, Missouri*, 618 F. Supp. 2d 1055; 2009 U.S. Dist. LEXIS 36410 (E.D. Missouri 2009).

Also, "[s]imply pointing out that possible alternative sites exist is not substantial evidence." *T-Mobile Cent. LLC v. City of Fraser*, 675 F. Supp. 2d 721, 738 (E.D. Mich. 2009). See also *Telespectrum, Inc. v. Public Service Commission*, 227 F.3d 414, 424 (6th Circuit 2000).

Ultimately, mandatory response to Staff Requests as to alternative site investigations and any effort to support an Application denial by the PSC on the theory of lack of sufficient investigations is not rooted in substantial evidence because (1) there is no statutory or lawful regulatory requirement applicable to PSC proceedings which requires that Applicants investigate alternative raw land tower locations or potential collocation sites and provide documentary evidence of such sites to the PSC, and (2) the only substantiated evidence in the record demonstrates that Applicants met the minimal "statement of consideration" criteria set forth in the PSC enabling statutes and regulations.³ Accordingly, Applicants have satisfied the requirements of 807 KAR 5:063, Section 1(1)(s), and should not be required to provide additional information pursuant to the PSC's request.

³ A wireless applicant might on its own seek to present evidence on alternative locations to preserve and support a potential claim of "prohibition of service" pursuant to the TCA. An applicant could likely do so before the agency or in subsequent litigation because such claims are not strictly "on the record." See *PCS Assets, LLC v. City of Palos Verdes Estates, et al*, 2009 U.S. App. Lexis 22514 (9th Cir. Oct. 14, 2009). 47 U.S.C. Section 332(c)(7)(B)(i)(II) provides that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i)(II). However, an applicant is not required to prove a TCA prohibition claim before the PSC and should not be compelled to do so by agency discovery devices such as the Staff Requests. Applicants may meet their burden of proof under Kentucky law by submitting a new tower application in compliance with applicable Kentucky statutes and regulations of the PSC as Applicants within have done. See *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794 (6th Cir. 2012) detailing standards for a TCA prohibition claim which are applicable in Kentucky.

FCC Shot Clock Implications for PSC Authority. The PSC has specifically recognized: "... Federal law requires the Commission to act upon a siting application for a wireless facility within 150 days of its being duly filed."⁴ See *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, FCC 09-99 (Nov. 18, 2009). See also 47 U.S.C. Section 332(c)(7)(B)(iii). Of course, as of the filing of this Motion, one hundred eighty nine (189) days have passed since the Application was duly filed. Accordingly, a decision on the Application should have already been made. In this context, the Staff Requests are untimely. Consequently, Applications make a Motion to Quash the Staff Requests and for the Application to be Submitted for Decision on the existing administrative record.

Limited PSC Statutory Authority. A certificate of public convenience and necessity is, of course, required for a new cellular tower pursuant to KRS 278.020. KRS 278.665 enables the PSC, "by administrative regulation promulgated in accordance with KRS Chapter 13A", to establish minimum content of an application for a CPCN.

KRS 278.650 provides "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." (Emphasis added). *Id.* at KRS 278.650. "*The installation*" is clearly the installation proposed by the applicant. The statute provides no authority or standards for comparison of other potential new tower sites on other properties. Statutes are to be construed according to their "plain meaning." *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-491 (Ky. 2009).

⁴PSC Order, Case No. 2014-00098, p. 4.

Exploring alternative new tower site locations on other properties is not associated with the statutory criteria and is prejudicial to Applicants. Thus, grant of this Motion in Limine is appropriate. *Green River Elec. Corp. v. Nantz*, as modified, Ky. App., 894 S.W.2d 643 (1995).

Contrast the more limited PSC enabling authority of KRS 278.650 with the broader enabling authority for local planning commissions in KRS 100.9865(19) which requires an applicant for construction of a new cellular tower to provide "a statement that the applicant 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...." (Emphasis added). *Id.* at KRS 100.9865(19). Furthermore, KRS 100.987(7) authorizes a planning commission to deny a new tower application based on an applicant's unwillingness to co-locate. However, the enabling statutes for PSC regulation of new towers include no such authorization. The Legislature is presumed to have intended to make such distinctions in statutes covering similar topics.⁵ The evident

⁵ See *Desean Maynes v. Commonwealth of Kentucky*, 361 S.W.3d 922 (Ky. 2012):

In construing statutes, our goal is to give effect to the intent of the General Assembly. We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration. *Osborne v. Commonwealth*, 185 S.W.3d 645 (Ky. 2006). We presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes.... *Id.* at 925.

