

**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 )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC ) CASE NO.: 2024-00111  
CONVENIENCE AND NECESSITY TO CONSTRUCT )  
A WIRELESS COMMUNICATIONS FACILITY )  
IN THE COMMONWEALTH OF KENTUCKY )  
IN THE COUNTY OF GRAVES )

SITE NAME: KALER MILL

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**RESPONSE TO NOTICE OF FILING DEFICIENCY**

Applicant, by counsel and in response to the Kentucky Public Service Commission’s (“PSC”) letter dated May 8, 2024 requesting additional information to cure a deficiency in the within matter, states as follows:

1. In Response to the PSC’s finding of a deficiency with respect to 807 KAR 5:001 Section 14(3), Applicant hereby amends the subject Application to state Applicant’s name as New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company. All prior references to “New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company, *d/b/a AT&T Mobility*” shall be amended to “New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company.”

2. Applicant states that it markets and provides wireless services under AT&T branding.

3. In Response to the PSC’s finding of a deficiency with respect to 807 KAR 5:063 Section 1(1)(b), Applicant states that an application with the FAA is not required for

the proposed site because the proposed tower location and height does not exceed the FAA's notice criteria specifications. A copy of the FAA's Passing Notice Criteria Tool for the proposed tower is attached as **Exhibit E-1**. The PSC has found that documentation demonstrating notice to the FAA was not required complied with the requirements of 807 KAR 5:063 Section 1(1)(b) in several previous cases. (See: Case No. [2023-00157](#), [2023-00116](#), [2023-00043](#), [2022-00332](#), [2022-00220](#), [2022-00193](#)). Requiring Applicant to file an application with the FAA in this instance, when the FAA's own regulations do not require it, would place an undue burden on Applicant.

**WHEREFORE**, Applicant respectfully request that the PSC accept the foregoing information for filing, and having met the requirements of KRS §§ 278.020(1), 278.650, and 278.665 and all applicable rules and regulations of the PSC, find the application non-deficient and proceed to grant a Certificate of Public Convenience and Necessity to construct and operate the WCF at the location set forth in the subject application.

Respectfully submitted,



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David A. Pike

And



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F. Keith Brown

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**EXHIBIT E-1**

**FAA PASSING NOTICE CRITERIA TOOL**



## Notice Criteria Tool

Notice Criteria Tool - Desk Reference Guide V\_2018.2.0

The requirements for filing with the Federal Aviation Administration for proposed structures vary based on a number of factors: height, proximity to an airport, location, and frequencies emitted from the structure, etc. For more details, please reference [CFR Title 14 Part 77.9](#).

You must file with the FAA at least 45 days prior to construction if:

- your structure will exceed 200ft above ground level
- your structure will be in proximity to an airport and will exceed the slope ratio
- your structure involves construction of a traverseway (i.e. highway, railroad, waterway etc...) and once adjusted upward with the appropriate vertical distance would exceed a standard of 77.9(a) or (b)
- your structure will emit frequencies, and does not meet the conditions of the [FAA Co-location Policy](#)
- your structure will be in an instrument approach area and might exceed part 77 Subpart C
- your proposed structure will be in proximity to a navigation facility and may impact the assurance of navigation signal reception
- your structure will be on an airport or heliport
- filing has been requested by the FAA

If you require additional information regarding the filing requirements for your structure, please identify and contact the appropriate FAA representative using the [Air Traffic Areas of Responsibility map](#) for Off Airport construction, or contact the [FAA Airports Region / District Office](#) for On Airport construction.

The tool below will assist in applying Part 77 Notice Criteria.

<b>* Structure Type:</b>	POLE   Monopole <span style="float:right">▼</span>			
	Please select structure type and complete location point information.			
<b>Latitude:</b>	<input type="text" value="36"/>	Deg	<input type="text" value="53"/>	M <input type="text" value="41.34"/> S <input type="text" value="N"/> ▼
<b>Longitude:</b>	<input type="text" value="88"/>	Deg	<input type="text" value="34"/>	M <input type="text" value="37.68"/> S <input type="text" value="W"/> ▼
<b>Horizontal Datum:</b>	<input type="text" value="NAD83"/> ▼			
<b>Site Elevation (SE):</b>	<input type="text" value="408"/>	(nearest foot)		
<b>Structure Height :</b>	<input type="text" value="195"/>	(nearest foot)		
<b>Is structure on airport:</b>	<input checked="" type="radio"/> No <input type="radio"/> Yes			

### Results

You do not exceed Notice Criteria.

