



FREEMAN MATHIS & GARY, LLP
Attorneys at Law

2525 Harrodsburg Road
Suite 500
Lexington, KY 40504

www.fmglaw.com

Tia J. Combs
Attorney at Law

Writer's Direct Access
859.410.7854
859.806.1266

TCombs@fmglaw.com

June 21, 2021

via electronic filing:

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

Regarding: 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 Wayne, Case No. 2020-00404

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 respond to Applicants' Reply to SBA's latest filing.

In their Reply to SBA's Public Comment, Applicants continue to minimize their burden of complying with the requirements of 807 KAR 5:063 Section 1(1)(s) and ask the Commission to grant their requests by relying on prior Orders despite the facts upon which such Orders are based being different from the facts pertinent to this proceeding.

Specifically, in footnote four of Applicants' Reply, Applicants cite to five proceedings before the Commission, alleging that: "The PSC has previously recognized that post application efforts to identify purported co-location opportunities should not delay or thwart approval of a pending tower application."¹ However, the relevant facts in the cases relied upon by Applicants

¹ Applicants' Reply to SBA's Public Comment on May 27, 2021, at 3, ¶ 3, n.4.

June 21, 2021

Page 2

vary significantly from those present in this case. Moreover, the Commission's orders in those cases actually highlight AT&T Mobility's failure to satisfy its burden to attempt to co-locate on an existing tower, as required by 807 KAR 5:063 Section 1(1)(s) and as interpreted by prior Commission precedent.

Each of the five cases² cited by Applicants presented essentially the same relevant facts:

- (1) AT&T Mobility filed an application requesting a CPCN to construct a new wireless communications facility, seeking to provide coverage to an area that was currently unserved by AT&T Mobility.
- (2) East Kentucky Network filed a Motion to Intervene alleging that it was the owner of a nearby, existing wireless communications facility and that AT&T Mobility had not attempted to co-locate on the existing facility prior to filing its application.
- (3) AT&T Mobility filed a Response to the Motion to Intervene, attaching proof that AT&T Mobility had reached out to East Kentucky Network's Manager of Technical Operations to attempt to co-locate on the existing tower, but that East Kentucky Network refused to allow AT&T Mobility to co-locate because all co-location requests were "on hold" due to pending network upgrades by East Kentucky Network.
- (4) East Kentucky Network responded by withdrawing its Motion to Intervene.

Based upon these facts, the Commission entered an Order granting the relief requested in the Applications, and entered substantially similar orders in each proceeding, which included the following reasoning:

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, . . . 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, and Appalachian Wireless's motion to withdraw its motion to intervene should be granted.³

² Ky. PSC Case Nos. 2014-00098 (Alice Lloyd); 2014-00088 (East Point); 2014-00074 (Index); 2014-00135 (Nippa); 2014-00087 (Staffordsville).

³ See, e.g., *In the Matter of: Application of New Cingular Wireless PCS, LLC for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in*

June 21, 2021
Page 3

Simply put, the cases cited by Applicants do not stand for the proposition cited in Applicant's Reply. Instead, these cases fully support SBA's request for intervention in this proceeding. Specifically, the Commission encourages co-location as the preferred method for providing telecommunications services and Commission regulations require an "initial" attempt to co-locate, which AT&T Mobility has already acknowledged it did not make in this case.

Thus, any alleged "delay" in this proceeding (and many others) has resulted from AT&T Mobility's refusal to attempt to negotiate with SBA regarding co-location on an existing wireless communication facility. In fact, AT&T Mobility's citation to these cases merely discloses that AT&T Mobility is well aware that this Commission's regulations and precedent require AT&T Mobility to attempt to co-locate prior to constructing a new wireless facility, but that AT&T Mobility chose to make no such attempts prior to filing its Application.

Very truly yours,

s/ Tia J. Combs

the County of Johnson, Ky. PSC Case No. 2014-00087 (Aug. 22, 2014), Order, at 4-5 (emphasis added). (Staffordsville).