See also *J. Randolph Lewis v. Jackson Energy Cooperative Corporation, et al*, 189 S.W.3d 87, 92-94 (Ky. 2005) ("It is a primary rule of statutory construction that the enumeration of particular things excludes ideas of something else not mentioned....")

legislative intent should not be circumvented by required response to Staff Requests in PSC proceedings on alternative site issues.

Applicants were not required to assume any burden of proof on other new tower locations on the plain language of KRS 278.650. A denial ultimately founded upon PSC preference for an alternative new tower site could not be based on substantial evidence. As stated by the Kentucky Supreme Court in *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002), "... statutes must be given a literal interpretation unless they are ambiguous..." KRS 278.650 is very clear.

The Public Service Commission has recognized "... this issue of examining suitable alternative sites was in the past a statutory mandate, (footnote omitted) but the General Assembly has eliminated this requirement. (footnote omitted)."⁶ At the same time, the PSC has stated "[t]he existence of suitable alternative locations, however, remains a factor that the Commission considers in reaching a decision in an application for a CPCN."⁷ The problem with this contradictory approach is that when it comes to alternative new tower locations, there is no statutory or lawful regulatory authority or

Construction of the wireless permitting statutes applicable to Planning Commissions in comparison to those applicable to the PSC in light of these precedents leaves no doubt that the absence of reference to other alternative locations in the PSC statutes was intended by the Legislature to establish different types of proceedings before the local planning commissions and the PSC.

⁶ See Order of Public Service Commission in Case No. 2004-00508, dated July 11, 2006 (p. 1).

⁷ See Order of Public Service Commission in Case No. 2004-00508, dated July 11, 2006 (p. 1-2).

criteria for evaluation of such alternative new tower sites and/or for denial of a complete application upon insufficient or unpersuasive evidence as to failure to select an alternative new tower site. Kentucky's appellate courts have emphasized the importance of adequate standards supporting regulatory authority involving land use.⁸ PSC consideration of alternative sites has no foundation in any such objective standards.

KRS 13A.130, which applies to the adoption of regulations by the PSC, as specified by KRS 278.655, provides in pertinent part that "an administrative body shall not by internal policy ... (a) modify a statute...." or "expand upon" a statute. (Emphasis added). *Id.* at KRS 13A.130(1)(a) and (b). The Kentucky Court of Appeals Opinion in *Kerr v. Kentucky State Bd. of Registration for Professional Engineers & Land Surveyors*, 797 S.W.2d 714 (Ky. Ct. App. 1990) recognized "[r]egulatory agencies are creatures of statute, and have no powers of their own...."

KRS 13A.100 provides in pertinent part:

"Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations shall, by administrative regulation prescribe, consistent with applicable statutes: (1) each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure or practice requirements of any administrative body; or affects private rights or procedures available to the public." *Id.* at KRS 13A.100(1).

Thus, even if the PSC had statutory authority to make its new cellular tower permitting decisions on alternative site issues, it would have to adopt administrative regulations on its applied policy and procedure as to such issues. No such regulations currently exist.

⁸ *Hardin County. v. Jost*, 897 S.W.2d 592, 595 (Ky. Ct. App. 1995).

KRS 278.110 authorizes the PSC to employ or contract for staff "... to carry out provisions of this chapter [KRS Chapter 278], or to perform the duties and exercise the powers conferred by law upon the commission." (Emphasis added). *Id.* at KRS 278.110. Thus, the powers of Staff are constrained by statute.

The regulatory criteria for CPCN Applications submitted to the PSC are set forth at 807 KAR 5:063(1). The June 11, 2016 PSC Staff Requests specifically require additional information in regard to alternative new tower and collocation sites. The Staff Requests reference to 807 KAR 5:063, Section 1(1)(s), which requires:

"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" (Emphasis added). *Id.* at 807 KAR 5:036, Section 1(1)(s).

Unlike many design requirements promulgated by local planning commissions⁹, 807 KAR 5:063(1) does not include a preferential order of WCF locations (such as commercial over residential, etc.) other than preferring collocating on existing structures. As long as the laundry list of application and design requirements of 807

⁹ See Lexington Fayette Urban County Government Zoning Ordinance, Article 25-4, for an example of local government regulations, arising under the different statutory authority of KRS 100.9865(19), which expressly prioritize location of cellular towers on local government properties.

KAR 5:063(1) are met, there is no objective basis in PSC regulations to prefer one new tower site location over another.

