

**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

* * * * *

APPLICANTS’ RESPONSES TO INITIAL 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 to initial requests for information. This filing is in response to an Initial Request for Information filed by Roger and Janelle Nicolai on August 29, 2022 and a First Request for Information from the Kentucky Public Service Commission (“PSC”) issued on August 31, 2022.

Applicants OBJECT to the Information Request on RELEVANCY, DUE PROCESS, ARBITRARINESS, and JURISDICTION. The CPCN Application is reviewed on facts at time of filing on applicable law. The PSC does not have jurisdiction to impose an expanding review process in which Applicants have an obligation to change the location of their proposed tower. No statute or regulation

requires moving of a site after an Application is filed. Any required consideration of moving a proposed tower site is further prejudicial and damaging to Applicants in imposing substantial costs of new due diligence on Applicants. Inquiry on moving the proposed site serves no lawful purpose considering all of these factors.

Without waiving the aforesaid objection, the attached affidavits from Annie Zocco of Tillman Infrastructure addressing requests for information from Roger and Jannelle Nicolai and the Kentucky Public Service Commission, and an affidavit from Glen Katz addressing requests for information from Roger and Jannelle Nicolai, are submitted under protest with reservation of rights upon appeal.

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

David A. Pike
and

F. Keith Brown

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of September, 2022, 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

David A. Pike
and

F. Keith Brown

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
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IN THE COUNTY OF GRAYSON)

SITE NAME: FALLING BRANCH

* * * * *

**APPLICANTS' RESPONSES TO INITIAL REQUESTS FOR INFORMATION
AFFIDAVIT OF ANNIE ZOCCO, TILLMAN INFRASTRUCTURE**

Comes now the affiant, Annie Zocco, Senior Site Development Project Manager for co-applicant Tillman Infrastructure, and after having been duly sworn and under oath states the following facts are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry. This filing is in response to an Initial Request for Information filed by Roger and Janelle Nicolai on August 29, 2022.

1. Question: Since January 1st, 2015 have any residents of the Falls of Rough requested a wireless communications facility to be constructed on their property?

Answer: Other than the owners of the proposed site parcel (parcel #034-00-00-013 at 2589 Blue Bird Road, Falls of Rough, Kentucky), no residents of Falls of Rough

requested tower placement on their parcel prior to the filing of the application for a Certificate of Convenience and Public Necessity (“CPCN”) on October 18, 2021. Terry Newton and Kimberly Newton own the proposed site parcel and offered a single location on the site parcel, and the applicants selected this location for tower placement following the site selection process. In July 2022, more than nine months after the application for a CPCN was filed, Robert Shelton (owner of parcel #034-00-00-013.0F on Paradise Acres Road) emailed Tillman Infrastructure to offer a portion of his property for tower placement. The parcel offered by Mr. Shelton was much closer to existing dense residential development along Paradise Acres Road and was a more intrusive location than the proposed site location. Further, Robert and Debra Shelton were contacted during the initial site selection process (discussed further below in response to Question 5) and were not interested in leasing space for tower placement. At the time Mr. Shelton’s email was received, over twenty-two months had passed since Tillman sent a proposal letter to the Sheltons. During that time, significant time and resources had been spent on the proposed site. Further, no due diligence has been performed on the Shelton parcel to confirm if it is capable of supporting a tower, nor has any regulatory review been conducted to confirm that tower placement on this parcel is permissible. Consequently, there is no guarantee that this property is even viable for tower placement. The applicants are focused on the prompt and efficient deployment of wireless infrastructure, and therefore cannot re-start the site selection process based on offers received months after a superior site location has been chosen. In addition, the proposed tower is capable of supporting future deployment of FirstNet technology. FirstNet improves public safety

by providing advanced communications capabilities to assist public safety agencies and first responders. The ability to host this technology further underlines the urgency to deploy this technology rapidly.

2. Question: At the public hearing on March 3rd, 2022, did any attendees, other than Terry and Kim Newton, express interest in hosting a communications facility on their property?

Answer: A video of the public hearing is part of the public record for this site and is available at: <https://www.youtube.com/watch?v=cTk8EbtZB0g&feature=youtu.be>.

3. Question: We are requesting all communication (written, verbal, et al.) between the Joint Applicants (including their legal representation; Pike Legal Group, PLLC) and the Newtons **from initial contact through present day.**

Answer: Representatives of Tillman Infrastructure and/or Tillman Infrastructure's vendors have been in consistent contact, typically via verbal communication, with the Newtons as part of the site acquisition process. This request for production of all communications is overbroad and would require Tillman Infrastructure to disclose confidential and proprietary business terms without producing any information relevant to the selection of the Newton site. In a good faith effort to comply with this request, I have reviewed applicable files and relevant communications related to the selection of the Newton site are attached as **Exhibit A.**

4. Question: Who initiated contact regarding the proposed wireless communications facility, the Newtons or the Joint Applicants?

Answer: Representatives of Tillman Infrastructure and/or Tillman Infrastructure's vendors initiated contact with the Newtons.

5. Question: Who chose the proposed facility location within the property located at 2589 Blue Bird Rd., the Newtons or the Joint Applicants?

Answer: The proposed facility location was selected by the joint applicants in collaboration with the Newtons at the conclusion of a typical site selection process as described below.

- 1) AT&T Mobility issued a “search area” (filed as **Exhibit N** of the application for a Certificate of Public Convenience and Necessity) identifying the area in which a new facility must be placed to resolve an existing coverage gap. For your reference, a copy of the search area with the county’s Property Valuation Administrator (PVA) parcel map overlaid is attached as **Exhibit B**.
- 2) Site acquisition agents conducted research on existing infrastructure in the search area to identify any structures capable of hosting AT&T Mobility’s equipment at the elevation required to resolve the existing coverage gap. There is no suitable, existing infrastructure in this area. A search of the Federal Communications Commission (“FCC”) Database for this area revealed no existing towers within two miles of the search area (see attached **Exhibit C**, which shows the proposed tower as the only FCC-registered structure within two miles of the 0.35 mile-wide search area). Antennas located on the nearest FCC-registered tower will not resolve the existing coverage gap in this area.

- 3) After confirming that no existing infrastructure is suitable for antenna placement to resolve the existing coverage gap, the site acquisition agents researched parcels within the search area to identify the least intrusive, available location from which to resolve the existing coverage gap. Rough River Lake occupies most of the eastern portion and the extreme southern edge of the search area, so there is no land available for tower placement in those areas. The central portion of the search area includes exclusively small parcels with residential structures throughout the area. Based on these factors, the western portion of the search area was identified as the least intrusive location from which to resolve the existing coverage gap in this area.
- 4) The site acquisition agents sent “proposal letters” discussing the possibility of tower placement to the owners of large parcels in the western portion of the search area. Roger and Janelle Nicolai (owners of three large parcels southwest of the intersection of Bluebird Road and Paradise Acres Road) did not respond to proposal letters sent to them. Robert Wayne and Debra R. Shelton (owners of parcel #034-00-00-013.0F) responded but declined to lease space for tower placement. The Newtons (owners of the proposed site parcel) were the only landowners in the search area with a large parcel that were willing to lease space for tower placement.

