



1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, KY 40165-0369
Phone (502) 955-4400 or (800) 516-4293
Fax (502) 543-4410 or (800) 541-4410

VIA FEDEX

November 3, 2017

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

NOV 06 2017

PUBLIC SERVICE
COMMISSION

Re: Response to Request for Intervention
PSC Case No.: 2017-00368
Site Name: Symsonia

Dear Ms. Pinson:

We have received and responded to a Request for Intervention from Nancy M. Roche concerning this tower site. Please find enclosed our response to their concerns and make this letter and its enclosures a part of the administrative record. Do not hesitate to contact us with any concerns regarding this matter

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Pike", with a long, sweeping underline.

David A. Pike
Attorney for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

Enclosure

cc: Brittany Hayes Koenig, Div. of General Counsel

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 06 2017

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC)
D/B/A AT&T MOBILITY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2017-00368
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF GRAVES)

SITE NAME: SYMSONIA

RESPONSE TO REQUEST TO INTERVENE

Applicant New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T Mobility"), by counsel, make this Response to Intervene. Applicants respectfully state, as follows:

1. The Request to Intervene by Nancy M. Roche offers no new evidence in support of intervention and largely duplicates the claims of her initial filing without directly countering that there are no grounds for denial of the subject application and substantial evidence of record exists in support of the requested CPCN, as set forth in Applicants' Response filed September 29, 2017.

2. While Ms. Roche acknowledges that she owns farmland next to the proposed site, she also attempts to characterize the farmland as residential to bolster her generalized concerns about "property values and aesthetics," but otherwise attaches no expert testimony in support of her concerns to the motion. A denial of the Application could not be supported by Ms. Roche's assertions. Moreover, Ms. Roche does not detail why the proposed tower site should be rejected under statute or regulation even if her

concerns as to property values and aesthetics were true.

3. Ms. Roche acknowledges that there is a problem with cell phone coverage in the area, but expresses the unsupported lay opinion that there are more appropriate locations for a new tower without offering any specific alternatives and without demonstrating that another location is available for leasing, would meet the radio frequency needs of the project, and would not result in opposition from other property owners in the area.

4. The Public Service Commission should not become a facilitator to Ms. Roche's efforts to circumvent clear and controlling legal precedent. 807 K.A.R. 5:001 - Section 4 - (11)(b) provides:

"(b) The commission shall grant a person leave to intervene if the commission finds that he or she had made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." (Emphasis added). Id at 807 K.A.R. 5:001 - Section 4 -1 (11)(b).

Federal Courts recognize that lay opinion or generalized aesthetic concerns are not substantial evidence justifying a rejection of this application. Cellco Partnership v. Franklin Co., KY, 553 F. Supp. 2d 838, 845-846 (E.D. Ky. 2008). Unsupported opinion is not substantial evidence. Cellco Partnership at 849. Generalized expressions of concerns with "aesthetics" are not substantial evidence. Cellco Partnership at 851.

It is clear the Motion to Intervene adds nothing to Ms. Roche's initial filing and provides no credible response to the issues raised by Applicant's Response filed September 29, 2017.

WHEREFORE, Applicants respectfully request the Kentucky Public Service

Commission:

- (a) Accept this Response to Request to Intervene for filing;
- (b) Deny the Motion to Intervene; and
- (c) Grant Applicants any other relief to which they are entitled.

Respectfully submitted,



David A. Pike
Pike Legal Group, PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369
Telephone: (502) 955-4400
Telefax: (502) 543-4410
Email: dpike@pikelegal.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November 2017, a true and accurate copy of the foregoing was sent by U.S. Postal Service first class mail, postage prepaid, to Nancy M. Roche, 821 Fatherland Street, Nashville, Tennessee 37206.

Respectfully submitted,



David A. Pike
Pike Legal Group, PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KY 40165-0369
Telephone: (502) 955-4400
Telefax: (502) 543-4410
Email: dpike@pikelegal.com