In this case, Applicants have already provided enough information in its application to comply with the requirements of 807 KAR 5:063(1).¹⁰ If more information is required than Applicants' statement of consideration of and conclusion on certain issues, the PSC would need to have a statutory basis and to have adopted specific regulations on the issue pursuant to KRS 13A.100. Paragraph 11 of the Application states:

"Applicants have considered the likely effects of the installation of the proposed WCF on nearby land uses and values and have concluded that there is no more suitable location reasonably available from which adequate services can be provided, and that there are no reasonably available opportunities to co-locate the necessary antennas on an existing structure. When suitable towers or structures exist, AT&T Mobility attempts to co-locate on existing structures such as communications towers or other structures capable of supporting its facilities; however, no other suitable or available co-location site was found to be located in the vicinity of the site." (Paragraph 11 of Application, page 5).

With this representation as to alternative new tower sites and co-location opportunities, Applicants fulfilled all statutory and regulatory requirements on such subjects in order to obtain approval of their Application. There is no statutory or regulatory justification for them to have to respond to detailed Staff Requests on the subject or for such issues to be the basis for a denial of the Application. To require

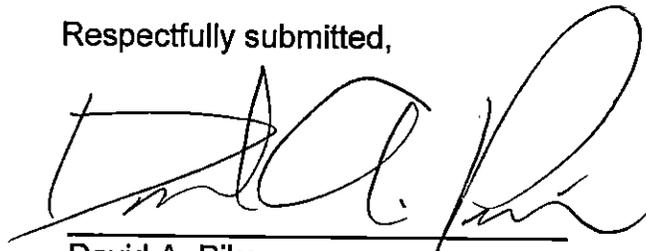
¹⁰ The Applicants did not provide any documentation associated with co-location opportunities because the only FCC-registered structure within the search area is located on Ronald and Elaine Halsey's property, the same property owners of the proposed WCF, who indicated that they are unwilling to lease additional ground space near the structure for an equipment shelter. Therefore, it is apparent that the requirements of 807 KAR 5:063, Section 1(1)(s), are already satisfied and no additional information is necessary.

them to do so violates the prohibition on arbitrary government action set forth in Section 2 of the Kentucky Constitution. See *American Beauty Homes Corp. v. Louisville*, 379 S.W.2d 450 (Ky. 1964)(action in excess of statutory powers is arbitrary); *Kaelin v. City of Louisville*, 643 S.W.2d 590 (Ky. 1982).

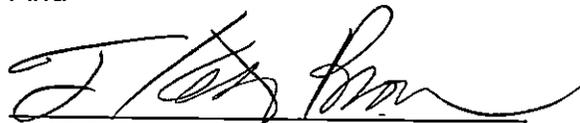
4.0 CONCLUSION

Ultimately, the Staff Requests are not expressly or impliedly within the limited statutory authority of the PSC to regulate the permitting of cellular towers. On all of the foregoing facts, circumstances, and applicable law, Applicants' Objection and Reservation of Rights should be preserved of record. In addition, Applicants' Motion in Limine, or, in the alternative, their Motion to Quash the Staff Requests and Submit the Application for Decision should be granted and Applicants should be granted any other relief to which they are entitled.

Respectfully submitted,



David A. Pike
And

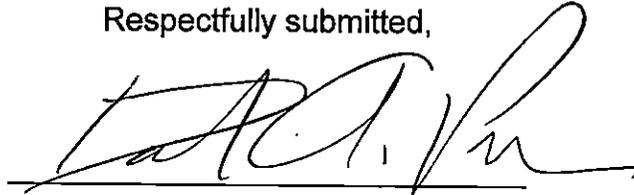


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CERTIFICATE OF SERVICE

It is hereby certified that on Friday June 24, 2016, a true and correct original of the foregoing and five copies was filed with the Filings Division, Kentucky Public Service Commission, 211 Sower Blvd, Frankfort, KY 40602 via hand delivery and that an additional copy in a separate envelope was hand delivered to the attention of Jeb Pinney, Staff Attorney, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602. It is further certified, although Applicants maintain they have no duty to do so, that 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; Raymond Banks, P.O. Box 173, Compton, KY 41301; and Garrett Denniston, 154 Back St., Compton, KY 41301.

Respectfully submitted,



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June 21, 2016

Kentucky Public Service Commission
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RE: Alternate Site Analysis Report
Uniform Application for a Communications Facility
Applicant: AT&T Mobility
Site Location: 395 Miller Ridge Road, Pine Ridge, KY 41360
Site Name: Pea Ridge

Dear Commissioners:

This report is provided to explain the site development process used by the Applicant to identify the site selected for the new wireless communications facility proposed in the accompanying Uniform Application.

AT&T Site Development Process

Step 1: Problem Identification. AT&T radio frequency engineers first identified a growing coverage and/or capacity gap in an area of unincorporated Wolfe County west of Campton, Kentucky.

