

**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) CASE NO.: 2020-00310
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF PULASKI)

SITE NAME: HAPPY RIDGE RELO

**APPLICANTS' MEMORANDUM DOCUMENTING \$28,000,000.00 COST SAVINGS
FROM RELOCATING WIRELESS COMMUNICATIONS FACILITIES FROM SBA
TOWERS TO UNITI TOWERS**

INTRODUCTION

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 (“Applicants”), by counsel, file this Memorandum to highlight the aggregate cost savings issues involved in twelve proposed cellular tower sites pending before the Kentucky Public Service Commission (“PSC”) for issuance of requested Certificates of Public Convenience and Necessity (“CPCN”). The \$28,000,000.00 cost savings which would be realized by co-location on Unit Towers LLC towers rather than SBA towers as detailed below makes it clear the SBA towers are not “reasonably available” for co-location

pursuant to 807 K.A.R. 5:063-Section 1(s).¹

Duplicative requests for intervention by SBA² in the twelve proceedings have doubtless resulted in significant delays in issuance of CPCNs.³ The Motions to Intervene have continued even though the same argument repeatedly raised by SBA has been rejected repeatedly in final Orders of the PSC. Additionally, SBA's Motions have been filed as many as 55 to 65 days after an application was filed, which has further compounded delays in the PSC's review process. SBA's strategy is not in the interest of utility service or competition and should be rejected by the PSC in all pending proceedings.

The Kentucky General Assembly recognizes that consumers benefit from market-based competition, which offers consumers of telecommunications services the most innovative and economical services (see KRS 278.546).

Similarly, the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Telecommunications Act"), establishes a national policy to "make available, so far as possible, to all people of the United States, without discrimination . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of

¹ This sum represents an aggregate of the additional cost of co-location on SBA towers discussed in the Responses to Motions to Intervene filed by SBA in the twelve cases referenced herein.

² Motions to Intervene for various Applications have been filed by SBA Communications Corp., SBA Infrastructures, LLC and SBA VII, LLC (collectively "SBA")

³ For example, an SBA Motion to Intervene was filed June 25, 2019 in PSC Case No. 2019-00176 ("Dunnville Relo"). A decision granting the CPCN was not rendered until the PSC's Order of January 21, 2021.

national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.” (emphasis added). 47 U.S.C. § 151.

The 1996 federal Telecommunications Act Preamble, 110 Stat. 56 describes the legislation’s intent as "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies" (emphasis added). In addition, federal law requires state and local tower permitting decisions be made in a “reasonable time” (emphasis added).⁴

SBA’s efforts at intervention would only complicate and delay CPCN proceedings with no possibility of altering the ultimate outcome of any of the pending cases based on dispositive issues of law and the uncontroverted evidence of cost disparity already of record. Ultimately, the \$28,000,000.00 cost savings from relocating from the SBA towers plainly illustrates SBA’s efforts are unequivocally at odds with both state and federal law.

PRIOR FINDINGS BY THE PSC REGARDING SBA

In a similarly situated case where SBA was denied intervention, the PSC stated that it “is under no illusion that SBA’s request to intervene... is anything other than an attempt to protect its monopoly as the owner of the only tower in the area.” Order of March 26, 2018 in PSC Case Number 2017-00435 (“Hansen”). It further stated that, SBA has “...an interest in keeping tower rents high by limiting the number of towers in the vicinity in order to maximize its profits.” *Id.* The PSC expressly noted that such interest “runs counter to one of the purposes of the Telecommunications Act of 1996, which is to

⁴47 U.S.C. § 332(c)(7)(B)(ii).

promote competition.” *Id.*

In a subsequent case, the PSC again denied SBA’s request for intervention, stating that “SBA’s interest is strictly commercial and lies in ensuring that no other facilities are built, allowing them to remain the only tower in the area with no competition to drive down rents.” Order of October 1, 2019 in PSC Case Number 2019-00176 (“Dunnville Relo”). The PSC ultimately concluded that, “SBA’s interest in this matter does not coincide with the interest of the public.” Order of October 1, 2019 in PSC Case Number 2019-00176.

