

**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 HARMONI TOWERS LLC, A DELAWARE )  
LIMITED LIABILITY COMPANY )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC ) CASE NO.: 2022-00010  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY )  
IN THE COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF RUSSELL )

SITE NAME: HORN ROAD

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**RESPONSE TO REQUEST FOR INTERVENTION  
BY TINA ALLEN (NON-ADOINER)**

Applicants New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility and Harmoni Towers LLC, a Delaware limited liability company ("Applicants"), by counsel, make this Response to the Request for Intervention submitted by Tina Allen, a non-adjointing property owner, in the within proceeding. Applicants respectfully state, as follows:

1. Tina Allen has voiced generalized aesthetic concerns to the Kentucky Public Service Commission regarding the facility location in the within Application. 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. Russell County has not adopted planning and zoning regulations, nor has it adopted regulations regarding the placement, construction and modification of wireless communications facilities. Any property purchased in Russell County is acquired with the understanding that the surrounding neighbors are free to develop their property in any manner they desire without regulation from local government or input from area residents. For this reason, area residents have no reasonable expectation of input into the land use of surrounding properties or the impact a proposed land use will have on their property.

3. 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 has 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 Russell 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.

4. Applicant, AT&T Mobility, is licensed by the Federal Communications Commission (“FCC”) to provide wireless communications services to the area to be served by the proposed wireless communications facility, and a copy of the relevant FCC license granted to AT&T Mobility was filed as part of the subject Application. AT&T Mobility is a provider of essential wireless voice and data services to residential and commercial customers. AT&T Mobility 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. In addition to expanding and improving voice and data service for AT&T mobile customers, this site will also accommodate the First Responder Network Authority (“FirstNet”), an advanced broadband network dedicated specifically to public safety communications. Congress created FirstNet to address emergency response communications shortcomings that were initially identified in the aftermath of the September 11, 2001 terrorist attacks.

**WHEREFORE**, there being no ground for denial of the subject application and substantial evidence in support of the requested CPCN, Applicant respectfully requests the Kentucky Public Service Commission:

- (a) Accept this Response for filing;
- (b) Deny the request for intervention;

(c) Issue a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth herein without further delay; and

(d) 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 11th day of February 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 Tina Allen, 1976 Hwy 910, Russell Springs, KY 42642.



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David A. Pike  
Attorney for Applicant