- 5) After discussing tower placement with the Newtons, the Newtons elected to offer the proposed site location and only the proposed site location to the applicants for tower placement. The Newtons have communicated to Tillman or Tillman's representatives that the remainder of the parcel is unavailable because: 1) the Newtons do not want to clear trees to accommodate tower placement or 2) the proposed site location is non-tillable land and the remainder of the parcel is used for agricultural operations.
- 6) In sum, the proposed search area was thoroughly reviewed, co-location was appropriately ruled out, alternative rawland locations were either inappropriate for tower placement or unavailable to the applicants, and the proposed site location is the only available location suitable for tower placement.

6. Question: What other locations, within the previously mentioned piece of property, were considered prior to the CPCN? If alternative locations were considered, why were none chosen?

Answer: The entire site parcel (and more broadly the entire search area) was considered prior to filing the CPCN application. After undertaking the process described above in the response to question five, the applicants determined that the proposed site location is the only available, suitable location for tower placement. Further, the proposed location is the least intrusive site location available in the area because the proposed location maximizes the distance from more dense residential developments along Blue Bird Road and Circle Hill Road to the north, Paradise Acres

Road to the southeast and Fentress Lookout Road to the east (see Exhibit D). Additionally, the site location maximizes the distance from the Nicolai home (see Exhibit E) and is nearly 600' from the Nicolai residence. The site could not be placed farther from the Nicolai residence without requiring extensive tree clearing, interfering with agricultural operations on the site parcel or placing the tower closer to more dense residential development along the major roads in this area. For these reasons, the tower has been placed at the least intrusive location available to the applicants.

7. Question: After Intervention was granted to the Nicolais by the PSC was any attempt made to relocate the proposed facility within 2589 Blue Bird Road? What has prevented the proposed site from being moved?

Answer: No. The site selection process described in the response to question five of this document was complete before intervention was granted to the Nicolais. At the time intervention was granted, the applicants knew that there was no other less intrusive and suitable location available for tower placement in this search area. Accordingly, no attempt was made to relocate the site following the grant of intervention. Additionally, the applicants are focused on the efficient and rapid deployment of wireless infrastructure. Selecting a site is a time consuming and costly process. In this instance, significant time and resources have been invested in identifying the least intrusive available location. Further delays related to site relocation would be a disservice to wireless customers in the area, who have clearly communicated their desire for improved coverage in this area.

Further the affiant sayeth naught.

Affiant: _____



Date: _____

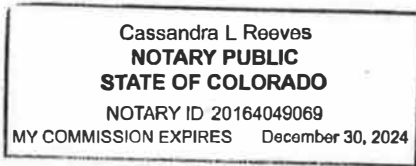
9.12.2022

State of Colorado)
County of Adams)

On this, the 12 day of September 2022 before me, the subscriber, a Notary Public in and for the above state, personally appeared to me, the Affiant, Annie Zocco, and in due form of law, acknowledged, subscribed, and swore under oath that she executed this instrument as her voluntary act and deed and her responses are true and accurate to the best of her knowledge, information, and belief formed after a reasonable inquiry.

In testimony whereof, I have hereunto set my hand and affixed my seal in said County and State on the day and year last above written.

My commission expires on: December 30, 2024



Cassandra L Reeves

Notary Public

EXHIBIT A

**RELEVANT WRITTEN COMMUNICATIONS BETWEEN
APPLICANTS AND SITE PARCEL OWNERS**



1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, KY 40165-0369
Phone (502) 955-4400 or (800) 516-4293
Fax (502) 543-4410 or (800) 541-4410

**Notice of Proposed Construction of
Wireless Communications Facility
Site Name: Falling Branch**

Dear Landowner:

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 have filed an application with the Kentucky Public Service Commission ("PSC") to construct a new wireless communications facility on a site located at 2589 Blue Bird Road, Falls of Rough, KY 40119 (37° 35' 48.02" North latitude, 86° 29' 24.53" West longitude). The proposed facility will include a 145-foot tall tower, with an approximately 4-foot tall lightning arrestor attached at the top, for a total height of 149-feet, plus related ground facilities. This facility is needed to provide improved coverage for wireless communications in the area.

This notice is being sent to you because the County Property Valuation Administrator's records indicate that you may own property that is within a 500' radius of the proposed tower site or contiguous to the property on which the tower is to be constructed. You have a right to submit testimony to the Kentucky Public Service Commission ("PSC"), either in writing or to request intervention in the PSC's proceedings on the application. You may contact the PSC for additional information concerning this matter at: Kentucky Public Service Commission, Executive Director, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to docket number 2021-00398 in any correspondence sent in connection with this matter.

We have attached a map showing the site location for the proposed tower. AT&T Mobility's radio frequency engineers assisted in selecting the proposed site for the facility, and they have determined it is the proper location and elevation needed to provide quality service to wireless customers in the area. Please feel free to contact us toll free at (800) 516-4293 if you have any comments or questions about this proposal.