The PSC subsequently granted the requested CPCN in Dunnville Relo. According to the PSC, “SBA’s only interest is to remain AT&T Mobility’s landlord.” Order of January 21, 2021 in PSC Case Number 2019-00176. The PSC further explained “SBA is a competitor with an interest in keeping tower rents high by limiting the number of towers. This runs counter to one of the stated purposes of the Telecommunications Act of 1996, which is to promote competition as well as KRS 278.546(4) which states that market-based competition benefits consumers.” *Id.* Furthermore, the PSC concluded “Unreasonable and excessive fees for rent on a tower have the potential to divert resources that could otherwise be used to invest in expanding wireless networks and conducting necessary network upgrades necessary to meet increased demand for wireless voice and broadband services.” *Id.*

PRIOR FILINGS WITH THE PSC DOCUMENTING THE COST SAVINGS OF RELOCATING FROM SBA TOWERS TO NEW UNITI TOWERS

Applicants have identified the per site projected cost savings over twenty years of relocating from the relevant SBA tower to a new Uniti tower in the record of each of the twelve pending CPCN proceedings as follows:

- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower

is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over \$1,000,000.00 more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Amended Motion to Intervene, Page 2 of October 9, 2020 in PSC Case Number 2020-00300.

- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over five million dollars (\$5,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Motion to Intervene, Page 3 of November 5, 2020 in PSC Case Number 2020-00310.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over one million dollars (\$1,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Motion to Intervene, Page 3 of November 12, 2020 in PSC Case Number 2020-00328.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over one and a half times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over five million dollars (\$5,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Motion to Intervene, Page 3 of November 13, 2020 in PSC Case Number 2020-00343.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over one million dollars (\$1,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Motion to Intervene, Page 3 of February 19, 2021 in PSC Case Number 2020-00345.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over one and one-half times what Uniti will charge AT&T to co-locate on

the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over one million dollars (\$1,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA VII, LLC ‘s Motion to Intervene, Pages 2-3 of December 28, 2020 in PSC Case Number 2020-00351.

- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over three times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over four million dollars (\$4,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA VII, LLC’s Motion to Intervene, Pages 2-3 of December 28, 2020 in PSC Case Number 2020-00354.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over three times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over four million dollars (\$4,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Communications Corporation’s Motion to Intervene, Pages 3-4 of December 2, 2020 in PSC Case Number 2020-00360.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over two million dollars (\$2,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Infrastructure, LLC’s Motion to Intervene, Pages 2-3 of January 12, 2021 in PSC Case Number 2020-00404.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over one million dollars (\$1,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Infrastructure, LLC’s Motion to Intervene, Pages 2-3 of February 5, 2021 in PSC Case Number 2021-00012.
- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over two times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty

(20) years, it would cost AT&T well over two million dollars (\$2,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Infrastructure, LLC’s Motion to Intervene, Page 3 of March 1, 2021 in PSC Case Number 2021-00065.

- “The current rent charged by SBA for AT&T to co-locate on the SBA Tower is over one and 1/2 times what Uniti will charge AT&T to co-locate on the proposed new Uniti tower... At the current rate of rent increases, over the next twenty (20) years, it would cost AT&T well over one million dollars (\$1,000,000.00) more in rent as a colocation tenant on the SBA Tower versus co-locating on the proposed Uniti tower.” Applicant’s Response to SBA Infrastructure, LLC’s Motion to Intervene, Pages 2-3 of March 22, 2021 in PSC Case Number 2021-00092.

SBA RENT REQUIREMENTS ANALYZED – OVER \$28 MILLION IN EXCESS RENT

PSC Case Number / Site Name:	SBA Rental Rate as Multiples Over Uniti:	Total Excess Rent Over Twenty Years:
2020-00300 / Lake City - Luka	2	\$1,000,000.00
2020-00310 / Happy Ridge Road	2	\$5,000,000.00
2020-00328 / Dry Fork Road – Wisdom Relo	2	\$1,000,000.00
2020-00343 / Bethel – Chandler Road	1.5	\$5,000,000.00
2020-00345 / Russell Springs Relo	2	\$1,000,000.00
2020-00351 / Rose Hill Road – Elihu Relo	1.5	\$1,000,000.00
2020-00354 / Monticello North Relo – Katlin’s Way	3	\$4,000,000.00
2020-00360 / Jamestown Relo	3	\$4,000,000.00
2020-00404 / Steubenville Relo	2	\$2,000,000.00
2021-00012 / Ringgold Relo – N. Hart Road	2	\$1,000,000.00
2021-00065 / Windsor Relo – Pine Top Road	2	\$2,000,000.00
2021-00092 / Sharpsburg	1.5	\$1,000,000.00

Over the next the next twenty (20) years, co-location on the existing SBA towers will cost AT&T over \$28,000,000.00 more in rent versus co-locating on the proposed Uniti

towers.

