

**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.: 2021-00049  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY )  
IN THE COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF ADAIR )

SITE NAME: WEED RELO - EDMONTON

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**APPLICANTS’ RESPONSE TO PUBLIC COMMENT, REQUEST FOR  
INTERVENTION, AND REQUEST FOR HEARING OF RACHAEL DZIERAN AND  
THOMAS DZIERAN**

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, make this Response to Public Comment, Request for Intervention, and Request for Hearing (“Public Comment”) of Rachael Dzieran and Thomas Dzieran (“Dzierans”). In summary, the Dzierians’ comments raise issues outside the scope of the Kentucky Public Service Commission’s (“PSC’s”) authority pursuant to KRS Chapter 278 and its implementing regulations including purported effects of radio frequency emissions and efforts to apply setbacks which do not exist in applicable law. The Dzierians address issues which are preempted by federal statutes and the authority of the Federal Communications Commission (“FCC”). Furthermore, no basis for

intervention or public hearing has been established by the Public Comment.

## **ARGUMENT IN REPSONSE TO PUBLIC COMMENT**

### **1. Scope of PSC Review is Limited to its enabling Statutes and Implementing Regulations.**

The Dzierians' Public Comment cites to no statute or regulation requiring the PSC to consider the issues they have raised in making a decision on a request for a Certificate of Public Convenience and Necessity pursuant to KRS 278.020 or 807 KAR 5: 063. Essentially, the Dzierians are advancing their own policy issues which could not provide substantial evidence<sup>1</sup> to support a denial of the pending Application under the federal Telecommunications Act ("TCA") or Kentucky law. The PSC has further rejected lay testimony on such issues repeatedly<sup>2</sup> in reliance on federal court precedent. Consideration and decision on issues raised by the Dzierians would be highly discriminatory to Applicants in that hundreds if not thousands of CPCNs have been granted for new towers without the PSC taking into account such issues. Such decision would be further arbitrary in violation of the Kentucky Constitution.<sup>3</sup> Moreover, no provision

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<sup>1</sup>47 U.S.C. § 332(c)(7)(B)(iii). See *Cellco Partnership v. Franklin Co.*, KY, 553 F. Supp. 2d 838 (E.D. Ky. 2008); *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794, 804 (6<sup>th</sup> Cir. 2012).

<sup>2</sup> See PSC Orders in Case No. 2017-00368, Case No. 2017-00435, and Case No. 2019-00176.

<sup>3</sup>Section 2 of the Kentucky Constitution prevents arbitrary action by government agencies. *Bunch v. Personnel Bd., Commonwealth*, 719 S.W.2d 1986 (Ky. Ct. App. 1986). Reaching different results on the same legal issue in different cases would be a conscious violation of the principle of uniformity in violation of Section 2. *Standard Oil Co. v. Boone County Board of Supervisors*, 562 S.W.2d 83 (Ky. 1978). Applicants request the PSC to decline the unwarranted invitation to arbitrarily alter its long-established approach of deciding CPCN cases pursuant to KRS Chapter 278 and implementing regulations.

of applicable law provides the Dzierians any right for “Emergency Intervention” as they request.<sup>4</sup>

Applicants have filed a complete application for a CPCN pursuant to all applicable law. The PSC is not obligated to begin inquiry on matters within the jurisdiction of other state or federal agencies, such as purported endangered species issues, as the Dzierians seem to suggest. The PSC has a limited but important role in the tower permitting process. However, its review is not open-ended. Ultimately, its consideration of all issues is constrained by its jurisdiction and the time limits of the FCC Shot Clock<sup>5</sup> regardless of what expansive considerations members of the public wish to include in the CPCN proceeding.