Sincerely,
David A. Pike
Attorney for Applicants

enclosures

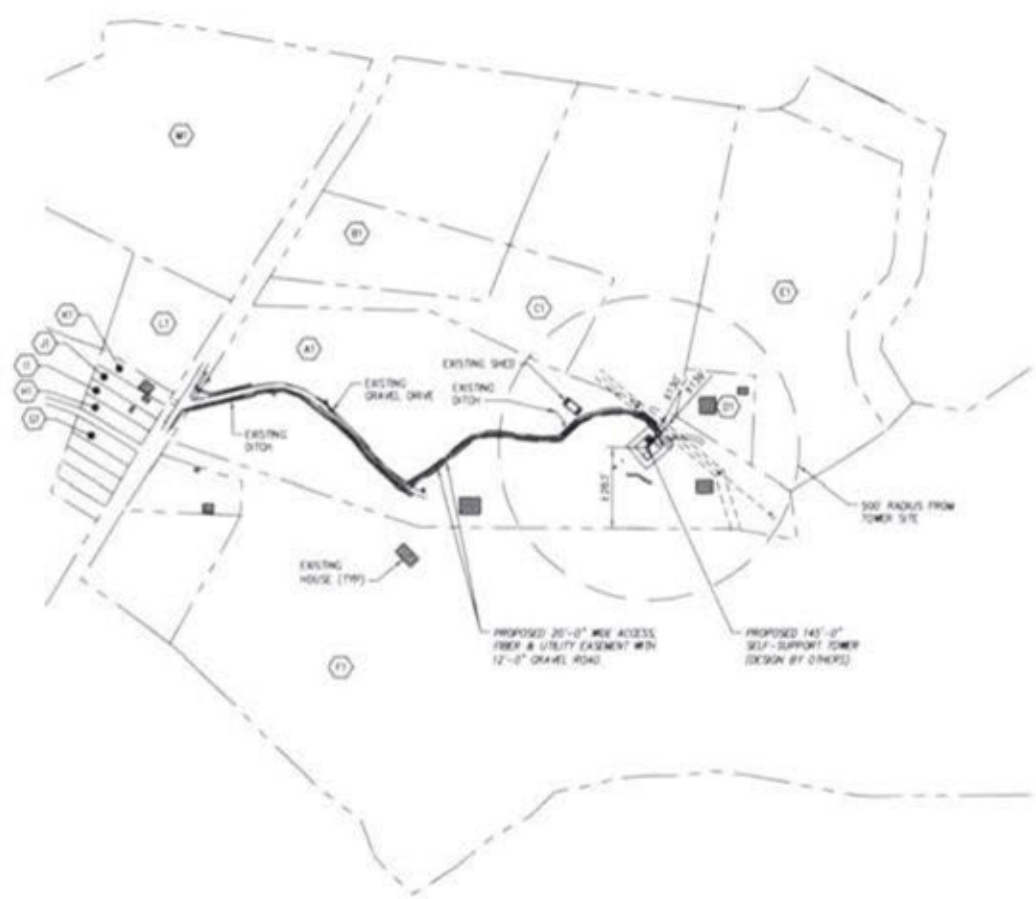
Driving Directions to Proposed Tower Site

1. Beginning at 130 E. Market Street, Leitchfield, KY 42754, head west on E Market Street toward S Heyser Drive and travel approximately 459 feet.
2. Turn right at the 2nd cross street onto S Main Street and travel approximately 459 feet.
3. At the traffic circle, take the 3rd exit onto Public Square and travel approximately 410 feet.
4. Follow Public Square as it turns slightly right and becomes W Main Street and travel approximately 0.9 miles.
5. Continue onto KY-54 W / Owensboro Road and travel approximately 10.0 miles.
6. Turn right onto KY-79 N and travel approximately 5.8 miles.
7. Turn right onto KY-110 and travel approximately 0.4 miles.
8. Turn right to stay on KY-110 and travel approximately 0.9 miles.
9. Turn left to stay on KY-110 and travel approximately 1.3 miles.
10. The site is located on the right at 2589 Blue Bird Road, Falls of Rough, KY 40119.
11. The site coordinates are:
 - a. North 37 deg 35 min 48.02 sec
 - b. West 86 deg 29 min 24.53 sec



Prepared by:
Chris Shouse
Pike Legal Group
1578 Highway 44 East, Suite 6
P.O. Box 396
Shepherdsville, KY 40165-3069
Telephone: 502-955-4400 or 800-516-4293

DIRECTIONS:
 DEPART (LOUISVILLE INTERNATIONAL AIRPORT ON LOCAL ROADS) (EAST) FOR 142 YDS TOWARD REWOTE PARKING. TURN LEFT (NORTH-WEST) ONTO LOCAL ROADS) FOR 0.3 MI. ROAD NAME CHANGES TO TOLL PLAZA ON FOR 0.2 MI. MERGE ONTO LOWER TERMINAL ON FOR 0.1 MI. TOWARD I-264 / I-65 / PARKING / TERMINAL. RETURN / DOWNTOWN. MERGE ONTO TERMINAL ON FOR 0.2 MI. KEEP RIGHT ONTO RAMP FOR 0.6 MI. TOWARD I-264 / I-65 / DOWNTOWN. KEEP LEFT TO STAY ON RAMP FOR 0.3 MI. TOWARD TAKE RAMP (RIGHT) ONTO I-65 FOR 29.4 MI. TOWARD I-65 / US-61 / NASHVILLE. AT EXIT 91, TURN RIGHT ONTO RAMP FOR 0.2 MI. TOWARD US-51W / KY-61 / WK PARKWAY / HOSGENVILLE / PADUCAH. KEEP RIGHT TO STAY ON RAMP FOR 0.2 MI. TOWARD US-51W / KY-61 / WK PARKWAY / ELIZABETHTOWN / OWENSBORO. TAKE RAMP (LEFT) ONTO MENKELL + FORD WESTERN KENTUCKY PARKWAY FOR 29.3 MI. TOWARD WK PARKWAY WEST / OWENSBORO / PADUCAH. AT EXIT 157, KEEP RIGHT ONTO RAMP FOR 0.2 MI. TOWARD KY-258 / LETCHFIELD / BROWNVILLE. TURN RIGHT (NORTH) ONTO SR-258 FOR 0.7 MI. KEEP STRAIGHT ONTO US-62 FOR 0.2 MI. AT ROUNDABOUT, TAKE THE THIRD (LEFT) ONTO W MAIN ST FOR 142 YDS. BEAR RIGHT (WEST) ONTO SR-154 FOR 10.8 MI. TURN RIGHT (NORTH) ONTO SR-174 FOR 5.7 MI. TURN RIGHT (EAST) ONTO SR-110 FOR 0.4 MI. TURN LEFT TO STAY ON SR-110 FOR 0.9 MI. TURN LEFT TO STAY ON SR-110 FOR 1.5 MI. TURN RIGHT (SOUTH) ONTO PARADISE ACRES RD FOR 0.2 MI. BEAR RIGHT (SOUTH) ONTO BLUE BIRD RD FOR 0.2 MI. CHECK LOCAL TIME. THIS STOP IS IN A DIFFERENT TIME ZONE. TURN RIGHT (NORTH) ONTO LOCAL ROADS) FOR 0.2 MI. APPROX 2585 BLUE BIRD ROAD FALLS OF ROUGH, KY 40118