Step 2: Search Area. To help guide the site development team's task of identifying a suitable location for a new wireless communications facility site, AT&T Mobility's radio frequency engineers identified the geographic area where the antenna site must be located in order to close the gap and issued a map (called a Search Area) that identified the general area in which a new site must be located. In this instance, the search area contains a mix of federally-owned forest parcels and rural residential parcels located near the Bert Combs Mountain Parkway. A copy of the Search Ring for this site is attached as Exhibit A.

Step 3: Co-location Review. The site development team first reviewed the area within the Search Area for a suitable tall structure for co-location. In this case, there is one existing FCC-registered structure within the search area, an approximately 262-foot tall guyed tower owned by the Commonwealth of Kentucky (ASR# 1044845) located at (37° 46' 22.4" N, 83° 37' 57.1" W). Site Acquisition Agents conducted a visual inspection and determined that the existing tower would not support the Applicants' required antennas. While the Site Acquisition Agent was visiting the site, a state official was on site to perform maintenance on the existing tower. The state official confirmed the tower's age and unsuitability for antenna placement. Further, additional ground space is required near the existing tower to accommodate placement of the Applicants' ground compound including an equipment shelter and generator. The proposed site's landowner also owns the property on which the existing tower is located. The landowner is not willing to lease

additional ground space near the existing tower for the Applicants' ground compound due to his existing business use on the parcel.

Step 4: Review of the Area's Zoning Classification. Once the site development team determined that there are no available existing tall structures which are technically feasible and suitable for co-location, the team next reviewed local zoning requirements to identify parcels located within the search area that might be suitable from a land use perspective to host an antenna site. In this case, the selected site is located in an unincorporated portion of Wolfe County, and there is no applicable zoning district.

Step 5: Preliminary Inspection and Assessment of Suitable Parcels. Once suitably zoned parcels are identified, the site development team visits the parcels and performs a preliminary inspection. The purpose of the preliminary inspection is: (1) to confirm the availability of sufficient land space for the proposed facility; (2) to identify a specific location for the facility on the parcel; (3) to identify any recognized environmental conditions that would disqualify the parcel from consideration; (4) to identify any construction issues that would disqualify the candidate; and, (5) to assess the potential impact of the facility on neighboring properties. In this case, preliminary inspections by the site development team revealed that many parcels in the search area were immediately ruled out due to steep terrain, lack of access roads, lack of utilities, and densely forested landscape. Federally-owned property within the search area was eliminated from consideration based on the terrain and lack of access roads and utilities. Parcel 012-00-00-023.00 meets all of the requirements discussed above. Other Landowners in the search area were approached during in-person visits by Site Acquisition Agents to discuss tower placement. With the exception of the site parcel's owner, none of the landowners approached were willing to lease space for tower placement at this time.

Step 6: Candidate Evaluation and Selection. After the preliminary site assessments were performed, the site development team evaluated potential locations based on the availability of ground space, topography, applicable environmental conditions, construction feasibility and the potential impact of the facility on neighboring properties. In this case, the owners of parcel 012-00-00-023.00 were interested in leasing ground space, and a site location on this parcel was confirmed to satisfy AT&T's radio frequency service objectives by AT&T's radio frequency engineer. Access and utility requirements for the facility are met by this site.

Step 7: Leasing and Due Diligence. Once a suitable candidate was selected, lease negotiations were commenced and site due diligence steps were performed, as described below.

Leasehold Due Diligence:

- A Title Report was obtained and reviewed to ensure that there are no limitations on the landowner's capacity to lease and to address any title issues.
- A site survey was obtained to identify the location of parcel features, boundaries, easements and other encumbrances revealed by the title search.
- Review of Environmental Conditions

Engineering Due Diligence:

- Utility access identified.
- Grounding plan designed.
- Geotechnical soil analysis performed to determine foundation requirements.
- Foundations designed to meet the Kentucky Building Code lateral and subjacent support requirements.
- Site plan developed.

Federal Regulatory Due Diligence

- Federal Aviation Administration ("FAA").
- Federal Communication Commission ("FCC").

In this case, the selected site candidate satisfied the above criteria.

Step 8: Application. Once a lease was obtained and all site due diligence was completed, AT&T Mobility prepared and filed the accompanying uniform application to construct, maintain and operate a communications facility.