## **2. PSC Consideration of Speculative Radio Frequency Emissions Claims is Preempted.**

The Dzierians’ Public Comment is misguided in attempting to persuade the PSC to make a decision on “RF radiation”<sup>6</sup> issues. State or local regulation of wireless communications facility siting based upon radio frequency emissions issues is prohibited specifically by the Telecommunications Act of 1996 and generally as a result of the FCC’s pervasive jurisdiction over this area of regulatory concern. The Telecommunications Act of 1996 flatly prohibits state or local regulation of wireless communications facilities on the basis of the environmental effects of radio frequency emissions. This prohibition is

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<sup>4</sup> Dzierian Public Comment, un-numbered p. 1.

<sup>5</sup> 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 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”).

<sup>6</sup> Dzierian Public Comment, un-numbered p. 1.

codified at 47 USC Section 332(c)(7), as follows:

“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s regulations concerning such emissions.”

A copy of the relevant FCC license granted to AT&T Mobility for the area to be served by the proposed wireless telecommunications facility was provided as part of the application submitted to the PSC. As an FCC licensee, Applicant is subject to the FCC regulation referenced at 47 U.S.C. Section 332(7)(B)(iv), and federal and state courts have recognized that the Telecommunications Act prohibits state and local governments from regulating wireless telecommunications facilities on the basis of radio frequency interference issues.

In light of federal statutory prohibition, it is clear that any inquiry into radio frequency issues by the PSC as part of its review would put the PSC directly at odds with the Federal Communications Act, the Telecommunications Act of 1996, and FCC policy. Consequently, the introduction of any radio frequency interference evidence during deliberations on the Application or in granting a Motion to Intervene would be improperly and unfairly prejudicial to the Applicants and outside the PSC’s proper scope of review. See *T-Mobile South, LLC v. City of Roswell, Georgia*, 190 L.Ed. 2d 679, 688-689 (U.S. 2015); *Telespectrum, Inc. v. PSC*, 227 F.3d 414, 424 (6<sup>th</sup> Cir. 2000); and *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794, 800 (6<sup>th</sup> Cir. 2012); See also *Broyde v. Gotham Tower, Inc.*, 13 F.3<sup>rd</sup> 994, 996-997 (6<sup>th</sup> Cir. 1994) (“The radio signal interference at issue here falls within the FCC’s technical domain.”).

The PSC is not the proper agency to evaluate hypothetical claims of interference

before a tower is built in making a CPCN permitting decision. Ultimately, it is the FCC which regulates any actual interference or other effects of radio frequency emissions. Such is not the role of the PSC in connection with a request for a Certificate of Public Convenience and Necessity for a new cellular tower. *Robbins v. New Cingular Wireless PSC, LLC*, 854 F.3d 315 (6<sup>th</sup> Cir. 2017) is persuasive:

“Congress passed the TCA to foster industry competition in local markets, encourage the development of telecommunications technology, and provide consumers with affordable access to telecommunications services. Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996). The TCA furthers those goals by preventing local governments from impeding the siting and construction of cell towers that conform to the FCC's RF-emissions standards. See 47 U.S.C. § 332(c)(7)(B)(iv). By delegating the task of setting RF-emissions levels to the FCC, Congress authorized the federal government—and not local governments—to strike the proper balance between protecting the public from RF-emissions exposure and promoting a robust telecommunications infrastructure. See *id.*; In the Matter of Procedures for Reviewing Requests for Relief from State & Local Regulations Pursuant to Section 332(c)(7)(b)(v) of the Communs. Act of 1934 in the Matter of Guidelines for Evaluating the Env'tl. Effects of Radiofrequency Radiation, 12 F.C.C. Rcd. 13494, 13505 (1997).

Allowing RF-emissions-based tort suits would upset that balance and impair the federal government's ability to promote the TCA's goals. A proliferation of suits similar to the one the Residents brought would tie up companies whenever they tried to build cell towers, leading to construction delays, increased costs, and ultimately, less public access to affordable cell-phone services. Widespread litigation would also shift the power to regulate RF emissions away from the FCC and into the hands of courts and state governments. *Stanley v. Amalithone Realty, Inc.*, 94 A.D.3d 140, 940 N.Y.S.2d 65, 70 (N.Y. App. Div. 2012).

