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PUBLIC SERVICE
COMMISSION

VIA FEDEX

November 8, 2017

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

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 To Intervene from Jose M. Flores 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 'DA', is written over the name 'David A. Pike'.

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

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In the Matter of:

PUBLIC SERVICE
COMMISSION

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC)
D/B/A AT&T MOBILITY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF GRAVES)

CASE NO.: 2017-00368

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 Request to Intervene. Applicant respectfully states, as follows:

1. A Request to Intervene made by Jose M. Flores offers no new evidence in support of intervention and largely duplicates the claims of his 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 Applicant's Response filed September 29, 2017.

2. Mr. Flores repeats his generalized concerns about "property values and aesthetics," but otherwise attaches no expert testimony in support of his concerns to the motion. A denial of the Application could not be supported by Mr. Flores' assertions. Moreover, Mr. Flores does not detail why the proposed tower site should be rejected under statute or regulation even if his concerns as to property values and aesthetics were

true.

3. Mr. Flores 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 Mr. Flores' 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 Request to Intervene adds nothing to Mr. Flores' initial filing and provides no credible response to the issues raised by Applicant's Response filed September 29, 2017.

WHEREFORE, Applicant respectfully requests the Kentucky Public Service Commission:

- (a) Accept this Response to Request to Intervene for filing;
- (b) Deny the Request to Intervene; and
- (c) Grant Applicant any other relief to which it is entitled.

Respectfully submitted,



David A. Pike
Attorney for Applicant
Pike Legal Group, PLLC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8 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 Jose M. Flores, 181 Symsonia Rd, Symsonia, KY 42082.



David A. Pike
Attorney for Applicant