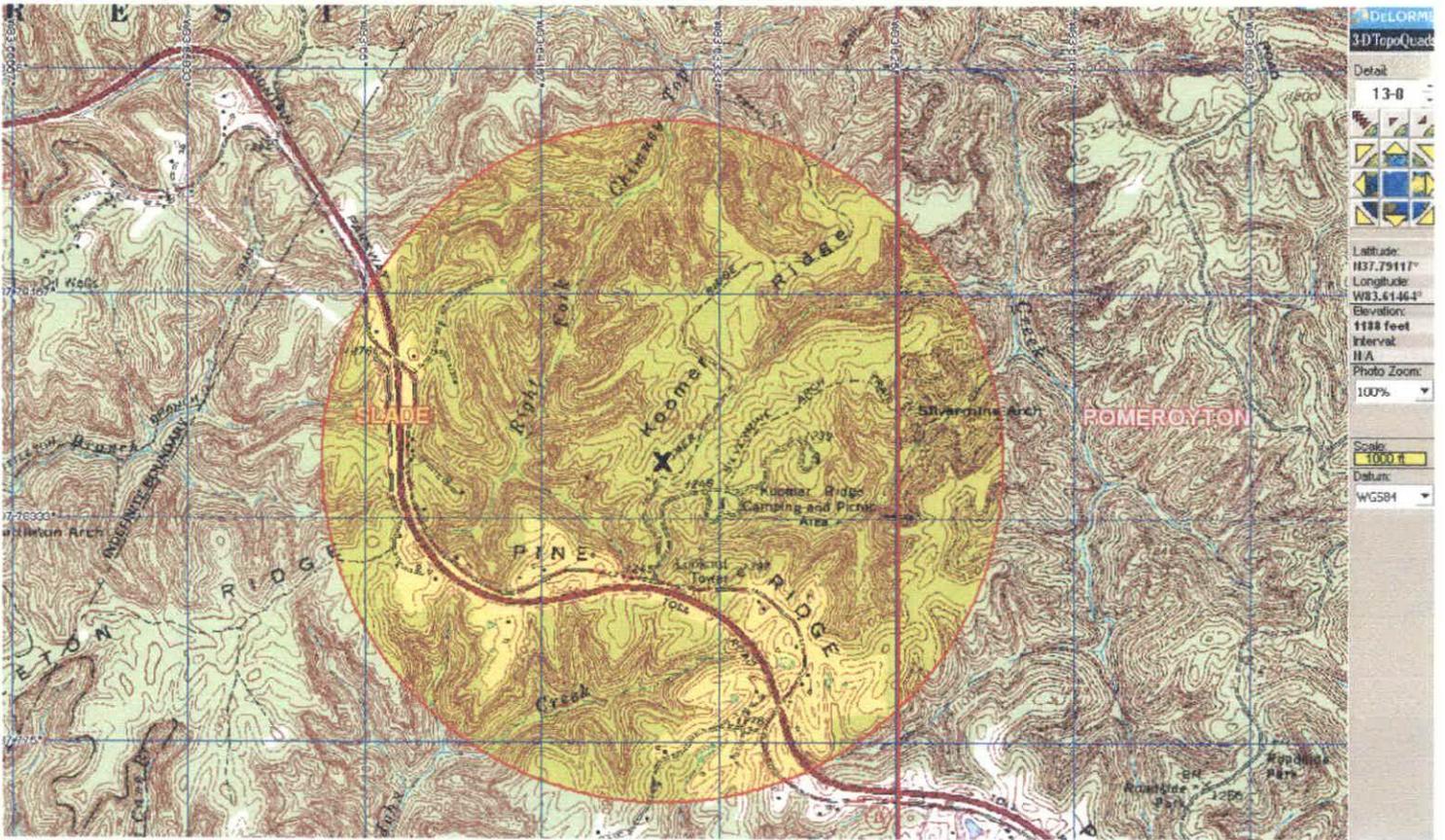
Conclusion

Applicant's site identification and selection process aims to identify the least intrusive of all the available and technically feasible parcels in a service need area. In this case, the selected property meets the radio frequency site design objective, provides appropriate separation from other properties in the area, and meets access and utilities requirements for the facility.

Signature and notarization to follow

Exhibit A

Topographical Search Ring



Certification of Compliance

I, Brian Ramirez, hereby certify that the attached Alternate Site Analysis Report for the Pea Ridge Site located in Pine Ridge, KY is true and accurate to the best of my knowledge, information, and belief after a reasonable inquiry.