The Residents respond by invoking an exception to § 332(c)(7)(B)(iv): if the tower's RF emissions exceed the maximum level set by the FCC, the Residents can sue. The Residents request discovery to find proof of whether AT&T's proposed tower would in fact exceed the FCC's standards. But they fail to allege facts in their complaint to support such a claim, and our precedent prohibits plaintiffs from turning discovery into a fishing expedition. *Michaels Bldg. Co. v. Ameritrust Co.*, 848 F.2d 674, 680 (6<sup>th</sup> Cir. 1988). Furthermore, without an existing tower, it is unclear how the

Residents would uncover evidence of excessive RF emissions.” (Emphasis added).

The Dzierians are attempting to bring these expectancy issues of purported interference into consideration even earlier than the plaintiffs in *Robbins, supra*, whose efforts were rejected by the U.S. Court of Appeals for the Sixth Circuit. The PSC should give such effort no credence. Were any such issues to arise after the new tower was constructed, the FCC has ample expertise and authority to address such matters. The PSC should proceed within authority and scope of KRS Chapter 278 and its implementing regulations and provide the Dzierians with no relief as a result of their Public Comment.

### **3. The Dzierians Fail to Meet Standards for Intervention.**

The Dzierians “request” intervention in their Public Comment, but do not make a “motion” for intervention. Nonetheless, Applicants respond to the substance of their filing.

Kentucky Public Service Commission implementing regulations at 807 KAR 5:001 provide in pertinent part for a movant to (among other things) “state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.” Further, in order to intervene, a would-be intervenor must have “a special interest in the case that is not otherwise adequately represented,” or “his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings” (emphasis added). *Id.* at 807 KAR 5:001. The Public Comment fails to satisfy these standards in that it essentially lists certain purportedly applicable federal requirements and calls for further investigation without offering evidence or credible proffer of evidence of violation of such standards. The PSC and its Staff are well-qualified to examine the

facts surrounding Applicants' proposed tower in connection with their statutory and regulatory obligations. Direct participation in the case by the Dzierians would not add to the PSC's analysis and its ultimate decision on the request for a CPCN.

#### **4. Courts have Upheld Denials of Intervention.**

Kentucky's appellate courts have upheld PSC denials of requests for intervention in CPCN cases. For example, in *EnviroPower, LLC v. PSC*, 2007 Ky. App. Unpub. LEXIS 121 (Ky. App. 2007), the Kentucky Court of Appeals upheld the PSC's denial of a motion to intervene in a CPCN proceeding which had been upheld by the Circuit Court. The Court of Appeals noted that a PSC decision to deny intervention is reviewed only for an abuse of discretion, and found that the PSC did not abuse that discretion in denying intervention to a person seeking intervention (EnviroPower) that did not "have an interest in the 'rates' or 'service' of a utility" seeking a CPCN. While EnviroPower held permits under which it had expected to construct the facility that the CPCN authorized the utility to self-construct instead, the Court agreed that this was insufficient to give EnviroPower a right to intervene, as it "had a mere expectancy and no fundamental property right."

The PSC relied on *EnviroPower* in its denial of a Motion to Intervene in PSC Case No. 2017-00435 at pages 3 and 5 and further in PSC Case No 2019-00176 in which a CPCN was granted January 21, 2021. It should likewise do so in this proceeding.