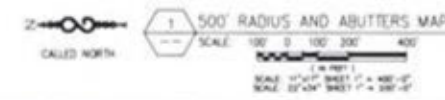


- PARCEL KEY:**
- A1 PARCEL ID: 034-00-00-013
TERRY L. NEWTON & KIMBERLY D. NEWTON
2585 BLUE BIRD ROAD
FALLS OF ROUGH, KY 40118
 - B1 PARCEL ID: 034-00-00-01300
NICOLA ROGER & JANELLE
2683 BLUE BIRD RD
FALLS OF ROUGH, KY 40118
 - C1 PARCEL ID: 034-00-00-01300
NICOLA ROGER & JANELLE
2683 BLUE BIRD RD
FALLS OF ROUGH, KY 40118
 - D1 PARCEL ID: 034-00-00-01300
NICOLA ROGER & JANELLE
2683 BLUE BIRD RD
FALLS OF ROUGH, KY 40118
 - E1 PARCEL ID: 034-00-00-01301
MILLTON ROBERT BAINE, JR & DEBRA S
363 CHERRY HILL PARKWAY
MT WASHINGTON, KY 40047
 - F1 PARCEL ID: 034-00-00-0130C
CORINNE MARTHA RAASCH
187 CHURCHMAN LN
FALLS OF ROUGH, KY 40118
 - G1 PARCEL ID: FENRIS CS-057
CHARLES CHARLES P & PAULINE S
10141 FALLS OF ROUGH RD
FALLS OF ROUGH, KY 40118
 - H1 PARCEL ID: FENRIS CS-058
GRANT RONNE DEAN & PATRICIA
142 QUEENS CT
BEAVER DAM, KY 42230
 - I1 PARCEL ID: FENRIS CS-058
GRANT RONNE DEAN & PATRICIA
142 QUEENS CT
BEAVER DAM, KY 42230
 - J1 PARCEL ID: FENRIS CS-060
STREBLE NICHOLAS & WHITNEY
2878 WEAVERS RUN RD
WEST POINT, KY 40177
 - K1 PARCEL ID: FENRIS CS-061
STREBLE NICHOLAS & WHITNEY
2878 WEAVERS RUN RD
WEST POINT, KY 40177
 - L1 PARCEL ID: FENRIS CS-062
DITTMUS GEORGE L, JR & SUE ANN
C/O ADAM THOMPSON & TRAVIS MOHLES
261 N SHYANE DR
LOUISVILLE, KY 40229
 - M1 PARCEL ID: LOOK 0-000
LANDOWNER INFORMATION FOR PARCEL
UNAVAILABLE PER GRAYSON COUNTY PVA OFFICE

GENERAL NOTE:

- ALL INFORMATION SHOWN HEREIN WAS OBTAINED FROM THE RECORDS OF THE WARREN COUNTY KENTUCKY PROPERTY VALUATION ADMINISTRATION OFFICE ON 08/21/21. THE PROPERTY VALUATION ADMINISTRATION MAY NOT REFLECT THE CURRENT OWNERS AND ADDRESSES DUE TO INACCURACIES AND TIME LAPSE IN UPDATING FILES. WARREN HERDFIELD CORPORATION AND THE COUNTY PROPERTY VALUATION ADMINISTRATION EXPRESSLY DISCLAIM ANY WARRANTY FOR THE CONTENT AND ANY ERRORS CONTAINED IN THEIR FILES.
- THIS MAP IS FOR GENERAL INFORMATIONAL PURPOSES ONLY AND IS NOT A BOUNDARY SURVEY.
- NOT FOR RECORDING OR PROPERTY TRANSFER.

GRAYSON COUNTY KY PVA
 ERINNE PERKINS, PVA
 110 PUBLIC SQUARE
 LETCHFIELD, KY 42754
 OFFICE (270) 259-4636
 FAX (270) 259-3918



NOTE:
 PARCEL NUMBERS ARE OF RECORD IN THE GRAYSON COUNTY PROPERTY VALUATION ADMINISTRATION OFFICE

NOTE:
 IN COMPLIANCE WITH LOCAL REGULATIONS, CONTRACTOR TO PRESERVE EXISTING VEGETATION NEAR THE SITE

at&t
 5075 E. BRAD ST
 NEWTON, KY 40051

TILLMAN INFRASTRUCTURE
 152 N 37TH STREET
 NEW YORK, NEW YORK 10018

INFINIGY8
 11111 WILSON ROAD
 THE WOODBRIDGE, VA 22191

NO.	DATE	DESCRIPTION	BY	CHKD
1	08/21/21	ISSUED FOR PERMITTING	CD	
2	08/21/21	ISSUED FOR PERMITTING	CD	
3	08/21/21	ISSUED FOR PERMITTING	CD	
4	08/21/21	ISSUED FOR PERMITTING	CD	
5	08/21/21	ISSUED FOR PERMITTING	CD	
6	08/21/21	ISSUED FOR PERMITTING	CD	
7	08/21/21	ISSUED FOR PERMITTING	CD	
8	08/21/21	ISSUED FOR PERMITTING	CD	
9	08/21/21	ISSUED FOR PERMITTING	CD	
10	08/21/21	ISSUED FOR PERMITTING	CD	

Project No: 15346957
 T3-OPP-17878
FALLING BRANCH
 261 N SHYANE DR
 FALLS OF ROUGH KY 40118

PROFESSIONAL ENGINEER
 CD

500' RADIUS AND ABUTTERS MAP & ADDRESSES

CD

C3



1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, KY 40165-0369
Phone (502) 955-4400 or (800) 516-4293
Fax (502) 543-4410 or (800) 541-4410

**Notice of Proposed Construction of
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Site Name: Falling Branch**

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This notice is being sent to you in compliance with a PSC Order issued on February 24, 2022. The PSC will hold a local public hearing to take public comments on this proposal. The hearing will be held on March 3, 2022, at the Rough River State Park located at 450 Lodge Road, Falls of Rough, Kentucky 40119 and shall begin at 5:00 p.m. Central Standard Time.

You may contact the PSC for additional information concerning this matter at: Kentucky Public Service Commission, Executive Director, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to docket number 2021-00398 in any correspondence sent in connection with this matter.

Sincerely,
David A. Pike
Attorney for Applicants

enclosures

COMMONWEALTH OF KENTUCKY
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In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC D/B/A AT&T)	
MOBILITY FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO.
TO CONSTRUCT A WIRELESS)	2021-00398
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF GRAYSON)	

ORDER

This matter arises upon the motion of the Robert and Janelle Nicolai (collectively, the Nicolais), filed November 16, 2021, for intervention in the application of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility and Tillman Infrastructure LLC (collectively, the Joint Applicants) to construct a wireless tower in Grayson County, Kentucky. As a basis for their motion, the Nicolais state that the proposed placement of the tower will negatively affect the value of their property and cite to an article claiming that cell towers affect the value of neighboring property. The Nicolais also claim that the proposed tower is at the western edge of their property, which would impede the use of their property. The Nicolais are not opposed to the construction of the tower, objecting only to the location of the tower, and state that the tower could be placed elsewhere on their neighbor's property.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate

Intervention (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.¹

The statutory standard for permissive intervention, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."²

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is two-fold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that 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.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that the Nicolais demonstrated that the Nicolais have a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that the Nicolais are likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complication the proceedings, for the reasons discussed below.

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

The Commission "may take into account . . . the likely effect of the installation on nearby land uses" ³ (Emphasis added.) The Nicolais' interest in the proposed placement of the tower and the possible effect on the use of their land is a special interest that is not otherwise represented in this proceeding. The Commission, therefore, finds that the Nicolais should be granted full rights of a party in this proceeding. The Commission directs the Nicolais to the Commission's July 22, 2021, Order in Case No. 2020-00085⁴ regarding filings with the Commission.