Sign: Brian Ramirez

Name: Brian Ramirez

Title: Site Acquisition Agent

Company: PBM Wireless Services

Address: 13714 Smokey Ridge Overlook, Carmel, Indiana 46033

Phone: (317) 225-6075

State of Indiana

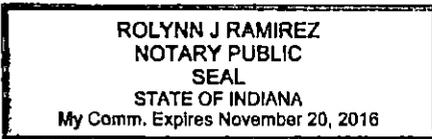
County of Hendricks

This instrument was acknowledged before me this 21st day of June, 2016

by Rolynn J Ramirez
Print name of signer

Rolynn J Ramirez
Notary Signature

My Commission Expires 11-20-16





June 23, 2016

Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: Case No. 2015-00404
Response to First Request for Information - Radio Frequency Analysis
AT&T Mobility Site Name: Pea Ridge

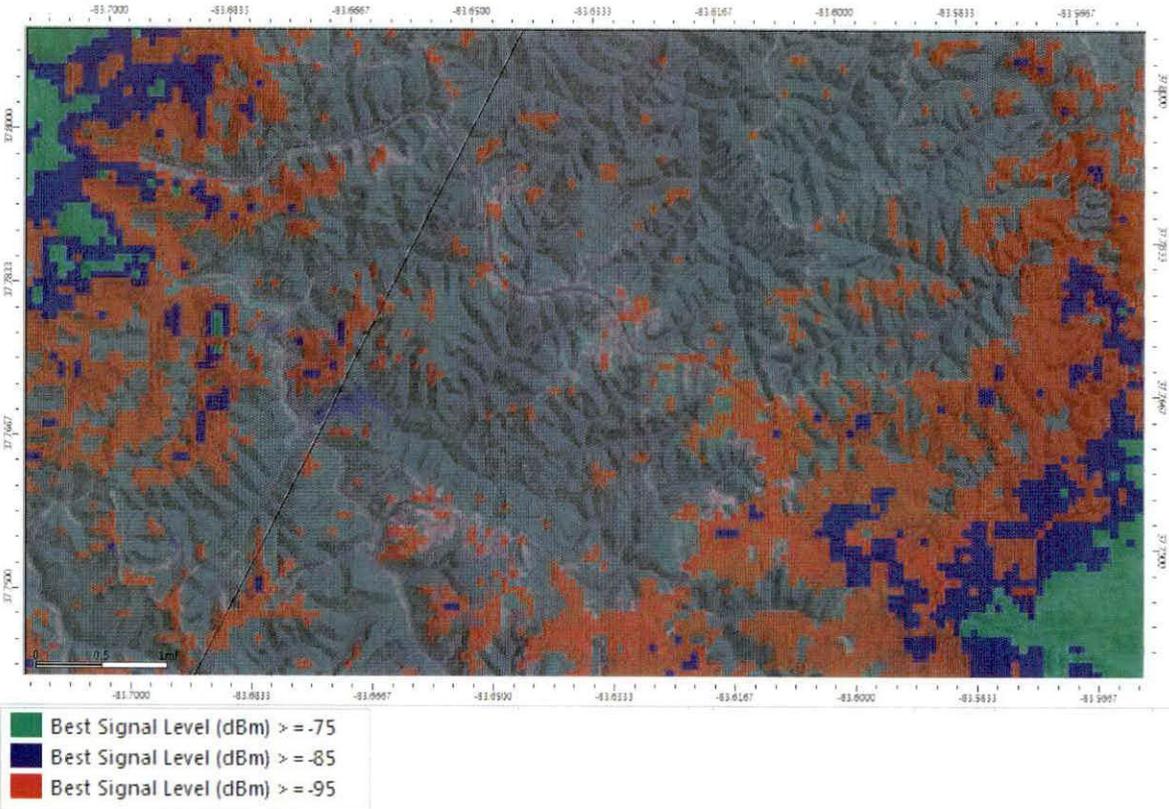
Dear Commission Members:

I am providing this correspondence to address the portion of the Commission Staff's First Request for Information regarding the radio frequency analysis performed by AT&T Mobility demonstrating that (1) there is no more suitable location reasonably available from which adequate service to the area can be provided and (2) there is no reasonably available opportunity to co-locate.

BACKGROUND

AT&T Mobility ("AT&T") is an FCC-licensed wireless communications service provider that provides essential wireless voice and data services to residential and commercial customers. AT&T delivers these services over a network of sites (i.e., antennas mounted on a support structure, with associated radio transmitting equipment) which are linked to one another and which transmit and receive signals to and from mobile phones and other wireless communication devices.

There is a significant gap in AT&T's wireless coverage in the vicinity of the proposed site. This gap exists because there is insufficient wireless service infrastructure in the subject area. The map below illustrates existing coverage in the subject area.



The green shading indicates areas with a signal strength level that provides acceptable in-building service coverage (i.e., where users are able to place or receive a call on the ground floor of a building). The blue shading indicates areas with a signal strength level that provides acceptable in-transit service coverage (i.e., where users should be able to place or receive a call from within a vehicle). The red shading indicates areas with a signal strength level where a customer might have difficulty receiving consistently acceptable service. Note the clear gap in coverage in the vicinity of the Proposed Site location.