#### **5. The PSC has Denied Intervention in Many Cases.**

Critical to the PSC's many denials of requested intervention have been factors such as the potential intervenors being "unlikely to present issues or develop facts that will assist the Commission in considering the matter" or that the party requesting intervention is not a customer of the applicant, does not receive services from the applicant and/or does not

pay any rates charged by the applicant. All of these same factors warrant denial of the Dzierians' Request in that they made no representation or provided any evidence of any such status in their Public Comment. See *In the Matter of Application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility 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 Graves* (Case No. 2017-00368), 2017 Ky. PUC LEXIS 1148 (November 30, 2017); *In the Matter of Application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility 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 Butler* (Case No. 2017-00369), 2017 Ky. PUC LEXIS 1167 (December 30, 2017); *In the Matter of: Tariff Filing of East Kentucky Power Cooperative, Inc. and its Member Distribution Cooperatives for Approval of Proposed Changes to their Qualified Cogeneration and Small Power Production Facilities Tariffs and the Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Case No. 2017-00212), 2017 Ky. PUC LEXIS 967 (September 22, 2017); *In the Matter of: Electronic Application of Kentucky Power Company ....* (Case No. 2017-00179), 2017 Ky. PUC LEXIS 833 (August 16, 2017); *In the Matter of the Joint Application of PNG Companies LLC ... for Approval of an Acquisition of Ownership ....* (Case No. 2017-00125), 2017 Ky. PUC LEXIS 412 (April 20, 2017); *In the Matter of: Application of New Cingular Wireless PCS, LLC, D/B/A AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility ...* (Case No. 2018-00031 – Order of June 1, 2018); *In the Matter of Application of East Kentucky Network, LLC D/B/A Appalachian Wireless....* (Case No. 2018-00095 – Order of



September 7, 2018).

#### **6. Opportunity to File Comments in Absence of Intervention.**

In all of the above-referenced denials of intervention the PSC has pointed out that, even with denial of intervention, the requesting person or entity may still file comments in the record of the case and review the progress of the proceedings via the PSC's online docket. Nothing prevents the Dzierians from filing further "public comment" without regard to their obtaining intervener status. Thus, intervention is not essential to allow any person or entity to be heard in a PSC proceeding.

#### **7. The PSC has No Setback Regulations.**

The Dzierans erroneously argue<sup>7</sup> that there is some setback requirement applicable to the proposed tower. Their reference to a "national standard" has no basis in applicable law. Neither KRS Chapter 278, the PSC's implementing regulations, or any other applicable law require the proposed tower to be set back any particular distance from a property line. Ad hoc requirement of a setback in this proceeding would be arbitrary and further discriminatory under the TCA since no setbacks have been applied in countless other tower CPCN proceedings before the PSC.

#### **8. The Dzierians have No *Right* to Intervene.**

The Dzierians have only a right to *request* intervention in PSC proceedings pursuant to applicable regulations. 807 KAR 5:063 Section 1(1)(n)3; 807 KRS 5:120 Section 2(5)(c) ("interested persons have right *to request* to intervene"). See also *Bee's Old Reliable Shows, Inc. v. Kentucky Power Co.*, 334 S.W.2d 765, 766 (Ky. 1960) ("limitation [on individual participation in Commission proceedings] was not in violation of

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<sup>7</sup> Dzierian Public Comment, un-numbered p. 2.

the Constitution, and ... deprives no one of his rights"). Intervention is in the "sound discretion" of the PSC. *Inter-County Rural Elec. Co-Op. Corp. v. Public Service Commission*, 407 S.W.2d 127, 130 (Ky. 1966). That discretion should be exercised to deny the Request for Intervention on all of the foregoing grounds.

### **9. Applicants Object to Request for Public Hearing.**

The Dzierians have requested a "public hearing"<sup>8</sup>, but have not specifically requested a local public hearing, which per KRS 278.650, requires more than two persons to make such a request. Moreover, such requesters must be persons residing in the county where the tower is proposed and Dzierians Public Comment provides an Ohio address at which they are presumably resident. Ownership of property in Adair County does not meet the KRS 278.650 standard for local public hearing. Applicants object to any public hearing whether in Frankfort or in Adair County, Kentucky.