In addition, the Commission has received more than three requests from residents of Grayson County, Kentucky, for a local public hearing on the Joint Applicants' application. Because more than three residents have requested a local public hearing on the Joint Applicants' application, the Commission, pursuant to KRS 278.650, must convene a local public hearing. The Commission, therefore, finds that a local public hearing will be held on March 3, 2022, beginning at 5 p.m. Central Standard Time at Rough River State Park.

IT IS HEREBY ORDERED that:

1. The motion of the Nicolais to intervene is granted.
2. The Nicolais shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

³ KRS 278.650.

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

3. The Nicolais shall file all documents with the Commission by U.S. mail to P.O. Box 615, Frankfort, Kentucky 40602-0615, or by email to PSCED@ky.gov.

4. Within seven days of the date of this Order, the Nicolais shall provide to the Commission and to the Joint Applicants an email address at which the Nicolais may receive electronic service of documents.

5. A local public hearing is convened for the purpose of taking public comment the Joint Applicants' application to construct a wireless telecommunications facility to be located at 2589 Blue Bird Road, Falls of Rough, Kentucky 40119.

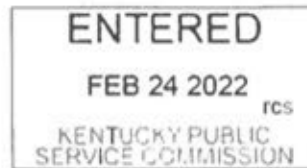
6. The local public hearing shall be held on March 3, 2022, at the Rough River State Park, 450 Lodge Road, Falls of Rough, Kentucky 40119, and shall begin at 5 p.m. Central Standard Time.

7. No evidence shall be taken at the local public hearing.

8. The Joint Applicants shall have a representative present at the local public hearing to answer questions from the public.

9. The Joint Applicants shall provide written notice of the time and place of the local public hearing to the residents of Grayson County who requested the local public hearing and to the Grayson County Judge Executive.

By the Commission



ATTEST:


Executive Director

Case No. 2021-00398

Roger & Janelle Nicolai
2663 Blue Bird Road
Falls of Rough, KENTUCKY 40119

*Christopher Shouse
Attorney
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*Honorable David A Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*New Cingular Wireless PCS, LLC dba AT&T
1010 N St Mary's Street, 9th Floor
San Antonio, TX 78215

EXHIBIT B

PVA MAP OF SEARCH AREA



K RIDGE RD

LOOK OUX

034-00-00-013

034-00-00-013.0G

034-00-00-013.0F

034-00-00-013.0C

PARADISE ACRES RD

MUSKIE RD

WALLEYE RD

EXHIBIT C

FCC DATABASE OF EXISTING TOWERS NEAR SEARCH AREA

Registration Search Results

Displayed Results

PA = Pending Application(s)

Specified Search

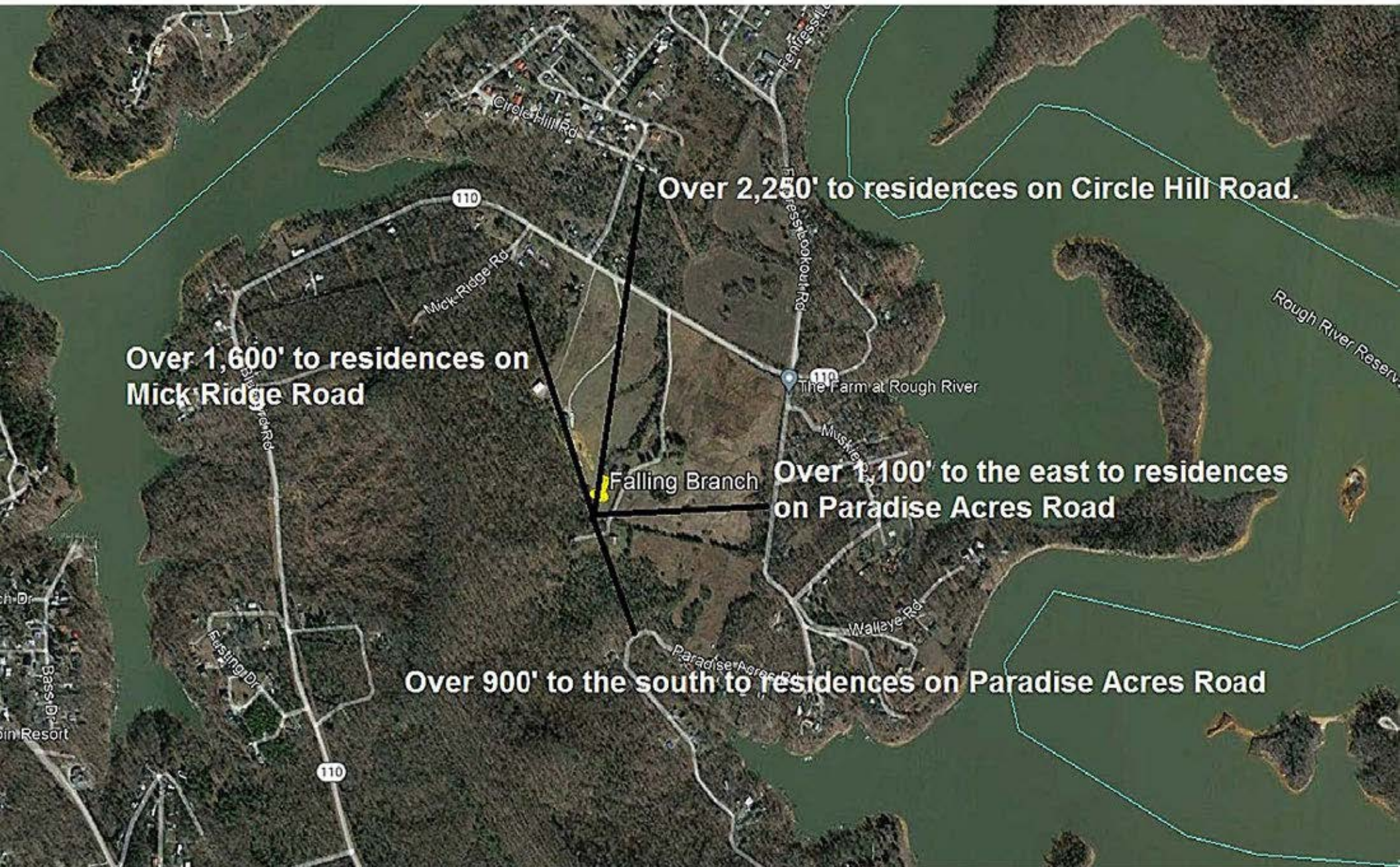
Latitude='37-35-47.5 N', Longitude='86-29-03.0 W', Radius=3.9 Kilometers

Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1 1319716	Granted	A1191069	Tillman Infrastructure, LLC	37-35-48.0N 086-29-24.5W	Falls of Rough, KY	45.7

CLOSE WINDOW

EXHIBIT D

**AERIAL PHOTOGRAPH DEPICTING DISTANCE BETWEEN TOWER AND
DENSE RESIDENTIAL DEVELOPMENT IN THE AREA**



Over 2,250' to residences on Circle Hill Road.

