

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO.: 2019-00176

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JUL 08 2019

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF
NEW CINGULAR WIRELESS PCS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY,
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 CASEY

**SBA COMMUNICATIONS CORPORATION'S REPLY TO NEW CINGULAR
WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY D/B/A
AT&T MOBILITY'S SBA COMMUNICATIONS CORPORATION'S
MOTION TO INTERVENE**

Comes SBA Communications Corporation d/b/a SBA Towers III LLC ("SBA"), pursuant to 807 KAR 5:001 Section 4(11), and for its Reply to New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company d/b/a AT&T Mobility's ("AT&T") Response to SBA's Motion to Intervene, states as follows:

SBA has shown that it should be allowed to intervene in this matter. Although SBA understands that such decisions are within the discretion of the Public Service Commission ("PSC"), SBA has given the PSC more than ample reason to allow its intervention. SBA has shown that it has both a special interest in this matter and that it can present issues and develop facts that can assist the PSC in making the decisions at issue in this matter.

- 1) SBA has unique information related to AT&T's attempts at co-location, and reasonable attempts at co-location are required for AT&T to be granted a certificate of public convenience and necessity.**

AT&T is required, by KRS § 278.020 and 807 KAR 5:063 Section 1(s), to present evidence concerning attempts to co-locate on existing structures. In this case, the existing structure on which

Study shows that there is no benefit to the public if AT&T builds its new tower. The only benefit here is to AT&T's bottom line.

Further, in order to justify the lack of a public necessity for building the Proposed AT&T Tower, AT&T claims that the public will benefit when it saves money on tower rent. AT&T Mobility is a subsidiary of one of the world's largest publicly traded companies with reported annual revenues in excess of \$170,000,000,000. AT&T does not elaborate on how Kentucky consumers will benefit from the alleged \$12,000 annual savings nor does it pledge to pass those purported savings on to its subscribers.¹ It merely puts forth the absurd notion that this will somehow allow AT&T to "vastly improve" its service to its customers. It is hard to understand how this could possibly be true.

B) SBA has unique information concerning the specifications and capacity of the SBA Tower.

As attempted co-location is a qualification for AT&T to be allowed a certificate of public convenience and necessity, information concerning a tower only a third of a mile away from the Proposed AT&T Tower is required for proper adjudication of this matter. As previously stated, this was not included in the Application.

In its Response, AT&T now alleges it cannot "deploy[]" its "advanced technologies" on the SBA Tower. Response to Motion to Intervene ¶ 9. This is a general statement lacking any technical information, analysis, or expertise behind it. However, AT&T now argues that this is a key reason, in addition to the "exploitive rents" charged by SBA, as to why co-location is not an avenue they can explore. This is a technical question to which only SBA can truly address through

¹ In fact, AT&T has a history of raising fees. See https://www.washingtonpost.com/technology/2018/06/29/att-is-raising-an-obscure-fee-customer-bills-make-an-extra-million-year-analyst-says/?noredirect=on&utm_term=.e3afc3ca7e8b.

its engineering staff. This a fact that only further highlights the need for expert testimony from SBA being made available to provide assistance to the Commission at a hearing.

3) AT&T attempts to deny SBA the opportunity to present issues and develop facts that will assist the Commission.

In its effort to sway the Commission to deny SBA's Request to Intervene, AT&T cites a litany of administrative cases, none of which are on point here, to create straw men in order to distract the Commission from the issues at hand. *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) (denying intervention when the request is based on "unsupported lay opinion"); *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 30, 2017) (denying intervention when the request was based on "unsupported lay opinion" concerns about "R/F emissions and aesthetics"); *In the Matter of: Tariff Filing of East Kentucky Power Cooperative, Inc. and its Member Distribution Cooperatives for Approval of Proposed Changes to their Qualified Cogeneration and Small Power Production Facilities Tariffs and the Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Case No. 2017-00212), 2017 Ky. PUC LEXIS 967 (September 22, 2017) (denying intervention because it concerns only a contractual dispute between intervenor and applicant); *In the Matter of: Electronic Application of Kentucky Power Company ...* (Case No. 2017-00179), 2017 Ky. PUC LEXIS 833 (August 16, 2017) (denying intervention because

motion was not timely filed); *In the Matter of the Joint Application of PNG Companies LLC ... for Approval of an Acquisition of Ownership...* (Case No. 2017-00125), 2017 Ky. PUC LEXIS 412 (April 20, 2017) (denying intervention because the proposed intervenor's only interest was generalized interest).

Unlike the above, SBA, in this matter, meets the standard enumerated in 807 KAR 5:001. It has demonstrated that its direct participation in this proceeding can shed new light on the following: 1) What, if any attempts did AT&T make to co-locate on SBA's existing tower? 2) What is the disparity, if any, in rent charged by SBA as compared to the rent proposed by Uniti Towers, LLC? 3) What additional coverage, if any, would Kentucky consumers receive, if the Proposed Tower were constructed based on a plan described as "overbuilt" already by one R/F engineer? and 4) Does the application actually meet the technical standard for a CPCN?

4) There is no reason to believe that SBA will unduly complicate this matter.

AT&T attempts to scare the Commission into denying SBA's Motion by portraying SBA's involvement in this matter and questioning of the Application as something that will only complicate these proceedings. However, pursuant to 807 KAR 5:063 Section 1(s) AT&T was required to address several issues in the Application-namely co-location-that were left out of that filing. Addressing these types of concerns is not a "complication" or "disruption," these matters are a required part of the application as set forth in the PSC's own regulations.

Furthermore, there are no special rules for how much or little SBA will participate in this matter once it is made a party through the intervention process. SBA is confident the PSC can devise a manner of participation for SBA that allows SBA to both present evidence necessary for the PSC's decision-making process and limits that participation to a level that does not create a problem in this matter.

CONCLUSION

AT&T objects to SBA's intervention in this matter because the company does not believe that SBA should be allowed to assert its "purely proprietary" interests in this matter. However, what are AT&T's interests in building the Proposed AT&T Tower if not proprietary? Surely AT&T does mean to attempt to convince the PSC that its interests are something other than financial. If AT&T's interest was purely in helping the citizens of the Commonwealth, it might consider building the Proposed AT&T Tower in an area that is actually underserved, instead of right next to SBA's Tower. In asking the PSC for a certificate of public convenience and necessity, AT&T is clearly motivated by its own monetary interests. This is not in itself problematic, however a problem does arise in this case where AT&T tries to avoid complying with the requirements to obtain such a certificate and objects to SBA's recognition of that fact. The PSC is charged with regulating the installation of utilities in the Commonwealth; this regulation is desirable and necessary. Although the PSC can inquire into these matters on its own, SBA is now informing the PSC that it has information that is likely helpful to this inquiry.

Further, and more importantly, contrary to the assertions made by AT&T, SBA meets the standard to intervene in this matter. It has clearly and fully stated its special interest in the case and more than met the standard on how its intervention will assist the Commission without unduly complicating the matter. As such, the PSC should grant SBA's Motion to Intervene.

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, the foregoing document was served via first class USPS, postage prepaid, upon the following:

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