

Dinsmore & Shohl LLP
ATTORNEYS

Holly C. Wallace
502-540-2309
holly.wallace@dinslaw.com

August 8, 2005

RECEIVED

AUG 08 2005

PUBLIC SERVICE
COMMISSION

via Hand Delivery
Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: *The Application of BellSouth Mobility, LLC, d/b/a Cingular Wireless - Kentucky for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility at Rough and Tough Road, Prestonsburg, Kentucky 41653 or, in the Alternative, an Order Requiring Co-Location on Reasonable Terms and Conditions in the Wireless Communications License Area in the Commonwealth of Kentucky in the County of Floyd; Site name: Brainard; Case No. 2004-00413*

Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of East Kentucky Network, LLC's Response to Motion to Schedule a Public Hearing and Procedural Order in the above-styled case.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP


Holly C. Wallace

HCW/rk
Enclosures

cc: Gerald Robinette
John E. Selent, Esq.
97478v1; 33380/1

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUG 08 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF BELLSOUTH MOBILITY, LLC,)
 D/B/A CINGULAR WIRELESS - KENTUCKY)
 FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
 CONVENIENCE AND NECESSITY TO CONSTRUCT) CASE NO. 2004-00413
 A WIRELESS COMMUNICATIONS FACILITY AT)
 ROUGH AND TOUGH ROAD)
 PRESTONSBURG, KENTUCKY 41653 OR, IN THE)
 ALTERNATIVE, AN ORDER REQUIRING CO-LOCATION)
 ON REASONABLE TERMS AND CONDITIONS)
 IN THE WIRELESS COMMUNICATIONS)
 LICENSE AREA IN THE COMMONWEALTH OF)
 KENTUCKY IN THE COUNTY OF FLOYD)

SITE NAME: BRAINARD

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ORIGINAL

A PUBLIC
DER

East Kentucky
response to the motion
hearing”) of New Cin
states as follows.

+
10 copies
to file
with
Commission

), by counsel, in support of its
ral order (“motion for public
ireless (“Cingular Wireless”),

For reasons un
 litigate the issue of co-location before the Kentucky Public Service Commission (the
 “Commission”) rather than negotiate a co-location agreement in good faith with East Kentucky
 Network. From the inception of this case, Cingular Wireless has sought an order from the
 Commission ordering East Kentucky Network to permit Cingular Wireless to co-locate on its
 Ruff-N-Tuff site rather than negotiate a co-location agreement in good faith with East Kentucky

ingular Wireless continues to

Network. In contrast, East Kentucky Network has expressed, and continues to express, its willingness to negotiate in good faith with Cingular Wireless. As evidenced by the three progress reports filed by East Kentucky Network in this case, East Kentucky Network has consistently sought information from Cingular Wireless regarding the facilities it seeks to co-locate on the Ruff-N-Tuff site so that East Kentucky Network can evaluate the feasibility of co-location. Once East Kentucky Network received this information from Cingular Wireless, East Kentucky Network determined that co-location at the Ruff-N-Tuff site is feasible.

East Kentucky Network has determined that co-location at what it calls its Ruff-N-Tuff cell site with Cingular is possible, even if the height of the tower is decreased by half. To this end, East Kentucky Network has directed its legal counsel to draft a co-location agreement for submission to Cingular for review and negotiation. East Kentucky Network's legal counsel has done so and has submitted that co-location agreement to East Kentucky Network for its review.

Third progress report of East Kentucky Network, Case 2004-00413, pp. 1-2.

In accordance with its third progress report, after East Kentucky Network reviewed the co-location agreement drafted by counsel, it provided Cingular Wireless with a copy of the proposed co-location agreement on May 31, 2005. To date, East Kentucky Network has not received any response from Cingular Wireless regarding the proposed co-location agreement. Once again, rather than negotiate in good faith with East Kentucky Network, Cingular Wireless chose to shortcut the negotiation process and file a motion to schedule a public hearing and procedural order.

Pursuant to KRS 100.987(6), Cingular Wireless bears the burden to establish that it made a good-faith effort to co-locate.

The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment.... If the local planning commission requires the applicant to attempt co-location, the applicant shall provide the

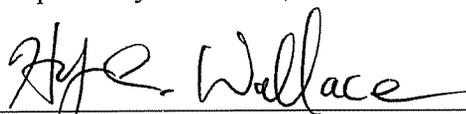
local planning unit with a statement indicating that the applicant has:

- (a) successfully attempted to co-locate....; or
- (b) unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities....

KRS 100.987(6). In addition, the Commission has the authority to investigate the sufficiency of Cingular Wireless's attempts at co-location. *See e.g.*, PSC Case 96-269, Order of January 6, 1997; PSC Case 97-278, Order of February 17, 1998; and PSC Case 97-180, Order of May 21, 1998. Having failed to respond to East Kentucky Network's initial proposal, Cingular Wireless cannot establish that it satisfied its burden to make a good-faith effort to co-locate. In fact, one might characterize Cingular Wireless's motion for a public hearing as a strong-arm negotiation tactic. In any event, the motion is premature at best; there is absolutely no need to involve the Commission at this stage of the negotiation process.

Accordingly, given Cingular Wireless has yet to respond to East Kentucky Network's initial co-location proposal, the Commission should deny Cingular Wireless's motion to schedule a public hearing and procedural order, and order Cingular Wireless to negotiate in good faith with East Kentucky Network.

Respectfully submitted,



John E. Selent

Holly C. Wallace

DINSMORE & SHOHL LLP

1400 PNC Plaza

500 W. Jefferson Street

Louisville, KY 40202

(502) 540-2300 (Office)

(502) 585-2207 (Fax)

Counsel to East Kentucky Network, LLC

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served by first class United States mail this 8th day of August, 2005, upon the following:

David A. Pike
Pike Legal Group, PLLC
1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, KY 40165-0369
Counsel to BellSouth Mobility



**Counsel to East Kentucky
Network, LLC**

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