

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE NO.: 2020-00270**

In the Matter of:

APPLICATION OF VERTICAL BRIDGE DEVELOPMENT, LLC AND  
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 AT  
STATE ROUTE 2194W, HICKORY  
GRAVES COUNTY, KENTUCKY 42051

SITE NAME: US-KY-5040 / WORKMAN ROAD

**SBA COMMUNICATIONS CORPORATION'S  
REPLY IN SUPPORT OF MOTION TO INTERVENE**

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Comes SBA Communications Corporation and for its Reply in Support of its Amended Motion to Intervene, states as follows:

In their response to SBA's Motion to Intervene, Vertical Bridge Development, LLC ("Vertical Bridge") and New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T") (collectively Vertical Bridge and AT&T are referred to herein as the "Applicants") fail to adequately address requirements for intervention found in 807 KAR 5:001 Section 4(11) and place their focus squarely and solely on their proprietary self-interest. Consequently, their response is void of any reasonable arguments as to why SBA's intervention should not be granted to allow for the presentation of issues and development of facts that currently remain unaddressed.

Applicants posit that SBA will not be able to present any issues or develop facts to assist the Commission but choose not to explain this claim further and speak only in vague generalities. In place of addressing technical and novel facts presented in SBA's Motion to Intervene, Applicants reveal their true motivations by focusing on how a new tower will benefit AT&T

monetarily and how this self-interested decision may have externalities that could possibly trickle down to consumers in the form of some undisclosed future benefit. These vague generalities only serve to further illuminate the need for intervention.

As SBA has presented evidence that it meets the requirements of 807 KAR 5:001 Section 4(11), it should now be allowed to intervene in this matter.

**I. The issue before the Commission is whether SBA is likely to present issues or to develop facts that assist the commission in fully considering AT&T's Application.**

The Application itself and the Response to the Motion to Intervene are bare of evidence as to actual improvements to consumer rates and services. The Applicants only vaguely state that if the new tower (the "Proposed Tower") is built, then "tower rents are likely to decrease" and this will in some unexplained way serve to "enhance and expand the availability of advanced wireless services." Not only do Applicants admit that they can not say for sure that there will be a benefit in rates for themselves, they certainly can not and have not shown that the general public will see any lowering of rates or increases in service. This inability or refusal to describe convenience or necessity to the general public with any specificity or certainty illustrates the strong need for intervention to present issues and develop these missing facts for the benefit of the consumer.

The general platitudes and unsubstantiated explanations do nothing to help this Commission make a determination as to the application and intervention. Applicants further fail to provide details into how the Proposed Tower being built less than half a mile from the nearly identical existing tower will be convenient or in any way necessary to anyone but themselves. If there was some sort of technical benefit that could be provided, the Applicants fail to make any mention of what these specific advances or benefits are in either their Application or Response.

This lack of concrete information provided by the Applicants cuts strongly in favor of allowing SBA's intervention in this matter. If Applicants can not or will not provide this critical

information as to how a new tower could be of any benefit, then SBA can and is well suited to “present issues or develop facts that will assist the commission in fully considering the matter” as required by 807 KAR 5:001 Section 4(11). Furthermore, SBA can provide additional evidence and testimony, and any other resources that could fill in the gaps in the Application related to actual convenience or necessity for the public. Other than baseless claims that purely technical or rate related information may complicate proceedings, Applicants have failed to show how intervention will be a detriment in any way besides its potential effects on their bottom-line.

**II. SBA can present issues and help develop facts that assist the Commission in evaluating the Application.**

SBA has the primary source of information concerning whether and how AT&T has attempted to co-locate. As noted in SBA’s Motion, the Application barely touches on this important subject, which is certainly part of the proof need to prove the Proposed Tower is of public necessity.

The Applicants argue that co-location attempts have already been acknowledged by SBA because SBA has honestly admitted that it did get several form letters from AT&T concerning lowering of rents at sites across the county. However, a bulk mailing with vague terms and demands can hardly be considered a genuine attempt to negotiate co-location. It does not meet the Applicants burden to show that they have appropriately completed this required step.

The issue of co-location has been looked over by the Applicants in favor of arguments that SBA has only a proprietary interest in this matter. However, the Applicants have now admitted that their interests in having a new tower are actually proprietary. They state “that they would like to build the Proposed Tower because of “[u]nreasonable and excessive fees charged by SBA.” This proprietary interest is directly at odds with the public’s interest to have all relevant issues and facts available to the PSC before a determination is made as to public convenience and necessity.

The Applicants claim that SBA “fails to recognize competition is a desired outcome as to wireless facilities.” However, the “competition” referred to the Telecommunications Act of 1996 is competition that produces “lower prices and higher quality services for...consumers.” *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, 991 (9th Cir. 2009). If the competition of the Proposed Tower would actually benefit consumers in rates or services, the Applicants would have described this consumer benefit of the Proposed Tower in practical terms. Indeed, it appears that Applicants feel that “public necessity” and their own proprietary interests are synonymous in this case.

If a nearly identical tower exists within approximately a half mile, the SBA Tower, the Proposed Tower is unlikely to be of necessity to the public. Wishing to ignore this fact, the Applicants state in their Response that SBA has not provided “evidence that wireless service from [the SBA Tower] would be superior to that from the Proposed Tower.” However, it should be the Applicants’ burden to prove the need for the Proposed Tower. They have not, and all they can muster is that SBA has not met an imaginary burden of proof. As such, information SBA can provide about this issue is apparently badly needed.

### **CONCLUSION**

SBA has a unique interest in this matter that is not currently being represented and also has and will present issues and develop facts not included in the Application. These issues and facts are undeniably critical and relevant to public, convenience, necessity, or any potential benefit in rates or services and will only assist this Commission in making its determination. As such, SBA’s intervention appropriate and desirable under 807 KAR 5:001 Section 4(11) and it respectfully requests the ability to present this information in order to help assure full consideration of the Application.

FREEMAN MATHIS & GARY, LLP

*s/ Tia J. Combs*

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Casey C. Stansbury  
Tia J. Combs  
2525 Harrodsburg Road, Suite 500  
Lexington, KY 40504  
Telephone: (859) 410.7854  
[cstansbury@fmglaw.com](mailto:cstansbury@fmglaw.com)  
[tcombs@fmglaw.com](mailto:tcombs@fmglaw.com)  
*Counsel for SBA Communications, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2020, the foregoing document was served via first class USPS, postage prepaid, and email upon the following:

Todd R. Briggs, Esq.  
Briggs Law Office, PSC  
10200 Forest Green Blvd, Suite 112  
Louisville, KY 40223  
*Counsel for the Applicant*

*s/ Tia J. Combs*

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*Counsel for SBA*