The COVID-19 pandemic has greatly impacted the operation of Kentucky state government. 2020 Senate Bill 150 as signed by the Governor and effective on March 30, 2020 provides in pertinent part: "Notwithstanding KRS 61.826, a public agency may conduct any meeting including its regular meeting, by live audio or live video teleconference during the period of the state of emergency...." See also March 31, 2020 Kentucky Attorney General Advisory: Open Meetings Act and Open Records Act Changes during the COVID-19 Public Health Emergency.

Kentucky Public Service Commission ("PSC") Order entered March 16, 2020 in Case No. 2020-00085 styled "Electronic Emergency Docket Related to the Novel Coronavirus COVID-19" provides "Any conference or meeting that was scheduled to be

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<sup>8</sup> Dzierian Public Comment, p. 1.

held at the Commission's offices will be conducted by teleconference or videoconference." Presumably, if the PSC is exercising such level of caution as to meetings at the PSC offices in Frankfort, it would do the same for any meeting or public hearing it would otherwise conduct outside of its Frankfort offices. Consequently, should the PCS grant the Request for Hearing in this proceeding, such hearing should be by teleconference or video conference.

Thousands of applications for a Certificate of Public Convenience and Necessity ("CPCN") for construction of a new cellular towers have been decided by the PSC without public hearing. Thus, the cryptic Request for Hearing in this action is unusual at best. Moreover, even without public hearing, citizens have the right to submit comments of all kinds into the administrative record for consideration of the PSC, thus ensuring their voices will be heard regardless of the merits of their claims.

In summary, Applicants object to the scheduling of an in-person public hearing on its Application for a Certificate of Public Convenience and Necessity ("CPCN") to construct a new cellular tower (the "Application"). In the alternative, should a public hearing be scheduled, Applicants request it be conducted by videoconference or teleconference and that at least the parameters set forth below be imposed by pre-hearing Order of the PSC in the interest of the appropriate jurisdiction of the agency under Kentucky statutes and implementing regulations as well as in the interest of compliance with the federal Telecommunications Act of 1996 ("TCA"). The scope and procedures applicable to any such hearing remains within the broad discretion of the PSC consistent with KRS Chapter 278 and 807 K.A.R. Chapter 5.

No Indication of Evidence to be Offered by Requesters. The Request for Hearing

provides no indication of evidence the requesters seek to present to the PSC in public hearing or why they could not provide any relevant information through public comment. Actually, the Dzierian Public Comment seems to call for the PSC to conduct investigation rather than identify what proof they would offer. Such argument provides no basis for intervention or public hearing.

Any effort to advance “Not in My Back Yard” (“NIMBY”) considerations outside the jurisdiction of the PSC would make a public hearing an exercise in futility. If the PSC is at all inclined to schedule a public hearing, it should first require the persons requesting a hearing to identify specifically the issues they intend to raise with identification of supporting evidence and how those issues are within the PSC’s mandate to consider wireless service issues or are otherwise within PSC jurisdiction under statute or implementing regulations.

Need Expert Witness Testimony on any Proof by Tower Opponents. Any reports filed or testimony offered in connection with any public hearing should be prepared and signed by an *expert* witness in that the U.S. Court of Appeals for the Sixth Circuit does not consider lay testimony to be probative in opposition to “substantial evidence” or “prohibition of service” claims for violation of Section 704 of the TCA. *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794 (6<sup>th</sup> Cir. 2012).

Discretion of PSC to Consider Certain Factors. KRS 278.650 states in pertinent part: “In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values.” (Emphasis added). KRS 446.010 provides in pertinent part: “As used in the statute laws of this state, unless the context requires otherwise: ... (26) [the word] may

is permissive.” (Emphasis added). Also, the PSC implementing regulations do not bind the agency to consider such factors in its decision. Consequently, the PSC has the discretion to narrow the scope of any scheduled public hearing. TCA limitations weigh in favor of the PSC narrowing the scope of any hearing to foreclose consideration of aesthetic and other “not in my back yard” issues.

