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COMMISSION

Roger & Janelle Nicolai

2663 Blue Bird Rd.
Falls of Rough, Kentucky 40119



October 20, 2023

Kentucky Public Service Commission
Executive Director
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602
Re: Docket #2021-00398

To Whom It May Concern,

This communication is in response to the *Applicant's Update on Alternative Site*. The *Update* was filed September 29, 2023 on the KPSC website and included an alternative location for the proposed cellular tower compound (37.596158°, -86.490678°).

This alternative site, given the original intent of our intervenor status, remains unacceptable. This is due to the compound's distance from our dwelling/barn/property, visibility of the compound throughout our property, and the effect the compound will have on our property value. We have already expressed our concerns and disfavor of this site, founded on previously submitted evidence¹⁺², to the

¹ Stephen L. Locke & Glenn C. Blomquist, 2016. "The Cost of Convenience: Estimating the Impact of Communication Antennas on Residential Property Values," *Land Economics*, University of Wisconsin Press, vol. 92(1), pages 131-147.

Also located at: <https://gatonweb.uky.edu/Faculty/blomquist/LE%202016%20Locke%20Blomquist%20towers.pdf>

² Affuso, E., Reid Cummings, J. & Le, H. Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis. *J Real Estate Finan Econ* 56, 653–676 (2018). <https://doi.org/10.1007/s11146-017-9600-9>

Also located at: <https://www.cga.ct.gov/2021/ETdata/Tmy/2021HB-06442-R000309-Lynch%20,%20Margaret--TMY.PDF>

Applicants. This was all discussed during the “Informal Conference” held August 28, 2023.

The alternative site provided by the Applicants keeps the tower located under 850’ from our house. By keeping the tower within 850’ of our house the Applicants have located the tower’s associated compound under 800’ from our house. This is in contrast to the *absolute minimum distance* requirements we expressed at the public hearing before the PSC on July 27, 2023³.

Our distance requirement was also contingent on a visibility requirement⁴. By locating the Falling Branch compound at the Applicant’s proposed alternative, no visibility issues related to the tower will be alleviated. The compound and associated tower remain open to view from our property. This is in contrast to the almost complete **invisibility** provided by the alternative site we, the Intervenors, have proposed⁵.

It has become clear that the site alternative we have provided since the beginning of this process is the **only** alternative site we are “OK” with. We had hoped the Applicants would propose a site that at least met the quality of our submitted alternate site. They did not.

It is also of note that, according to evidence already submitted by the Applicants, the alternate site they have provided should not work.⁶ Likewise, the testimony of Sherri Lewis claims the Applicant’s alternative site is unusable. At the public hearing in July, 2023 she stated, “Anything outside the search ring was not an acceptable candidate.”⁷

³ July, 27th, 2023 Hearing: Time-stamp, 4:37:23

⁴ Ibid.

⁵ Roger and Janelle Nicolai Response to Public Hearing, Page 7 of 10, 03/15/2022

⁶Falling Branch - Radio Frequency Engineering Statement, Page 6 of 7, 10/04/2022, includes the following statement, “The Search Area map below shows the area within which an AT&T wireless communications facility *must be located* in order to function properly within AT&T’s network to provide service to its customers. Accordingly, 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.” Emphasis mine.

⁷ July, 27th, 2023 Hearing: Time-stamp, 1:12:04

This “search ring” is found in the Applicant’s October 04, 2022 submission (Falling Branch Radio Frequency Engineering Statement) and is a radius of .35 miles from the coordinates 37.596529° & -86.484175°. The Applicant’s alternative site (37.596158°, -86.490678°) is **outside** of this search ring.

As the referenced statement from Sherry Lewis is no longer factual, we continue to emphasize our original site alternative as an “olive branch” to the property owners the Applicants would be leasing from.

The dismissal of the Sherry Lewis testimony is the latest example of the Applicants acting in a manner that casts doubt on any of their claims. Throughout this process the Applicants have continued to misrepresent us and themselves. The following are examples of our primary concerns when we acknowledge the *flexibility* of the Applicants evidence and testimony.

- **The Applicants have painted us as arguing from aesthetics**

We have always argued, based on substantial evidence, that we should not have to bear the negative impact on our **property value** that will occur should this tower site be erected. This is a matter of legitimate evidence, not aesthetics.

The evidence we have submitted is based on data that is orders of magnitude larger than anything the applicants have submitted. Further, our evidence includes general studies and *specific comments* by multiple economists. Economists who hail from various states, *including* Kentucky.

- **The Applicants have stated there was written communication with us— and other parties— regarding the erection of a tower compound on various properties**

The Applicants have presented both written⁸ and oral evidence⁹ asserting the *existence* of this written communication. None of the purported written communication has ever

⁸ Falling Branch - Applicants Response to Initial Requests for Information, 09/13/2022, “Question 5”, Paragraph 4.

⁹ July, 27th, 2023 Hearing: Time-stamp, multiple (including, 2:29:46)

been submitted by the Applicants. None of these documents were tendered, even, upon the KYPSC's request.

In contrast, we have testified that there was never any form of written communication with us regarding the erection of a tower compound on our property.

Terry Newton, likewise, has testified that he received no written communication from the Applicants regarding initial inquiry into the erection of a tower site on his property¹⁰.

- **The Applicants now want to build in an area that was previously testified to as being, “not an acceptable candidate.”**

As has already been mentioned in this correspondence, the Applicants have submitted evidence stating a cellular tower facility can only be erected within a particular .35 mile search radius. Sherry Lewis testified that, “anything outside of the search ring was not an acceptable candidate.”

The Applicants now seek to build outside of this ring. By pursuing their suggested alternative site, the Applicants are acting in a manner that should be impossible according to their own testimony and evidence.

