

**COMMONWEALTH OF KENTUCKY  
BEFORE THE 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	)
AND UNITI TOWERS LLC, A DELAWARE	)
LIMITED LIABILITY COMPANY	)
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 LIVINGSTON	)

CASE NO.: 2020-00300

SITE NAME: LAKE CITY / LUKA

\* \* \* \* \*

**FILING OF PUBLIC SERVICE COMMISSION ORDER IN CASE NO. 2017-00435 IN  
SUPPORT OF APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY**

\* \* \* \* \*

New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (“AT&T”) and Uniti Towers LLC, a Delaware limited liability company (“Uniti”) (collectively “Applicants”), by counsel, file the Kentucky Public Service Commission November 1, 2018 Order in Case Number 2017-00435 (“Hansen” Case) in support of the within Application. It is attached hereto and incorporated as **Exhibit A**. Such Order involved a proposed wireless communications facility site in Marshall County, Kentucky and has long been a final and non-appealable Order. The Order provides in pertinent part:

**Both motions to intervene [including one by SBA] raised the issue of whether co-location was reasonably available .... Although the motions to intervene were denied, Commission Staff issued, and Applicants responded to, one round of data requests of this issue. The data requests revealed that within a 50-mile radius of the site of the proposed wireless communication facility, the rent on towers owned by SBA Properties are 58.7% greater than rent on wireless communications facilities owned by other companies. Applicants also provided information that the rent on the proposed tower would be less than half of what they are presently paying SBA properties. Therefore the Commission believes that Applicants have met their burden of showing that co-location is not reasonably available, even with the close physical proximity of SBA Properties' wireless communications facility. (Emphasis added). *Id.* at p. 2.**

The above-referenced 50-mile radius from the proposed tower in Marshall County would include almost the entirety of Livingston County, as calculated from any commonly available map. Accordingly, this evidence of rent disparity on SBA towers is likewise relevant in the within Case No. 2020-00300 involving a proposed new wireless communications facility site in Livingston County, Kentucky. The attached Order in Case Number 2017-00435 shows the problematic rent disparity is not just applicable to a single site, but is widespread in western Kentucky.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Applicants request that the PSC:

- (a) Accept this filing in the record of this proceeding;
- (b) Grant the requested Certificate of Public Convenience and Necessity; and
- (c) Grant Applicants any other relief to which they are entitled.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of October, the foregoing was electronically filed in the PSC system. No natural person or entity has been granted intervention in this proceeding. Accordingly, no other service of this Filing and Motion has been made.

Respectfully submitted,

A handwritten signature in blue ink that reads "David A. Pike".

---

David A. Pike and

A handwritten signature in blue ink that reads "F. Keith Brown".

---

F. Keith Brown  
Pike Legal Group, PLLC  
1578 Highway 44 East, Suite 6  
P. O. Box 369  
Shepherdsville, KY 40165-0369  
Telephone: (502) 955-4400  
Telefax: (502) 543-4410  
Email: dpike@pikelegal.com  
Attorneys for Applicants

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On November 14, 2017, Tillman Infrastructure, LLC (Tillman), and New Cingular Wireless, PCS, d/b/a AT&T Mobility (Applicants), filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 325 feet in height, with attached antennas, to be located at 1641 Lee Burd Road, Benton, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49'24.34" by West Longitude 88° 28'25.57".

Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the application, the design of the tower and foundation conform to applicable nationally recognized building standards, and a licensed professional engineer has certified the plans.

Pursuant to 807 KAR 5:063, Applicants have filed statements of having provided

the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Applicants have filed evidence that the county judge/executive and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction. The notices solicited any comments and informed the recipients of their right to request intervention.

SBA Properties filed a motion to intervene on December 27, 2017, and it was denied by Order of the Commission dated March 26, 2018. Mr. Scott Norman filed a motion to intervene on April 10, 2018, and it was denied by Order of the Commission dated July 2, 2018. No other requests to intervene or public comments have been filed with the Commission.

Both motions to intervene raised the issue of whether co-location was reasonably available (Applicants facilities are currently located on SBA Properties' structure pursuant to a lease agreement). Although the motions to intervene were denied, Commission Staff issued, and Applicants responded to, one round of data requests on this issue. The data requests revealed that within a 50-mile radius of the site of the proposed wireless communication facility, the rent on towers owned by SBA Properties are 58.7% greater than the rent on wireless communication facilities owned by other companies. Applicants also provided information that the rent on the proposed tower would be less than half of what they are presently paying SBA Properties. Therefore the Commission believes that Applicants have met their burden of showing that co-location is not reasonably available, even with the close physical proximity of SBA Properties' wireless communication facility.

AT&T Mobility has filed applications with the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) seeking approval for the

construction and operation of the proposed facility. The FAA application has been approved and the application with KAZC is pending approval.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Applicants have demonstrated that a facility is necessary to provide adequate utility service and, therefore, a CPCN to construct the proposed facility should be granted.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, Applicants should notify the Commission if the antenna tower is not used to provide service in the manner set out in the application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the proper practices, including removal of the unused antenna tower, which should be observed by Applicants.

IT IS THEREFORE ORDERED that:

1. Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 325 feet in height, with attached antennas, and to be located at 1641 Lee Burd Road, Benton, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49'24.34" by West Longitude 88° 28'25.57".
2. Applicants shall file with the Commission notice of KAZC's approval of their application within ten days of receiving said approval.

3. Applicants shall immediately notify the Commission in writing, if, after the tower is built and utility service is commenced, the tower is not used for a period of three months in the manner authorized by this Order.

4. Documents filed, if any, in the future pursuant to ordering paragraph 2 or 3 herein, shall reference this case number and shall be retained in the post-case correspondence file.

5. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:

  
Executive Director



\*Honorable David A Pike  
Attorney at Law  
Pike Legal Group PLLC  
1578 Highway 44 East, Suite 6  
P. O. Box 369  
Shepherdsville, KENTUCKY 40165-0369

\*New Cingular Wireless PCS, LLC dba AT&T  
1010 N St Mary's Street, 9th Floor  
San Antonio, TX 78215