The quality of service experienced by any individual customer can differ greatly depending on whether the user is indoors, outdoors, stationary, or in transit. AT&T strives to provide consistent service to all users within a coverage area. Accordingly, the blue and red areas on the coverage map are areas where there is currently inadequate service coverage, and a new facility is needed to close the coverage gaps that affect these areas. A new wireless communications facility is needed to close this

gap so that quality service may be provided to wireless service users in this area of Wolfe County.

THE SEARCH AREA

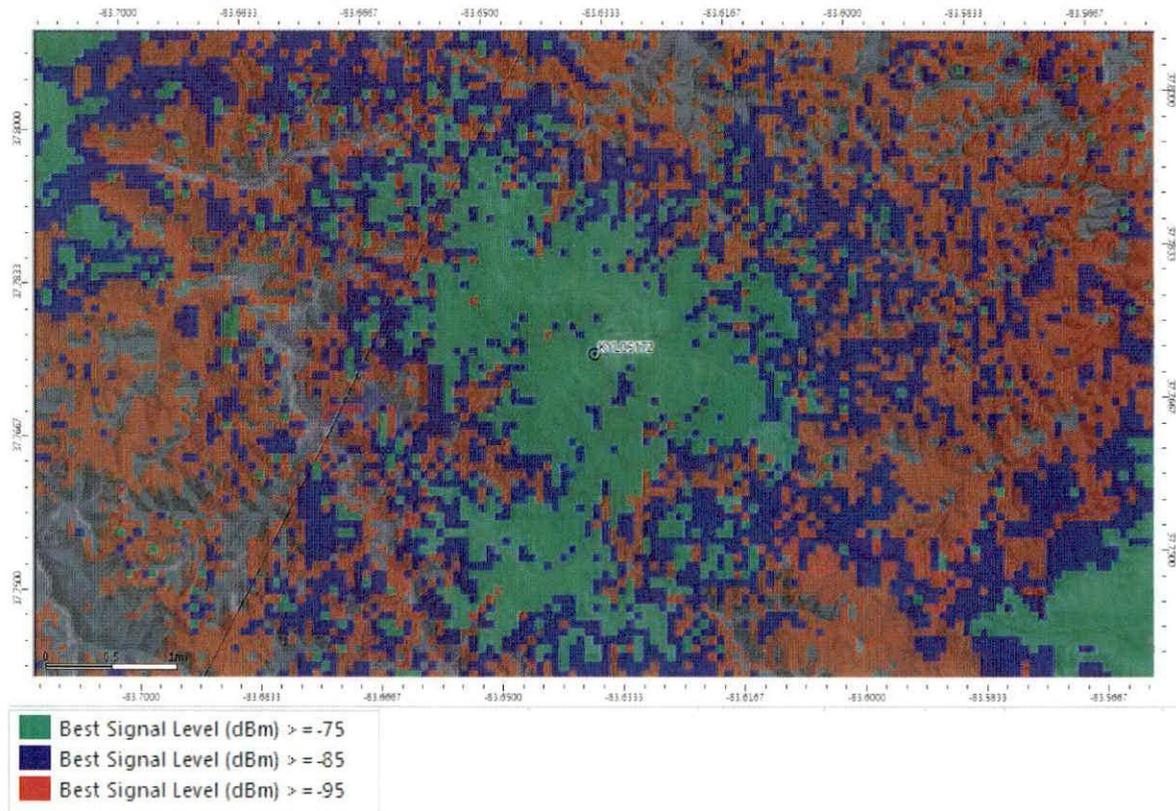
Each site provides coverage for users located in a particular area. The geographic area covered by a given site is determined by factors such as site elevation, local topography, relative location and elevation of adjacent sites and customer usage patterns for the area. The volume of usage that can be handled by an individual site is limited, and sites must be carefully located to provide sufficient coverage for users in a given area. Sites must also be located with reference to other sites in the network to provide as much new incremental coverage as possible while also avoiding interference with one another.

To remedy the subject service need as much as possible, new wireless communications antennas and associated equipment must be located within a prescribed area and at a specific elevation in order to be integrated into AT&T's existing network to provide coverage in the relevant area. The Search Area map included as Exhibit N to the Application shows the area where a new wireless communications facility is needed in order to fulfill the coverage objectives and network design criteria discussed herein.

THE PEA RIDGE SITE

AT&T Mobility carefully examined the Search Area to select the subject site location and concluded that there is no more suitable location reasonably available for the proposed facility. Specifically, the proposed site will remedy the service issues and close the coverage gap illustrated in the coverage map above.

