

**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.: 2022-00062
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF MCCREARY)

SITE NAME: PARKERS LAKE RELO

* * * * *

APPLICANTS' RESPONSE TO DEFICIENCY LETTER

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 (formerly known as Uniti Towers LLC) (“Applicants”), by counsel, make this Response to the Kentucky Public Service Commission’s (“PSC”) Deficiency Letter dated March 16, 2022 (“Deficiency Letter”). Applicants respectfully state, as follows:

1. The Deficiency Letter states the Applicants’ filing was rejected due to a filing deficiency pursuant to 807 KAR 5:063 Section 1 (1) (m), which requires that an Application for a Certificate of Public Convenience and Necessity to construct a Wireless Communications Facility contain “[a] list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners.” The name and address of every property owner who received notice was included as part of **Exhibit J** of the Application. A copy of the letter sent to the property owners identified via certified

mail, return receipt requested, was included as part of **Exhibit K** of the Application. Further, 807 KAR 5:063 Section 1 (l) requires the Application to contain “A **statement** that every person who, according to property valuation administrator’s records, owns property within 500 feet of the proposed tower has been notified by certified mail, return receipt requested, of the proposed construction.” (emphasis added). It does not require that post office certifications be provided. Return certifications are not available immediately after dispatch and would be impossible to include at the time of filing. Applicants object to this additional requirement being imposed. As an accommodation, not as required by law, and under protest, the Applicants have provided copies of the post office certifications for each landowner as part of **Exhibit J-1**. It should be noted that hundreds of CPCNs have been issued for similar proposals filed by the undersigned without requiring submission of similar certifications, and similar requests in connection with future sites will delay the deployment of infrastructure that is critical to daily life and development in Kentucky’s communities.

2. The U.S. Congress in adopting the Telecommunications Act of 1996 in the Act’s preamble recognized the importance of the “rapid deployment of new telecommunications technologies.”¹ (Emphasis added). Moreover, it is agency regulations, not ad hoc requirements, which establish substantial evidence in support of a wireless permitting decision. *Cellco Partnership v. Franklin County, et al*, 553 F. Supp. 2d 838, 845-846 (E.D. Ky. 2008). Establishing filing and/or review criteria beyond adopted regulations which serve to delay filing and processing of wireless facility applications is inconsistent with the longstanding practice of the PSC and federal telecommunications law, precedent, and

¹ See 1996 federal Telecommunications Act preamble, 110 Stat. 56.

policy.

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

- (a) Accept this Response for filing;
- (b) Issue a No Deficiency Letter;
- (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 Applicants any other relief to which they are entitled.

Respectfully submitted,



David A. Pike
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
Attorney for Applicants

LIST OF EXHIBITS

J-1 - Post Office Certifications for Notice Letters

EXHIBIT J-1
POST OFFICE CERTIFICATIONS FOR NOTICE LETTERS

7017 0190 0000 9587 6529

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **CORDER RICHARD E & SHERYL**
170 HWY 90
PARKERS LAKE KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6772

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **MILLS ZELLA FAYE**
548 VANOVER RDG RD
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6789

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **DANIEL BOONE NATIONAL FOREST**
1700 BYPASS RD
LONDON, KY 40744

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6512

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **JIMMIE W. GREENE, II**
COUNTY JUDGE EXECUTIVE
P. O. BOX 579
1 NORTH MAIN STREET
WHITLEY CITY, KY 42653

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6796

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **CORDER RICHARD E & SHERYL**
170 HWY 90
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 7106

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total \$

Sent **CORDER RICHARD E & SHERYL F**
170 HWY 90
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6802

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Official Use

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

COFFEY FRANCIS & DEBBIE
PO BOX 125
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6765

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Official Use

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

VANOVER DONALD LEE
7335 HWY 90
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6734

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Official Use

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

SMITH APRIL M & JERRY
PO BOX 897
WHITLEY CITY, KY 42653

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6758

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Official Use

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

CORDER SHIRLEY W
128 P P WALKER LN
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7017 0190 0000 9587 6741

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Official Use

Certified Mail Fee
\$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage

OWENS GARY
PO BOX 63
PARKERS LAKE, KY 42634

Postmark Here
SHEPHERDSVILLE
FEB 28 2022
KY 40165

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions