



FREEMAN MATHIS & GARY, LLP  
Attorneys at Law

2525 Harrodsburg Road  
Suite 500  
Lexington, KY 40504

[www.fmglaw.com](http://www.fmglaw.com)

**Tia J. Combs**  
**Attorney at Law**

Writer's Direct Access  
859.410.7854  
859.806.1266

[TCombs@fmglaw.com](mailto:TCombs@fmglaw.com)

May 26, 2021

***Filed Electronically***

Linda C. Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

***Re: 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 Russell, Case No. 2020-00345***

Dear Executive Director Bridwell:

In recognition of the fact that the Commission has not yet ruled on the pending motion to intervene of SBA Infrastructure, LLC ("SBA"), SBA files this interim public comment to provide the Commission with additional facts directly bearing on the Commission's decision in this matter. See 807 KAR 5:063 Section 1(1)(s) ("A statement . . . that there is no reasonably available opportunity to co-locate, including documentation of attempts to co-locate . . ." (emphasis added)).

In their Motion to Submit their Application on the Existing Evidentiary Record, Applicants New Cingular Wireless PCS, LLC, request that the Commission grant Applicants the relief they request. At this point in time, the burden, however, is upon the Applicants to prove that there is no reasonably available opportunity to co-locate.

SBA hereby notifies the Commission that it has offered to modify the monthly rent currently charged to AT&T Mobility ("AT&T") to continue to co-locate on the SBA Tower described in SBA's Motion to Intervene to match the monthly rent to be charged by Uniti Towers LLC ("Uniti"), less \$10.00. The offer was communicated by SBA to AT&T through its representative,

May 26, 2021  
Page 2

Ronnie T. Cheek, AT&T Area Manager Site Acquisition for NC/TN/KY, 4100 Southstream Blvd, Charlotte, NC. Accordingly, SBA's offer to AT&T is an additional fact that this Commission should consider in rendering its decision (this fact that might have been presented earlier had AT&T sought to renegotiate its tower rent for this particular tower, as the Commission regulations appear to require). However, AT&T never sought to renegotiate the rent for this particular tower as part of an effort to find a reasonably available opportunity to co-locate.

Thus, in accordance with 807 KAR 5:063 Section 1(s) and the Commission's Order of January 21, 2021 in KY PSC Case No. 2019-176, SBA's tower, a multi-tenant structure designed to provide a single coverage solution, remains reasonably available for continued co-location by AT&T. In addition, as AT&T has previously indicated that rent is the dispositive issue in this matter, it is now clear that AT&T and Uniti's Application for a Certificate of Public Convenience and Necessity to build a new tower should be denied. AT&T can continue to co-locate on the reasonably available SBA tower and provide the appropriate wireless service to the area. This result is consistent with the goal of 807 KAR 5:063, to encourage co-location and avoid the unnecessary proliferation of towers, and is best for the community.

Furthermore, the Applicant's statement, "With each passing day AT&T's current lease term with SBA Communications Corporation draws closer to expiration, making construction of the proposed Uniti tower more and more urgent" is not applicable as AT&T is already locked into the next lease term as the agreement has renewed as AT&T did not provide sufficient notice to non-renew the existing agreement.

SBA is committed to engaging with AT&T concerning any SBA tower located in the Commonwealth of Kentucky, which may avoid the need for further filings before the Commission. Furthermore, SBA is happy to meet with the Commission as well to discuss this matter.

Sincerely,

*s/ Tia J. Combs*

May 26, 2021  
Page 3

**Certification**

I hereby certify that the electronic version of this filing made with the Commission on May 26, 2021, is a true and accurate copy of the paper document that will be submitted to the Commission within 30 days of the Governor lifting the state of the emergency pursuant to the Commission's Orders in Case No. 2020-00085, and the electronic version of the filing has been transmitted to the Commission. A copy of this filing has been served electronically on all parties of record for whom an e-mail address is given in the online Service List for this proceeding.

*s/ Tia J. Combs*

---