These actions confuse us when any alternative sites we have located outside of this ring were deemed unacceptable.

A material change in the testimony and evidence submitted by the Applicants must have occurred. That is the only means by which it is possible for the Applicants to erect a cell tower compound in their proposed Alternative Site.

We acknowledge this material change to the Applicants' testimony/evidence, and once again argue for the alternative tower site that we have submitted and referenced for, nearly, the entirety of this case. It is the best location for all parties involved.¹¹

¹⁰ July, 27th, 2023 Hearing: Time-stamp, 52:28

¹¹ Roger and Janelle Nicolai Response to Public Hearing, Page 7 of 10, 03/15/2022

Reasons we recommend this site include:

- **The .35 radius requirement has been voided**

As such, no evidence has been submitted by the Applicants that would deny locating a cell tower compound in that location.

- **It meets the distance requirements we discussed before the PSC**

At the PSC hearing in July of 2023 we discussed minimum distances from the cell tower to our house.¹² It was made clear to all in attendance that the *minimum distance* we would consider *potentially viable* was 800' from our house to the tower compound (850' from the tower itself). The Applicants have refused to meet this distance in any of their alternative location proposals.

The alternative site we have suggested meets this distance from our house.

- **It offers the least visibility of any site put before the PSC**

Our argument, based on multiple pieces of evidence, has always been that the damage to property value we will suffer is based on both distance *and* visibility.

The alternative site we have submitted offers the longest distance from our house to the cellular compound. It also offers the least amount of visibility of the tower compound *and* the tower itself. This lack of visibility is essential in mitigating the loss in property value that will occur should this tower be erected.

This is also the **only** location submitted by any party that provides a mature tree line on *our property*. Should the Newtons or the Applicants ever need or want to remove any trees aboard their property/lease, our visibility will not be increased. No other submitted site offers a stable and mature barrier to our visibility that is both already erected *and* totally within our control.

- **Our submitted alternative site best mitigates our loss in property value and enables the Newtons to keep their lease with the Applicants**

¹² July, 27th, 2023 Hearing: Time-stamp, 4:37:23

The evidence we have submitted is clear and substantial; the erection of a cell tower compound *anywhere* on the Newton's property (due to distance and visibility) will have deleterious effects on our property value. We can best mitigate these effects by moving the compound to the alternative site we, the Intervenors, have submitted.

While recognizing the fact of damage to our property value, we also recognize the Newton's desire to make their property "work" for them. It is only in the interest of our neighbors that we have sought to locate a tower site that will be the most beneficial to them *and* the least deleterious to us.

Mr. Newton has testified to having an unobstructed view of the originally intended cellular compound location¹⁵. He has also testified, "...where we moved from we had a 911 cell tower in front of our house every day and it became invisible to us...".¹⁴ Mr. Newton's only objection to the site we have submitted has been the income he would lose if the alternate location is used.¹⁵

The Newton's objection to the placement of the cell tower site is easily overcome through a renegotiation of lease terms with the Applicants. Specifically, *an increase in the monthly lease payment* to the Newtons will void any concerns the Newtons have expressed regarding the placement of this site. This will enable the cellular compound to provide the Intervenors with the least amount of *negative impact on their property value*, while ensuring the Newtons lose *not a single cent of their current and proposed income*.

Everything we have communicated in this letter (and all previously submitted correspondence/evidence) must be understood in light of the following; the *use and value* of our property will suffer loss if the Falling Branch tower site is located *anywhere* on the holdings located at 2589 Blue Bird Road. The things that the PSC takes into consideration according to KRS 278.650 are the same things that the Applicants are willing to run roughshod over.

¹⁵July, 27th, 2023 Hearing: Time-stamp, 1:03:33

¹⁴ July, 27th, 2023 Hearing: Time-stamp, 1:03:46

¹⁵ July, 27th, 2023 Hearing: Time-stamp, 50:33

The Applicants, excluding their legal representation, are private entities registered outside the state of Kentucky. They have no duty or responsibility to the people of Kentucky, but only to the fiduciary impulses of themselves. This was formally exhibited as Annie Zocco¹⁶ repeatedly referenced “zoning” during her testimony before the PSC. It is a question of what they can get “away with”, not how the constituents of Kentucky should be treated.

This is why we continue to seek the PSC’s protection from the intended actions of the Applicants.

The Applicants have not proven a need for their tower compound to be erected aboard the Newton’s property. They have been unwilling to co-locate with other service providers within a two mile search of their proposed build site. They continue to push for the unnecessary erection of a structure that will do damage **exclusively** to our family’s property.

Our property is the first time, post-Marine Corps, that I have been able to get my feet up under myself and build something for my family.

Our property connects me with generations of my mother’s kin here in Grayson County.

Our property is the only piece of property in the immediate area that has kept livestock and been “farmed” 365 days a year for the past seven years. Our property is where local community members and visitors from greater Kentucky, the United States, and various other countries have come for respite and food that they can believe in. Our property currently raises livestock with bloodlines connected with the University of Kentucky and Kentucky’s own, Wendell Berry. Our property is a certified Kentucky Farm Bureau Market that continues to grow in recognition.

Our property is **the piece of property** that will bear the negative impact of the Applicants request to build their tower.

The *only* reason we are extending *any* “olive branch” in this messed up situation is out of concern for our neighbors, the Newtons.

¹⁶ July, 27th, 2023 Hearing: Zoning issues are repeatedly mentioned throughout both of her testimonies, starting at 2:10:36 & 4:44:07

If they or the Applicants refuse to locate the cell tower compound at the Alternative site we have submitted, we ask the PSC to deny the Applicant's CPCN.

Respectfully,

Roger & Janelle Nicolai