

**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 SUPPLEMENTAL 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 a Second Request for Information filed by Roger and Janelle Nicolai on September 26, 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 and 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, please find below responses to the Supplemental Request for Information filed by Roger and Janelle Nicolai on September 26, 2022.

Question 1 - Are you aware that the FCC is not a comprehensive list of telecommunication facilities/towers?

This question is argumentative and irrelevant. AT&T is an FCC license holder and appropriately complies with applicable FCC regulations including registration of towers. What is or is not included on an FCC list is determined by FCC regulations and FCC written policies. Any FCC lists, FCC regulations, and FCC written policies speak for themselves as public records, and the extent to which a person or entity is aware of such public records or their scope is irrelevant. As discussed further below in response to Questions 2, 3, and 4, Applicants made a good faith effort to identify and consider all collocation alternatives prior to filing the Certificate of Public Convenience and Necessity (“CPCN”) application for this site.

Questions 2, 3 and 4 (including all sub-questions)

These questions present the same issue, and the Applicants have previously addressed the topic of co-location and the search area on multiple occasions. The facilities discussed in this question are outside of the search area.¹ An aerial map of

¹ Question 4, sub-question 2 and Question 4, sub-question 3 do not identify a specific telecommunication structure. But the roads identified are outside of the search area.

the search area was attached as Exhibit N of the CPCN application filed for this site on October 18, 2021.

The affidavits of Annie Zocco, filed on September 13, 2022 thoroughly describe the site selection process.² A definition of the search area (“the area in which a new facility must be placed to resolve the existing coverage gap”) is also included in those affidavits. Further, Ms. Zocco’s affidavit confirms that site acquisition agents conducted research on existing infrastructure in the search area and found no existing structure suitable to host AT&T Mobility’s equipment at the elevation required to resolve the existing coverage gap.³

A sworn statement from Sherri Lewis, a RAN Engineer for AT&T, is attached. The statement describes the coverage need in the area and further confirms that the facility must be located within the search area to “function properly within AT&T’s network to provide service to its customers.” The statement continues “the site selection process for this site was limited to this prescribed area, since locations outside the search area would not provide for adequate service and would not position the site appropriately for integration into AT&T’s network.”

In any analysis of alternatives suggested by opponents of proposed tower construction, it is essential to note that the United States Court of Appeals for the Sixth Circuit has specifically rejected a standard requiring Applicants to endlessly search for different, marginally better alternatives.⁴ A mere assertion that an

² See answer to question 5 filed in response to Initial Request for Information filed by Roger and Janell Nicolai. See answer to question 3 filed in response to First Request for Information from the Kentucky Public Service Commission.

³ See paragraph 2 of answer to question 5 filed in response to Initial Request for Information filed by Roger and Janell Nicolai. See paragraph 2 of answer to question 3 filed in response to First Request for Information from the Kentucky Public Service Commission.

⁴ T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield, 691 F.3d 794, 808 (6th Cir. 2012)

alternative location may be available is not substantial evidence to support a denial of proposed tower construction.

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,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of October 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
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Falls of Rough, Kentucky 40119

Respectfully submitted,

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