

(McBRAYER)
ATTORNEYS AT LAW

RECEIVED

APR 08 2015

PUBLIC SERVICE
COMMISSION

DIANE M. PRITCHARD
DPRITCHARD@MMLK.COM

201 EAST MAIN STREET, SUITE 900
LEXINGTON, KENTUCKY 40507
(859) 231-8780 EXT. 253
FAX: (859) 231-6518

April 7, 2015

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

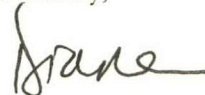
**RE: In the Matter of:
Tower Access Group, LLC Application for Declaratory Order as to Jurisdiction Over
a 190-Foot Monopole Constructed on the Campus of Eastern Kentucky University
Case No. 2015-00090**

Dear Mr. Deuouen:

Enclosed for filing in the above-referenced matter is an original and eleven (11) copies of Tower Access Group's Response to Kentucky Cable Telecommunications Association's Motion to Intervene. Please return to me one copy bearing the Commission's stamp in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter. Please call if you have any questions.

Sincerely,



Diane M. Pritchard
Litigation Assistant

:dmp
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO 2015-00090

RECEIVED

APR 08 2015

PUBLIC SERVICE
COMMISSION

IN RE TOWER ACCESS GROUP, LLC, APPLICATION FOR
DECLARATORY ORDER AS TO JURISDICTION OVER A 190-FOOT
MONOPOLE CONSTRUCTED ON THE CAMPUS OF EASTERN
KENTUCKY UNIVERSITY

**RESPONSE TO THE KENTUCKY CABLE TELECOMMUNICATIONS
ASSOCIATION'S MOTION TO INTERVENE**

Comes Applicant, Tower Access Group, LLC ("TAG"); by and through counsel, and hereby tenders its Response to the Kentucky Cable Telecommunications Association's ("KCTA") Motion to Intervene. As set forth below, TAG does not object to KCTA's intervention in this matter to protect its rights pursuant to 807 KAR 5.001, §4(11). However, TAG responds for the limited purposes of identifying a point of distinction in the case law cited by KCTA's motion and to respectfully request that the any intervention by KCTA will not affect the ability of the Public Service Commission ("the Commission") to consider TAG's Application for Declaratory Order in expedited fashion.

As stated in its Application, KCTA is a non-profit organization of cable operators, whose members attach their facilities to utility poles owned and controlled by various utilities throughout the state. TAG has moved the Commission to enter an Order declaring that (1) the city of Richmond, not the Commission, has jurisdiction over the monopole TAG constructed on the campus of Eastern Kentucky University, (2) the Commission does not have jurisdiction over TAG because it is not a utility, and/or (3)

the Commission will take no adverse action against TAG or its monopole and declare that the monopole is available for colocation by utilities. Importantly, KCTA expressly indicates that its only interest is in the second argument – that TAG is not a utility – and that should the Commission be inclined to rest its decision on either of the other alternative arguments, KCTA's motion would be moot.

Though TAG does not object to KCTA's intervention in this matter pursuant to 807 KAR 5 001, §4(11), it does take issue with the applicability of the case law cited in its Motion. KCTA's primary argument is that "TAG's role as lessor of utility infrastructure and its contractual relationship with third party wireless carriers does not necessarily place the monopole beyond the jurisdiction of the Public Service Commission." KCTA supports the argument with citation to *Windstream REIT*, Case No. 2014-00283 and *Kentucky CATV Association v. Volz*, 675 S W 2d 393 (Ky App. 1983).


However, the trouble with KCTA's argument is that TAG's unique situation is distinct from the cited precedent because at the time that it answered the RFP, entered into the Master Lease Agreement, and began required preparation to construct the monopole TAG was not in a formal relationship with a wireless carrier or any other entity providing utilities. In *Windstream REIT*, the Commission found that Communication Sales and Leasing, Inc. ("CSL") qualified as a utility under KRS 278 010(11) because its assets "are being used for or in connection with the business of the Applicants, who are utilities under Kentucky law." *Windstream REIT*, Case No. 2014-00283 at 11. The Commission also noted in its Order that "CSL will have title to the vast majority of the Applicants' assets that are currently being used, and are critical for uses in connection with providing telecommunications service." *Id.* at 13 (emphasis added).

Additionally, in *Kentucky CATV Association v. Volz*, the Court did not decide that companies constructing monopolies were utilities, but that the jurisdiction that the Commission has over companies that are regulated utilities extends to their poles. 675 S W 2d 393 (Ky App 1983) (“The Commission has jurisdiction over the utility companies, and that jurisdiction extends to their poles ”). Thus, neither of these cases bears on the issues of whether TAG is a utility TAG maintains that KCTA cannot locate precedent directly applicable to this situation because – for the reasons set forth in the Application for Declaratory Order – this situation is unprecedented

Nevertheless, while TAG does not believe that it is a utility or that the PSC has the jurisdiction to require it to file for a Certificate of Public Convenience and Necessity (“CPCN”), TAG’s primary concern in this matter is ensuring that it will be able to use the monopole that it constructed to colocate with wireless carriers as soon as possible and without fear of future sanction from the Commission Regardless of the Commission’s decision as to whether TAG is a utility, any of the alternative arguments set forth in the Application for Declaratory Order provides TAG with its requested relief However, TAG primarily responds herein to reiterate its request that the Commission consider its Motion in expedited fashion so that TAG may resume its business Toward that end, TAG requests that the Commission construe KCTA’s motion as a response, and this filing as a reply to that response, making TAG’s Motion for Declaratory Order currently ripe for the Commission’s review

Respectfully submitted,

McBRAYER, McGINNIS, LESLIE
& KIRKLAND, PLLC
201 East Main Street, Suite 900
Lexington, Kentucky 40507
859-231-8780

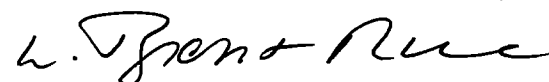
BY 
W. BRENT RICE
CHRIS WESTOVER
ANDREW H TRIMBLE
COUNSEL FOR TOWER ACCESS GROUP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served upon the following parties via U.S. mail on this 7th day of April, 2015.

Mr Jeff Derouen
Executive Director
Public Service Commission of Kentucky
P O Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602

Mr Douglas F Brent
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202


W BRENT RICE