The coverage map below depicts coverage that will be provided in the subject area once the proposed facility is built and integrated into AT&T's existing network.



As you can see from the above map, the gap area will be significantly reduced once the proposed facility is operational, and this will expand coverage and improve service quality and availability in the subject area.

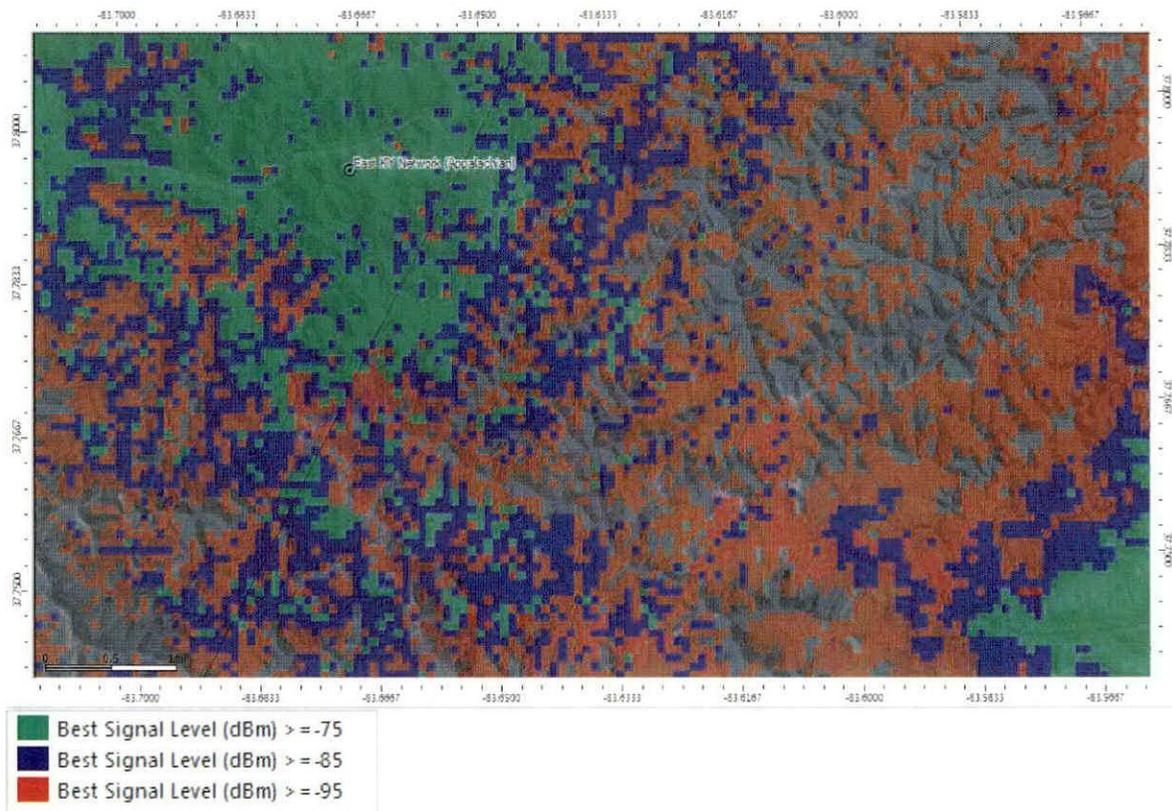
REVIEW OF CO-LOCATION OPPORTUNITIES

Since co-location speeds deployment of new facilities and reduces tower proliferation, AT&T Mobility seeks to co-locate its equipment on existing structures whenever possible. As discussed above, a new wireless communications facility site must be located within the prescribed search area in order to address the subject coverage gap.

However, there are no available co-location structures located within the search area. Furthermore, in order to provide a thorough response to the Commission's questions regarding co-location, I have also reviewed the existing tower on Campton Road in the Baker Estates area despite the fact that it is located approximately 1 mile outside of the search area. This tower is approximately 2.3 miles northwest of the proposed site location and is further identified as follows:

- Owner: East Kentucky Network, LLC d/b/a Appalachian Wireless
- FCC ASR #1042397 (N37° 47' 40.7"; W83° 40' 06.4")

The coverage map below illustrates the extent of coverage that could be provided if AT&T Mobility were to co-locate antennas on this tower instead of building the proposed Pea Ridge site.



As you can see from the coverage map, the East Kentucky Network tower is located too far to the northwest of the service gap area to extend sufficient coverage to close the gap and adequately address the service need for the area. Accordingly, the East Kentucky Network tower is not a feasible co-location alternative for the proposed Pea Ridge site.

