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May 4, 2018

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MAY 07 2018

**PUBLIC SERVICE
COMMISSION**

VIA OVERNIGHT DELIVERY

PUBLIC SERVICE COMMISSION
DOCKET SECTION
P. O. BOX 615
211 SOWER BLVD.
FRANKFORT, KY 40601-0615

RE: FILING IN CASE NO. 2017-00435
APPLICATION OF TILLMAN INFRASTRUCTURE LLC, ET AL
HANSEN SITE

DEAR PSC DOCKET STAFF:

PLEASE FIND AN ORIGINAL AND FIVE COPIES OF APPLICANTS' SUR-REPLY TO MOTION TO INTERVENE OF
SCOTT NORMAN IN THE ABOVE-REFERENCED PROCEEDING.

SINCERELY,

PIKE LEGAL GROUP, PLLC

A handwritten signature in blue ink, appearing to read 'D.A. Pike', is written over the typed name.

DAVID A. PIKE
ATTORNEY FOR APPLICANTS

RECEIVED

MAY 07 2018

PUBLIC SERVICE
COMMISSION

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THE APPLICATION OF)
TILLMAN INFRASTRUCTURE LLC)
A DELAWARE LIMITED LIABILITY COMPANY, AND)
NEW CINGULAR WIRELESS PCS, LLC,)
A DELAWARE LIMITED LIABILITY COMPANY,)
D/B/A AT&T MOBILITY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2017-00435
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF MARSHALL)

SITE NAME: HANSEN

APPLICANTS' SUR-REPLY TO MOTION TO INTERVENE OF SCOTT NORMAN

Tillman Infrastructure LLC ("Tillman"), a Delaware limited liability company, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility ("AT&T") (collectively, "Applicants"), by counsel, file this Sur-Reply to the April 30, 2018 Reply of Scott Norman ("Norman") supporting his Motion to Intervene. Norman's Reply provides no new grounds for intervention, and his request to intervene should be denied. Applicants respectfully state as follows:

1. Norman's Motion is Inconsistent with the PSC's Denial of SBA's Motion for Intervention. SBA previously filed a Motion to Intervene arguing that its tower on the Norman property should be considered for continued collocation. The Public Service Commission ("PSC") denied SBA's Motion by Order of March 26, 2018. As Applicants pointed out in response to Norman's Motion, that Motion is duplicative of SBA's Motion. Norman's Reply makes no attempt to identify what evidence he could supply that SBA

could not or that would distinguish his Motion from SBA's. To the contrary, Norman admits he "has an existing contract with SBA," and he only offers repetitive arguments regarding collocation on the SBA tower rather than construction of a new tower. Norman further fails to identify any substantial evidence he would present that could impact the PSC's decision, or to explain why the PSC Staff cannot adequately represent any public interest involved. Thus, the PSC, in exercise of its ample discretion in this matter, should deny Norman's request for intervention just as it did with SBA.

2. The Deadline Set by Executive Director Letter is Applicable. Norman attempts to distinguish the several PSC decisions cited by Applicants regarding the untimeliness of his Motion by arguing that the deadline set in the January 31, 2018 letter from the PSC Executive Director is not binding on him. However, KRS 278.100 provides the Executive Director is the "chief administrative officer for the commission" The Executive Director routinely sets time frames for matters before the PSC which are not otherwise specified by statute or regulation. Such decisions are within the Executive Director's lawful authority, delegation, and discretion. Accordingly, Norman is bound by the 30 day deadline set by the Executive Director's letter of January 31, 2018, with which he indisputably failed to comply.

3. Absence of Evidence of Service of Norman's Motion Forecloses His Claim That Applicants' Response Was Untimely. Norman argues that Applicants' Response to his Motion to Intervene was untimely. A person filing a Motion is required to serve counsel for applicants pursuant to 807 K.A.R. 5:001 – Section 4(8). Moreover, unless certain electronic filing procedures not applicable to the current proceeding are invoked, "... a paper shall not be deemed filed with the commission until the paper: ... 2. Meets

all applicable requirements of KRS Chapter 278 and KAR Title 807.”

Norman’s Motion does not include a Certificate of Service to Applicants’ counsel. Moreover, Norman’s Reply makes no representation of service of the Motion. In such circumstances, Applicants cannot be bound by the seven-day period of 807 K.A.R. 5:001 – Section 5. Past practice of the PSC in such situations has been to serve all parties with the Motion and then set a deadline for response to a Motion to Intervene in order to preserve due process. Finally, regardless of the timing of Applicants’ Response, Norman remains bound by the 30-day deadline of the Executive Director’s letter of January 31, 2018, which he failed to meet.

4. The PSC has Recently Denied Intervention to Neighbors in Cellular Tower Cases. Norman’s Reply cites to certain orders of the PSC, almost all of them entered ten or more years ago, involving the grant of intervention to various opponents of efforts by utilities to obtain approval for various new facilities, without regard to whether the motions were opposed, the status of the persons seeking intervention, or the type of proposed utility facility involved. However, *in the last six months*, the PSC has denied neighbors’ requests for intervention in at least two cellular tower permitting proceedings. *See In the Matter of 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), 2017 Ky. PUC LEXIS 1148 (November 30, 2017); and *In the Matter of 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 Butler*

(Case No. 2017-00369), 2017 Ky. PUC LEXIS 1167 (December 08, 2017). These decisions are the precedents most relevant to Norman's Motion, and compel its denial if the PSC is to avoid arbitrary action.

REQUEST FOR RELIEF

WHEREFORE, there being no sufficient grounds for intervention by Scott Norman, Applicants respectfully request the Kentucky Public Service Commission:

- (a) Accept this Sur-Reply for filing;
- (b) Deny the Motion to Intervene;
- (c) Issue a Certificate of Public Convenience and Necessity to construct and operate the proposed cellular tower at the location set forth herein without further delay; and
- (d) Grant Applicants any other relief to which they are entitled.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of May 2018, a true and accurate copy of the foregoing was sent by U.S. Postal Service first class mail, postage prepaid, to Casey C. Stansbury, Mazaenec, Raskin & Ryder Co., LPA, and Ed Roach, VP-Associate General Counsel, SBA Communications Corporation, 8051 Congress Avenue, Boca Raton, FL 33487-1307.

Respectfully submitted,



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