

**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 TILLMAN INFRASTRUCTURE LLC, A DELAWARE )  
LIMITED LIABILITY COMPANY )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC ) CASE NO.: 2021-00398  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY )  
IN THE COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF GRAYSON )

SITE NAME: FALLING BRANCH

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**APPLICANT RESPONSE TO PUBLIC COMMENT**

New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility and Tillman Infrastructure LLC, a Delaware limited liability company (“Applicant”), by counsel, make this Response to the comments submitted by Jason Allred, Christina Allred, Carrie Mutter, Sheila Meredith and Emily Parks in the within proceeding. Applicant respectfully states, as follows:

1. Jason Allred, Christina Allred, Carrie Mutter, Sheila Meredith and Emily Parks have voiced generalized concerns to the Kentucky Public Service Commission regarding the location of the facility proposed in the within Application, and while they request a public hearing, state that they do not wish to participate in an evidentiary hearing or make

unsworn public comment. 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. Jason Allred, Christina Allred, Carrie Mutter, Sheila Meredith and Emily Parks are not adjoining property owners. They each reside a substantial distance from the proposed tower location, the greatest of which is more than 12-miles from the tower site. They have not requested intervention, and therefore, are not parties to this proceeding. Utilizing the same form or template for their public comment, they request a public hearing, but also state that they do not wish to participate in an evidentiary hearing or make unsworn public comment. They support a different location for the tower on the same parcel without providing any reason for this conclusion and therefore do not present issues or develop facts that will assist the Commission in fully considering this matter.

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. Furthermore, the tower will be galvanized steel to minimize its visibility. The general area where the proposed facility is to be located is a heavily wooded rural area. The tower site is located on a large parcel and will be setback over 1,300’ from Highway 110 (Blue Bird Road). 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. AT&T’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 is a provider of essential wireless voice and data services to residential and commercial customers. AT&T 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. The proposed facility is necessary to achieve coverage and capacity needs that cannot be established in any other manner in this part of Grayson County. It will provide needed capacity to offload the surrounding sites which are currently operating at or near maximum capacity in this area limiting the ability of user access to the network. This new tower is required as there is no other means of providing this service in this area.

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 have 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 Grayson 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 (6<sup>th</sup> 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.

**WHEREFORE**, there being no ground for denial of the subject application and substantial evidence in support of the requested CPCN, Applicant respectfully request 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 19th day of November 2021, a true and accurate copy of the foregoing was electronically filed with the PSC and sent by U.S. Postal Service first class mail, postage prepaid, to:

Jason and Christina Allred  
400 Nancye Dr  
Leitchfield, KY 42754

Carrie Mutter  
321 Circle Hill Rd  
Falls of Rough, KY 40119

Sheila Meredith  
301 Paradise Acres Rd  
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Emily Parks  
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