Over 1,600' to residences on Mick Ridge Road

Over 1,100' to the east to residences on Paradise Acres Road

Over 900' to the south to residences on Paradise Acres Road

Falling Branch

Circle Hill Rd

Mick Ridge Rd

Fenwick Ln

The Farm at Rough River

Muskeget Island

Wallaye Rd

Paradise Acres Rd

Rough River Reservoir

Fishing Dr

110

110

110

Basin Resort

EXHIBIT E

**AERIAL PHOTOGRAPH DEPICTING THE DISTANCE BETWEEN THE
TOWER AND THE RESIDENCE ON THE NICOLAI PARCEL**



Nearly 600' from
tower site to
Nicolai residence

034-00-00-013.0C

**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

* * * * *

**APPLICANTS’ RESPONSES TO INITIAL REQUESTS FOR INFORMATION
AFFIDAVIT OF ANNIE ZOCCO, TILLMAN INFRASTRUCTURE**

Comes now the affiant, Annie Zocco, Senior Site Development Project Manager for Co-Applicant Tillman Infrastructure, and after having been duly sworn and under oath states the following facts are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry. This filing is in response to a First Request for Information from the Kentucky Public Service Commission (“PSC”) issued on August 31, 2022.

1. Question: Explain why AT&T Mobility and Tillman are unable to move the proposed tower within the property boundaries of the proposed location. Provide all supporting documentation for the explanation.

Answer: After identifying the proposed site parcel as the only available and suitable

parcel for tower placement as discussed further below in response to Question 3, the co-applicants discussed tower placement with the owners of the site parcel (Terry and Kim Newton). The Newtons elected to offer the proposed site location and only the proposed site location to the co-applicants for tower placement. The Newtons have communicated to Tillman or Tillman's representatives that the remainder of the parcel is unavailable because: 1) the Newtons do not want to clear trees to accommodate tower placement or 2) the proposed site location is non-tillable land and the remainder of the parcel is used for agricultural operations. Further, the proposed site location maximizes the distance between the tower and more dense existing residential development on nearby roads as shown on **Exhibit A**. The location also maximizes the distance from the Nicolai home on the adjoining parcel as shown on **Exhibit B**, while meeting the conditions imposed by the Newtons. The filed application (including filed exhibits) and testimony provided at the public hearing for this site (available at: <https://www.youtube.com/watch?v=cTk8EbtZB0g&feature=youtu.be>) further serve as supporting documentation justifying the selection of this location as the most suitable and least intrusive location available for tower placement.

2. Question: Describe AT&T Mobility's and Tillman's efforts to collocate on existing structures. Provide all supporting documentation for the response.

Answer: Site acquisition agents conducted research on existing infrastructure in the search area to identify any structures capable of hosting AT&T Mobility's equipment at the elevation required to resolve the existing coverage gap. There is no suitable, existing infrastructure in this area. A search of the Federal Communications

Commission (“FCC”) Database for this area revealed no existing towers within two miles of the search area (see attached **Exhibit C**, which shows the proposed tower as the only FCC-registered structure within two miles of the search area, which is 0.35 mile-wide). Antennas located on the nearest FCC-registered tower will not resolve the existing coverage gap in this area.

3. Question: Describe AT&T Mobility’s and Tillman’s consideration of alternative construction locations, including an analysis performed. Provide all supporting documentation for the response.

Answer: The proposed facility location was selected by the joint applicants in collaboration with the Newtons at the conclusion of a typical site selection process as described below.

- 1) AT&T Mobility issued a “search area” (filed as **Exhibit N** of the application for a Certificate of Public Convenience and Necessity) identifying the area in which a new facility must be placed to resolve an existing coverage gap. For your reference, a copy of the search area with the county’s Property Valuation Administrator (PVA) parcel map overlaid is attached as **Exhibit D**.
- 2) Site acquisition agents conducted research on existing infrastructure in the search area to identify any structures capable of hosting AT&T Mobility’s equipment at the elevation required to resolve the existing coverage gap. There is no suitable, existing infrastructure in this area. A search of the Federal

Communications Commission (“FCC”) Database for this area revealed no existing towers within two miles of the search area (see attached **Exhibit C**, which shows the proposed tower as the only FCC-registered structure within two miles of the 0.35 mile-wide search area). Antennas located on the nearest FCC-registered tower will not resolve the existing coverage gap in this area.

- 3) After confirming that no existing infrastructure is suitable for antenna placement to resolve the existing coverage gap, the site acquisition agents researched parcels within the search area to identify the least intrusive, available location from which to resolve the existing coverage gap. Rough River Lake occupies most of the eastern portion and the extreme southern edge of the search area, so there is no land available for tower placement in those areas. The central portion of the search area includes exclusively small parcels with residential structures throughout the area. Based on these factors, the western portion of the search area was identified as the least intrusive location from which to resolve the existing coverage gap in this area.
- 4) The site acquisition agents sent “proposal letters” discussing the possibility of tower placement to the owners of large parcels in the western portion of the search area. Roger and Janelle Nicolai (owners of three large parcels southwest of the intersection of

Bluebird Road and Paradise Acres Road) did not respond to proposal letters sent to them. Robert Wayne and Debra R. Shelton (owners of parcel #034-00-00-013.0F) responded but declined to lease space for tower placement. The Newtons (owners of the proposed site parcel) were the only landowners in the search area with a large parcel that were willing to lease space for tower placement.

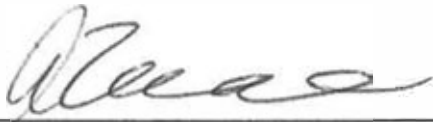
- 5) After discussing tower placement with the Newtons, the Newtons elected to offer the proposed site location and only the proposed site location to the applicants for tower placement. The Newtons have communicated to Tillman or Tillman's representatives that the remainder of the parcel is unavailable because: 1) the Newtons do not want to clear trees to accommodate tower placement or 2) the proposed site location is non-tillable land and the remainder of the parcel is used for agricultural operations.
- 6) In sum, the proposed search area was thoroughly reviewed, co-location was appropriately ruled out, alternative rawland locations were either inappropriate for tower placement or unavailable to the applicants, and the proposed site location is the only available location suitable for tower placement.

In July 2022, more than nine months after the application for a CPCN was filed, Robert Shelton (owner of parcel #034-00-00-013.0F on Paradise Acres Road) emailed Tillman Infrastructure to offer a portion of his property for tower placement.