CASE TIMELINE

PSC Case Number / Site Name:	Application Filed:	Days Since Application Filed:	Motion to Intervene Filed by SBA:	Days Since Motion to Intervene Filed:
2020-00300 / Lake City - Luka	9/10/2020	195	10/2/2020	173
2020-00310 / Happy Ridge Road	9/21/2020	184	10/29/2020	146
2020-00328 / Dry Fork Road – Wisdom Relo	10/9/2020	166	11/5/2020	139
2020-00343 / Bethel – Chandler Road	10/22/2020	153	11/6/2020	138
2020-00345 / Russell Springs Relo	12/11/2020	103	2/14/2021	38
2020-00351 / Rose Hill Road – Elihu Relo	10/27/2020	148	12/21/2020	93
2020-00354 / Monticello North Relo – Katlin’s Way	10/27/2020	148	12/21/2020	93
2020-00360 / Jamestown Relo	11/3/2020	141	11/25/2020	119
2020-00404 / Steubenville Relo	12/16/2020	98	1/5/2021	78
2021-00012 / Ringgold Relo – N. Hart Road	1/12/2021	71	2/1/2021	51
2021-00065 / Windsor Relo – Pine Top Road	2/9/2021	43	2/22/2021	30
2021-00092 / Sharpsburg	2/24/2021	28	3/15/2021	9

Largest Number of Days Since Filing:	Average Number of Days Since Filing:	Largest Number of Days Since Motion to Intervene Filed by SBA:	Average Number of Days Since Motion to Intervene Filed by SBA
194	123	173	92

FCC SHOT CLOCK IMPLICATIONS OF DELAYS INDUCED BY SBA

As the PSC is well aware, the FCC applies a 150-day Shot Clock to applications for new cellular towers.⁵ The FCC Shot Clock has or will soon expire for the pending

⁵ See *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review & to Preempt Under Section 253 State & Local*

twelve CPCN cases. The PSC should proceed forthwith to deny the SBA Motions to Intervene and decide the Applications for CPCN in circumstances where it is patently obvious the SBA towers are not reasonably available for co-location consistent with prior final PSC decisions on these issues in cases indistinguishable from cases which remain pending.

The PSC has repeatedly recognized the need to make decisions on CPCN Applications within the period of the FCC Shot Clock. See Kentucky PSC cases 2014-0098 (Alice Lloyd); 2014-0088 (East Point); 2014-0074 (Index); 2014-00135 (Nippa); and 2014-0087 (Staffordsville)(collectively the “Five Precedents”). The PSC’s Orders granting requests for CPCN in each of the Five Precedents included the following language:

“The Commission has long encouraged co-location as the preferred method in expanding telecommunication networks in underserved areas. However, in this matter, due to the delays arising from Appalachian Wireless's initial denial of New Cingular Wireless's co-location request, followed by Appalachian Wireless's subsequent request to intervene to pursue co-location, and concluding with Appalachian Wireless's withdrawal of its request, the Commission must balance its preference for co-location against the federal statutory deadline for action and the need to improve Kentucky's wireless network without undue delay. In this case, the Commission concludes that it is not feasible to pursue co-location and meet the federal statutory deadline by which the Commission must rule on New Cingular Wireless's application. Based upon the facts presented in this case, it is neither reasonable nor in the public's interest or convenience to require New Cingular Wireless to further pursue co-location. Therefore, we will not require New Cingular Wireless to further pursue co-location,” (Emphasis added).

Similar considerations are present in the this proceeding considering: (1) the long pendency of the twelve CPCN cases; (2) that every day it is not decided is another day approaching or soon beyond the FCC Shot Clock deadline; (3) that federal law

Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance, 24 F.C.C. Rcd. 13994, 14013 (2009)(a/k/a “FCC Shot Clock Ruling”).

encourages rapid deployment of wireless facilities and requires state and local government permitting decisions to be made in a reasonable time; and (4) that Kentucky statutory law recognizes the importance of wireless service to its citizens and the inherent value of competition in the industry.⁶ On top of all of those considerations, the basis for grant of a CPCN in each of the twelve pending cases is even more compelling because the rent and other business terms prevent each of the twelve SBA towers from being reasonably available for co-location pursuant to 807 K.A.R. 5:063(1)(s). \$28,000,000.00 in cost savings as discussed herein is compelling evidence for denial of the SBA Motions to Intervene and grant of each of the CPCNs requested by Applicants in the interests of wireless service to the public and promoting competition in the telecommunications industry.

⁶ See Applicants' Response to SBA Motion to Intervene addressing these issues in depth.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of March 2021, the foregoing was filed electronically with the Kentucky Public Service Commission. No natural person or entity has been granted intervention in any proceeding in which the within Memorandum is being filed.

Respectfully submitted,

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