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PUBLIC SERVICE
COMMISSION

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

In the Matter of:

THE APPLICATION OF
NEW CINGULAR WIRELESS PCS, LLC,
A DELEWARE LIMITED LIABILITY COMPANY,
D/B/A AT&T MOBILITY
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO CONSTRUCT A WIRELESS COMMUNICATION FACILITY IN THE
COMMONWEALTH OF KENTUCKY
IN THE COUNTY OF CASEY

**ELWOOD HOSKINS, SUSAN HOSKINS AND MANDY WAHL REPLY TO NEW
CINGULAR WIRELESS PCS, LLC, A DELEWARE LIMITED LIABILITY COMPANY
D/B/A AT&T MOBILITY' RESPONSE TO "THREE RESIDENTS"
MOTION TO INTERVENE.**

Come ELWOOD HOSKINS, 136 Taylor Street, P.O. Box 406, Liberty, Kentucky, 42539,
and SUSAN HOSKINS, 136 Taylor Street Liberty, Kentucky, 42539, and MANDY WALL, 8050
Dry Creek Road, Liberty, Kentucky, 42539, being three of the six members of the public who
submitted public comments requesting a hearing and who reside and own real property in Casey
County, Kentucky, and REPLY to the Response filed by NEW CINGULAR WIRELESS PCS,
LLC, ("AT&T"), to the "Three Residents" Motion to Intervene, as follows:

On July 25, 2019, ELWOOD HOSKINS, 136 Taylor Street, P.O. Box 406, Liberty,
Kentucky, 42539, and SUSAN HOSKINS, 136 Taylor Street Liberty, Kentucky, 42539, and
MANDY WALL, 8050 Dry Creek Road, Liberty, Kentucky, 42539, filed their Reply in support
of the pending public requests for a public hearing as described and mandated by KRS 278.650

and in opposition to the response filed by AT&T, and included therein their MOTION TO INTERVENE AS PARTIES.

On August 5, 2019, the undersigned received a AT&T's Response To Motion To Intervene Of Elwood Hoskins, Susan Hoskins and Mandy Wahl, thereafter identified by AT&T as the "Three Residents." In summary, it appears that AT& T wants to take the *Public* out of the *Public* Service Commission.

This Reply by the Three Residents is filed in support of their pending Motion to Intervene and in opposition to Response filed by the Applicant, AT&T.

The AT&T Response is not persuasive. AT&T must concede that the Three Residents are the only applicants seeking intervention who are able to speak for the public in this area. These Three Residents represent the reason for the settled Kentucky law and policy strongly supporting "co-location." As set forth in their earlier Reply in support of public hearing. 807 KAR 5:063 mandates a statement by the utility – the applicant – concerning existing land uses in the general area, consideration of attempts to co-locate, the conclusion that there is no reasonably available opportunity to co-locate. The applicant, AT&T has made this assertion. The Three Residents dispute that assertion. They live in or frequent the area of the existing SBA cell tower and the area where AT&T seeks to locate a new cell tower.

The Response by AT&T quotes the administrative regulation at 807 KAR 5:001, Section 4(11) governing intervention at page 10. These Three Residents have stated their interest – they live, own real property and frequently visit the areas where the existing SBA tower is located and where the proposed AT&T tower will be located. No other party or applicant for intervention has that interest. The Three Residents seek to present their testimony about the current and past land

uses in these areas. No other party or applicant for intervention has their knowledge of land uses. They meet the criteria of 807 KAR5:001, Section 4(11).

The Response by AT&T asserts that the Three Residents ignored the “reasonably available opportunity to collocate.” Page 2. In fact, the Three Residents expressly referred to this requirement when they cited to 807 KAR 5:063, Section 1, and asserted their belief that based upon their knowledge of the area, AT&T has failed to meet its burden of proof concerning the co-location requirements in that regulation. The Three Residents remind the Public Service Commission that the term “reasonably” requires a factual determination after considering all available points of view.

How can the Public Service Commission make a determination of “reasonableness” when it denies intervention to members of the public – with a special unique interest – owning land that will be impacted, using and visiting land that will be impacted – and only considers the assertion of the applicant.

In the event SBA is granted intervention, SBA cannot represent the public interest in protecting the public from the proliferation of unneeded cell towers that is at the heart of the policy for co-location.

The Response by AT&T mischaracterizes the land use interests of the Three Residents and misstates their basis for seeking intervention. AT&T makes the straw dog assertion that the Public Service Commission is “not a zoning or historic preservation board.” Page 4. AT&T makes another straw dog assertion that current and historic land uses in the area are not “dispositive criteria.” No one said they were. AT&T then concedes the per KRS 278.650, the Public Service 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 by AT&T]. That is precisely the point. The Three Residents can and will provide testimony to the Public Service Commission that will assist with that determination and the weight to give that consideration when the Public Service Commission makes the “reasonably available” determination.

The AT&T Response is dismissive of the Three Residents concerns about cemetery use. As is the AT&T practice, AT&T asserts another straw dog argument. The Three Residents do not assert that there is a statutory set-back requirement, nor do they assert a “tower exclusion zone.” See page 5. The Three Residents DO ASSERT that the Public Service Commission may take a nearby cemetery into account, per KRS 278.650, when it makes a determination of “reasonably available” under 807 KAR 5:063, Section 1(s). They further assert that they are the only members of the public who seek to become parties to this action in order to provide such testimony.

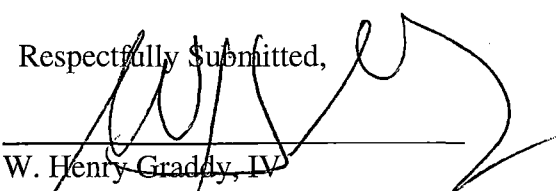
The AT&T Response relies heavily on another case, PSC Case No. 2017-00435 involving Scott Norman. Page 2, Page 3, Page 4, Page 6, Page 10. While the undersigned has not had the opportunity to review that case, we understand that the application to intervene by Scott Norman may have been found to be untimely. We ask the Public Service Commission to decline the AT&T invitation to apply that reasoning to this case. The Three Residents have timely moved to intervene.

Based upon their unique and direct interest in this matter, and their desire to be heard by the Public Service Commission , these three residents of Casey County and members of the public Hoskins and Wahl (“Three Residents’) URGE THAT THEIR MOTION FOR INTERVENTION BE GRANTED, herein.

CONCLUSION

WHEREFORE, Hoskins and Wahl reaffirm their previously filed REQUEST FOR HEARING and, URGE THAT THEIR MOTION FOR INTERVENTION BE GRANTED.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that on August 8, 2019, the foregoing document was served via first class mail and by email upon the following:

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