The parcel offered was much closer to existing dense residential development along Paradise Acres Road and was a more intrusive location than the proposed site location. Further, Robert and Debra Shelton were contacted during the initial site selection process and were not interested in leasing space for tower placement. At the time Mr. Shelton's email was received, over twenty-two months had passed since Tillman sent a proposal letter to the Sheltons. During that time, significant time and resources had been spent on the proposed site. Further, no due diligence has been performed on the Shelton parcel to confirm if it is capable of supporting a tower, nor has any regulatory review been conducted to confirm that tower placement on this parcel is permissible. Consequently, there is no guarantee that this property is even viable for tower placement. The applicants are focused on the prompt and efficient deployment of wireless infrastructure, and therefore cannot re-start the site selection process based on offers received months after a superior site location has been chosen. In addition, the proposed tower is capable of supporting future deployment of FirstNet technology. FirstNet improves public safety by providing advanced communications capabilities to assist public safety agencies and first responders. The ability to host this technology further underlines the urgency to deploy this technology rapidly.

Further the affiant sayeth naught.

Affiant:



Date:

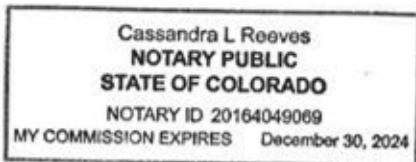


State of Colorado)
County of Adams)

On this, the 12 day of September 2022 before me, the subscriber, a Notary Public in and for the above state, personally appeared to me, the Affiant, Annie Zocco, and in due form of law, acknowledged, subscribed, and swore under oath that she executed this instrument as her voluntary act and deed and her responses are true and accurate to the best of her knowledge, information, and belief formed after a reasonable inquiry.

In testimony whereof, I have hereunto set my hand and affixed my seal in said County and State on the day and year last above written.

My commission expires on: December 30, 2024

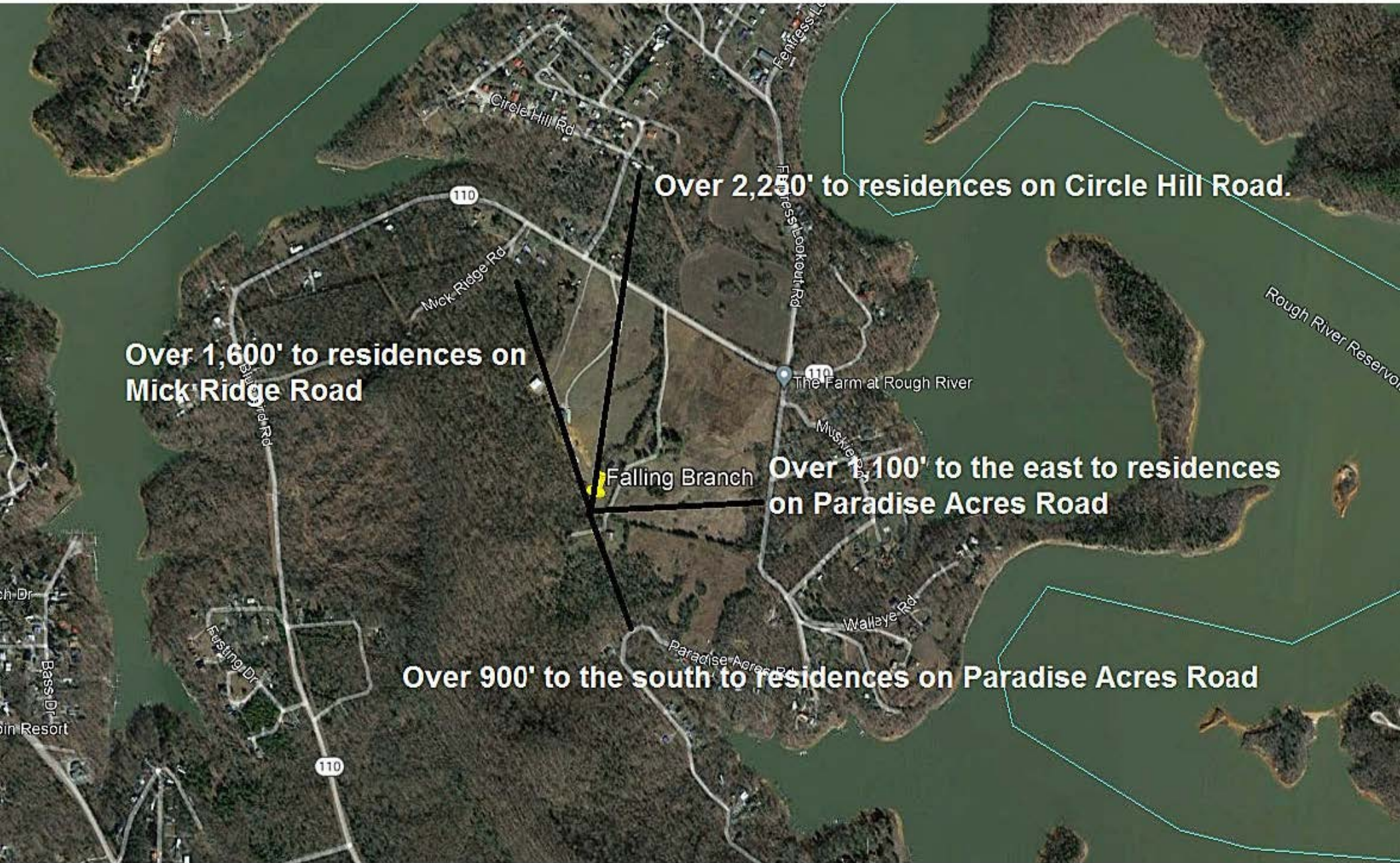


Cassandra L Reeves

Notary Public

EXHIBIT A

**AERIAL PHOTOGRAPH DEPICTING DISTANCE BETWEEN TOWER AND
DENSE RESIDENTIAL DEVELOPMENT IN THE AREA**



Over 2,200' to residences on Circle Hill Road.

