

**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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**APPLICANTS’ RESPONSES TO POST-HEARING
REQUESTS FOR INFORMATION**

New Cingular Wireless PCS LLC d/b/a AT&T Mobility (“AT&T”) and Tillman Infrastructure LLC, a Delaware limited liability company (“Tillman”) (collectively, “Applicants”), by counsel, hereby file this response in response to a Request for Information from the Kentucky Public Service Commission (“PSC”) issued on July 28, 2023.

Applicants have selected a tower site which is feasible and available after a good faith search of the Search Area identified by a Radio Frequency Engineer. No evidence of a feasible and available alternative site which would be less intrusive was introduced into evidence at the recent hearing before the Public Service Commission. Moreover, the regulations of the PSC include no specified setback requirement for a

tower from neighboring parcels or residences. No regulation of the PSC even required the Nicolais' residence to be identified on any filed drawings in that filed survey information shows the residence to be more than 500' from the proposed tower.

Applicants maintain the existing record compels grant of a Certificate of Public Convenience and Necessity ("CPCN") under Kentucky law and the federal Telecommunication Act of 1996 ("TCA") as authoritatively interpreted by *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794 (6th Cir. 2012) and other precedent. No substantial evidence could support denial of the request for CPCN on the existing record. Moreover, denial of the request for CPCN would constitute a prohibition of service in violation of the TCA. Accordingly, the Data Requests are irrelevant, immaterial, and arbitrary.

Without waiving the aforesaid objections and other objections of record, the attached Affidavit from Annie Zocco of Tillman Infrastructure addressing the most recent Data Requests from the PSC and submitting a new survey drawing as **Exhibit A** is attached hereto and incorporated by reference.

WHEREFORE, the Applicants, by counsel, request the PSC to accept this Response for filing and grant Applicants any other relief to which they are entitled.

Respectfully submitted,

David A. Pike

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and

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of August, 2023, 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 the Intervening Party at the following address:

Roger and Janelle Nicolai
2663 Blue Bird Road
Falls of Rough, Kentucky 40119

Respectfully submitted,

David A. Pike

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and

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