

**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)	
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.: 2020-00306
CONVENIENCE AND NECESSITY TO CONSTRUCT)	
A WIRELESS COMMUNICATIONS FACILITY)	
IN THE COMMONWEALTH OF KENTUCKY)	
IN THE COUNTY OF BREATHITT)	

SITE NAME: CLAYHOLE

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RESPONSE TO COMMENTS FROM STEPHEN JONES

Applicant New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T Mobility"), by counsel, makes this Response to the comments submitted by Stephen Jones in the within proceeding. Applicant respectfully states, as follows:

1. Stephen Jones has voiced generalized concerns to the Kentucky Public Service Commission regarding the facility proposed in the within Application. However, as presented in the subject Application and as discussed herein below, there is no ground for denial of the subject application, and substantial evidence supports approval of the requested Certificate of Public Convenience and Necessity ("CPCN").

2. Applicant is licensed by the Federal Communications Commission ("FCC") to provide wireless communications services to the area to be served by the proposed

wireless communications facility, and a copy of the relevant FCC license granted to AT&T Mobility was filed as part of the subject Application.

3. The proposed facility has been designed, configured, and located in such a manner that it will prevent or limit potential adverse effects on surrounding properties. The general area where the proposed facility is to be located is mountainous and heavily wooded. The proposed site will be located on a large parcel approximately 4,125' from Mr. Jones' property. Furthermore, the tower will be galvanized steel to minimize its visibility. Tower placement at this location is the most suitable and least intrusive method of resolving the existing coverage and/or capacity gap in this area.

4. Breathitt County has not adopted planning and zoning regulations, nor has it adopted regulations regarding the placement, construction and modification of wireless communications facilities. Any property purchased in Breathitt County is acquired with the understanding that the surrounding neighbors are free to develop their property in any manner they desire without regulation from local government or input from area residents. For this reason, area residents have no reasonable expectation of input into the land use of surrounding properties or the impact a proposed land use will have on their property.

5. The U.S. Court of Appeals for the Sixth Circuit has upheld that lay opinion or generalized concerns are not substantial evidence justifying a rejection of this application. Any decision rendered by state or local authorities must be in writing and supported by substantial evidence in a written record. Federal Courts in the 6th Circuit has defined "substantial evidence" in previous cases. For example, the locality's own zoning requirements are an example of substantial evidence. Cellco Partnership v. Franklin Co., KY, 553 F. Supp. 2d 838, 845-846 (E.D. Ky. 2008). Of course, in this instance Lee County

has not adopted zoning requirements. Courts in the 6th Circuit have found that lay opinion is not substantial evidence. Cellco Partnership at 852 and T-Mobile Central, LLC v. Charter Township of West Bloomfield, 691 F.3d 794, 804 (6th Cir. 2012). They have also found that unsupported opinion is not substantial evidence. Cellco Partnership at 849. Generalized expressions of concerns with “aesthetics” are not substantial evidence. Cellco Partnership at 851. Claims the tower is unsightly are generalized expressions of aesthetical concerns and the same objection could be made by any resident in any area in which a tower is placed. Cellco Partnership at 852. General concerns that the tower is ugly or unwanted near an individual’s residence are not sufficient to meet the 6th Circuit substantial evidence test. T-Mobile Central at 800. Finally, anyone who opposes a tower in their backyard can claim it would be bad for the community, not aesthetically pleasing, or is otherwise objectionable, but such claims would not constitute substantial evidence. T-Mobile Central at 801.

6. The tower must be located at the proposed location and proposed height to provide necessary service to residents in the subject area because the nature of the technology requires a facility to be located within the area to serve the area. Applicant's radio frequency engineers conducted studies and tests in order to develop a highly efficient network that is designed to handle voice and data traffic in the service area. The engineers determined an optimum area for the placement of the proposed facility in terms of elevation and location to provide the best quality service to customers in the service area. A radio frequency design search area prepared in reference to these radio frequency studies was considered by the Applicant when searching for sites for its antennas that would provide the coverage deemed necessary by the Applicant. A map

of the area in which the tower is proposed to be located which is drawn to scale and clearly depicts the necessary search area within which the site should be located pursuant to radio frequency requirements was submitted with the application. AT&T Mobility is a provider of essential wireless voice and data services to residential and commercial customers. AT&T Mobility delivers these services over a network of sites (i.e., antennas mounted on a support structure, with associated radio transmitting equipment) which are linked to one another and which transmit and receive signals to and from mobile phones and other wireless communication devices. In addition to expanding and improving voice and data service for AT&T mobile customers, this site will also provide wireless local loop ("WLL") broadband internet service in the subject area. As a participant in the FCC's Connect America Fund Phase II (CAF II) program, AT&T is aggressively deploying WLL service infrastructure to bring expanded internet access to residential and business customers in rural and other underserved areas. WLL will support internet access at the high speeds required to use and enjoy the most current business, education and entertainment technologies. Broadband service via WLL will be delivered from the tower to a dedicated antenna located at the home or business receiving service and will support downloads at 10 Mbps and uploads at 1 Mbps.

WHEREFORE, there being no ground for denial of the subject application and substantial evidence in support of the requested CPCN, Applicant respectfully requests the Kentucky Public Service Commission:

- (a) Accept this Response for filing;
- (b) Issue a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth herein without further delay; and

(c) Grant Applicant any other relief to which it is entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of October 2020, a true and accurate copy of the foregoing was sent by U.S. Postal Service first class mail, postage prepaid, to Stephen Jones, 8 Rosebud Ave, Erlanger, KY 41018.



David A. Pike
Attorney for Applicant