Over 1,600' to residences on Mick Ridge Road

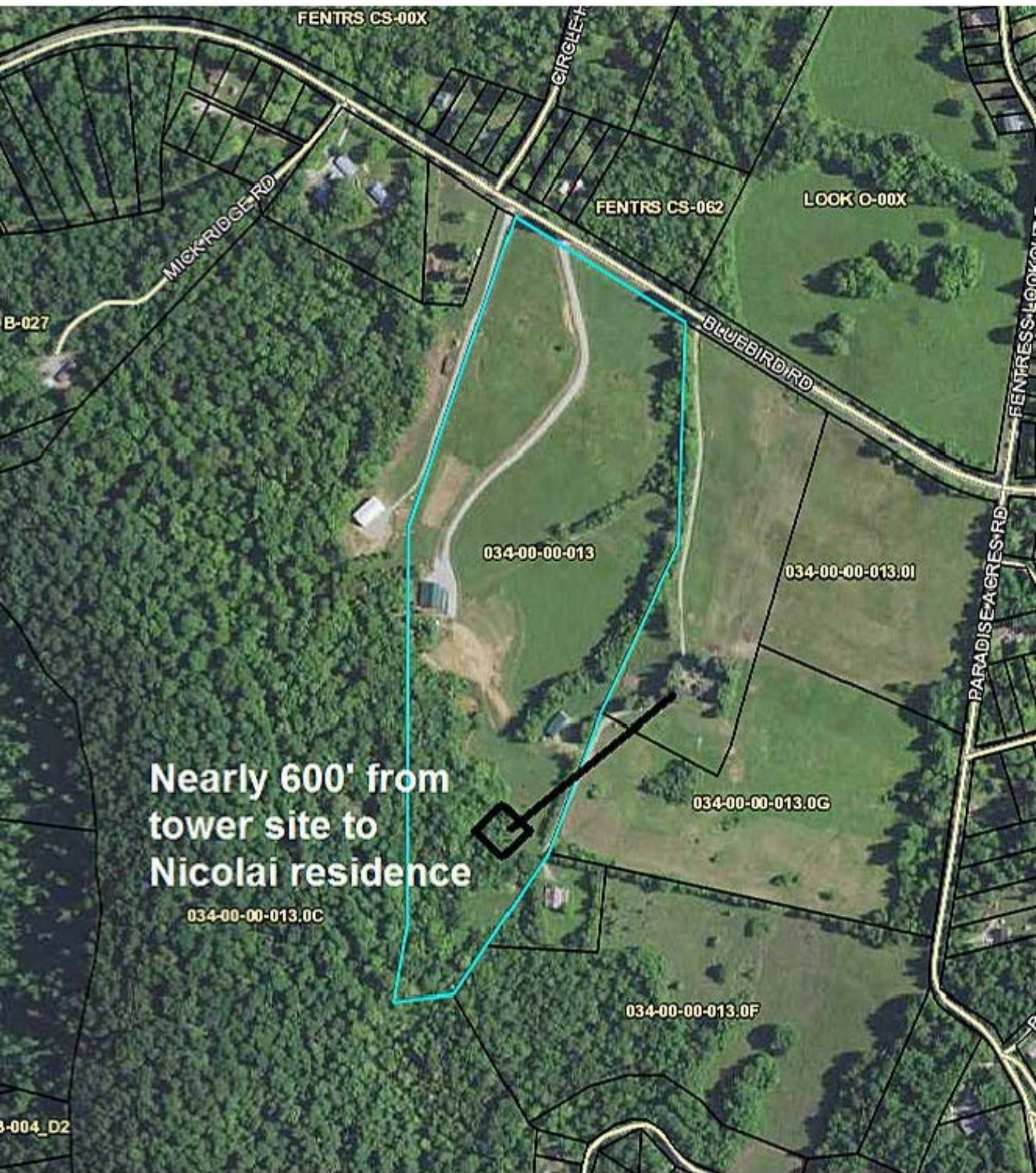
Over 1,100' to the east to residences on Paradise Acres Road

Over 900' to the south to residences on Paradise Acres Road

Falling Branch

EXHIBIT B

**AERIAL PHOTOGRAPH DEPICTING THE DISTANCE BETWEEN THE
TOWER AND THE RESIDENCE ON THE NICOLAI PARCEL**



Nearly 600' from
tower site to
Nicolai residence

034-00-00-013.0C

034-00-00-013.0F

EXHIBIT C

FCC DATABASE OF EXISTING TOWERS NEAR SEARCH AREA

Registration Search Results

Displayed Results

PA = Pending Application(s)

Specified Search

Latitude='37-35-47.5 N', Longitude='86-29-03.0 W', Radius=3.9 Kilometers

Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1 1319716	Granted	A1191069	Tillman Infrastructure, LLC	37-35-48.0N 086-29-24.5W	Falls of Rough, KY	45.7

CLOSE WINDOW

EXHIBIT D

PVA MAP OF SEARCH AREA



LOOKOUT

K RIDGE RD

034-00-00-013

034-00-00-013.0G

034-00-00-013.0F

034-00-00-013.0C

PARADISE ACRES RD

MUSKIE RD

WALLEYE RD

**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

**APPLICANTS' RESPONSE TO INITIAL REQUESTS FOR INFORMATION
AFFIDAVIT OF GLEN KATZ**

Comes now the affiant, Glen Katz of Realty Solutions Co. Inc., and after having been duly sworn and under oath states the following facts are true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry. This filing is in response to an Initial Request for Information filed by Roger and Janelle Nicolai on August 29, 2022.

Question: We are requesting any and all communication (written, verbal, et al.) between the Joint Applicants (including their legal representation; Pike Legal Group, PLLC) and the author of this study (Glen D. Katz) that pertains to docket #2021-00398.

Answer: Applicants provided me with a copy of the application filed in this matter,

and requested that I review it and other materials filed into the public record and deliver a report.

Question: Was any form of compensation involved in the procurement and creation of this study?

Answer: I was compensated for drafting the Real Estate Value Impact Study filed on November 30, 2021 for Kentucky Public Service Commission ("PSC") case number 2021-00398.

Question: Has this study, in whole or in part, been used in any other cases involving the PSC? If yes, how many? If yes, what are their docket/case numbers?

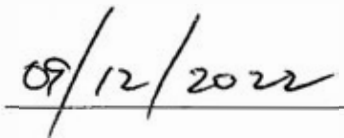
Answer: I have prepared a similar report for filing in 13 previous cases before the PSC. The docket numbers for those cases are 2017-00368, 2017-00369, 2017-00385, 2017-00435, 2018-00031, 2018-00384, 2019-00010, 2019-00176, 2020-00139, 2020-00270, 2020-00361, 2020-00365 and 2021-00398.

Further the affiant sayeth naught.

Affiant:



Date:



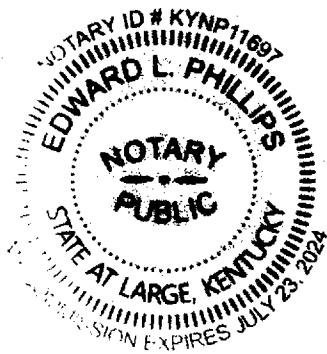
State of Kentucky)

County of Jefferson)

On this, the 12 day of September 2022 before me, the subscriber, a Notary Public in and for the above state, personally appeared to me, the Affiant, Glen Katz, and in due form of law, acknowledged, subscribed, and swore under oath that he executed this instrument as his voluntary act and deed and his responses are true and accurate to the best of his knowledge, information, and belief formed after a reasonable inquiry.

In testimony whereof, I have hereunto set my hand and affixed my seal in said County and State on the day and year last above written.

My commission expires on: 7-23-24



Edward L. Phillips

Notary Public