Aesthetic Considerations Fail to Justify a Public Hearing. The Request for Hearing does not evidence any recognition of the TCA’s limitation on aesthetic considerations as a basis for denial of a proposal for a new tower. *Cellco Partnership v. Franklin Co.*, KY, 553 F. Supp. 2d 838, 849, 851-851 (E.D. Ky. 2008). The U.S. Court of Appeals for the Sixth Circuit in *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794, 804, 804 (6<sup>th</sup> Cir. 2012). Federal courts have 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 enough 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.

In summary, any effort by tower opponents to thwart AT&T’s proposal for a new tower based on purported aesthetic issues arising from alleged tower proliferation is

ineffectual as a matter of law. Consequently, a hearing should not be scheduled to evaluate such issues and persons requesting a hearing should be informed well in advance of this state of the law. As the PSC's Order of March 26, 2019 in Case No. 2017-00435 confirmed, arguments against tower proliferation are "not permissible under federal law." *Id.* at p. 3. Should a public hearing be scheduled, AT&T requests an appropriate pre-hearing Order of the PSC exclude consideration of aesthetic issues, including issues of purported tower proliferation.

Risk of Prohibition of Service in Violation of TCA. A prohibition of service in violation of Section 704 of the TCA occurs when a permit is denied notwithstanding the wireless carrier showing a significant gap in its own service and that it has made a good faith effort in considering feasible and available alternatives. *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794, 804 (6<sup>th</sup> Cir. 2012). Persons requesting a public hearing in this context are only trying to lure the PSC into violating the TCA.

Preservation of Rights Pursuant to FCC Shot Clock. Applicants are concerned that persons requesting a public hearing in this proceeding may seek to delay "... the rapid deployment of wireless facilities" by drawing out any hearing proceedings which are scheduled in contrast to the intent of the TCA.<sup>9</sup> Consequently, Applicants reserve all rights under the TCA and FCC 150-day "Shot Clock" to ensure timely resolution of this

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<sup>9</sup>See *Pi Telecom Infrastructure V, LLC v. Georgetown-Scott County Planning Comm'n*, 234 F. Supp. 3d 856 (E.D. Ky. 2017) ("Congress enacted the TCA to promote competition between service providers that would inspire the creation of higher quality telecommunications services and to encourage the rapid deployment of new telecommunications technologies.").

proceeding.<sup>10</sup> The PSC has repeatedly recognized the need to make Certificate of Public Convenience and Necessity decisions prior to the expiration of the FCC Shot Clock.<sup>11</sup> It should do so in the present proceeding and not allow the request for hearing to delay its decision on the Application.

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<sup>10</sup>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 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”).

<sup>11</sup> See Kentucky PSC cases 2014-0098 (Alice Lloyd); 2014-0088 (East Point); 2014-0074 (Index); 2014-00135 (Nippa); and 2014-0087 (Staffordsville).

## REQUEST FOR RELIEF

**WHEREFORE**, there being no ground for intervention by the Dzierans, Applicants respectfully request the Kentucky Public Service Commission:

- (a) Accept this Response for filing;
- (b) Deny the Request to Intervene and for Public Hearing;
- (c) Grant Applicants the requested CPCN any other relief to which they are entitled.

Respectfully submitted,

*David A. Pike*

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David A. Pike  
And

*F. Keith Brown*

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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 in PSC Case No. 2021-0049



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9th day of March 2021, a true and accurate copy of the foregoing was electronically filed; and sent by U.S. Postal Service first class mail, postage prepaid, to:

Racheal Dzieran  
Thomas Dzieran  
251 W. Central Ave.  
Ste. 243  
Springboro, Ohio 45066

Respectfully submitted,

*David A. Pike*

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David A. Pike  
And

*F. Keith Brown*

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F. Keith Brown  
Attorneys for Applicants