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1578 Highway 44 East, Suite 6
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Shepherdsville, KY 40165-0369
Phone (502) 955-4400 or (800) 516-4293
Fax (502) 543-4410 or (800) 541-4410

December 11, 2019

VIA FEDEX

Louisville Metro Planning Commission
c/o Steve Hendrix
Metro Development Center
444 S. 5th Street, Suite 300
Louisville, KY 40202

RE: Supplemental Filings and Proof of Notice
Application to Construct a Wireless Communications Facility
Location: 15203 Shelbyville Road, Louisville, KY 40245
Applicants: New Cingular Wireless, PCS, LLC, d/b/a AT&T Mobility
Site Name: Montevista
Case No: 19-CELL-0005 & 19-FFO-0006

Dear Commission Members:

The following enclosed documents are provided as a supplement to the filed Uniform Application in connection with the subject case:

1. A Real Estate Value Impact Study by Glen Katz of Realty Solutions Co., Inc.
2. A report regarding the structural integrity of the proposed tower prepared by William E. Grigsby, a Professional Engineer.
3. A statement signed by AT&T Mobility Radio Frequency Engineer Brian Matthews adopting the content and findings of the Radio Frequency Engineering statement prepared by Mike Salvo and filed as Exhibit N of the Uniform Application.
4. In response to review comments received from Mark Dutrow, a copy of the easement recorded with the Jefferson County Clerk's office.

5. A legal memorandum prepared by the Pike Legal Group detailing the prohibition of reliance on radio frequency emissions evidence in Planning Commission hearings.

The following enclosed documents are provided as confirmation of Applicants' fulfillment of notice requirements in connection with the subject case:

1. Photographs of notice signs posted on and near the site parcel.
2. An affidavit and tearsheet confirming publication of a notice of construction advertisement placed in The Louisville Courier-Journal.
3. Mailing receipts for notice of construction letters mailed to landowners and local officials as required by state statute.
4. An Affidavit of Notification confirming that a Notice of Public Meeting for the proposed cell tower was sent by the Applicants.
5. An Affidavit of Notification confirming that a Notice of Public Meeting for the Floyds Fork Review Overlay application was sent by the Applicants.

Please file this correspondence and attachments in the administrative case file for the application. Thank you for your assistance with this matter.

Sincerely,



David A. Pike
Attorney for Applicants

Enclosures

Real Estate Value Impact Study

For

**Proposed Wireless Communications Facility
New Cingular Wireless, PCS, LLC, d/b/a AT&T Mobility
Site Name: Montevista
Case #: 19-CELL-0005
Assessor Parcel Number: 0024-0138-0000
15203 Shelbyville Road
Louisville, Jefferson County, Kentucky 40245**

Date of Report

November 12, 2019

Prepared For

**Louisville Metro Planning Commission
444 S. 5th Street
Louisville, Kentucky 40202**

Prepared By

**Glen D. Katz, MAI, SRA, AI-GRS, AI-RRS
Realty Solutions Co., Inc.
P.O. Box 20983
Louisville, KY 40250**

November 12, 2019

Louisville Metro Planning Commission
444 S. 5th Street
Louisville, Kentucky 40202

Realty Solutions Co., Inc.
Finding Answers to Real Estate Questions

Subject: Real Estate Value Impact Study
Proposed Wireless Communications Facility
New Cingular Wireless, PCS, LLC, d/b/a AT&T Mobility
Site Name: Montevista
Case #: 19-CELL-0005
Assessor Parcel Number: 0024-0138-0000
15203 Shelbyville Road
Louisville, Jefferson County, Kentucky 40245

Commissioners:

I have completed an impact study regarding potential influence of wireless communications tower facilities on market value of surrounding properties, specifically addressing the subject project low to medium density residential and commercial neighborhood. The study consists of analyzing sale activity and value trends of properties located in proximity to cell towers, as compared to properties which are not in proximity but are otherwise competitive as replacements in the market.

Public utilities provide a platform for economic sustainability, community growth, safety and education. These factors in turn influence value and demand for real estate. Based on the actions of buyers, occupants, and sellers of real estate, it is clear that communications towers are part of this platform. There are no indications for value diminution of low to medium density residential and commercial properties located with proximity to the proposed facility, or the neighborhood in general. Consistently, factual market evidence shows this type of facility has not, and does not, negatively impact surrounding property, and supports the positive influences on value and demand for real estate.

The attached report is a summary of the research and analysis performed. Thank you for the opportunity to present this information. Please contact me if you have questions or comments.

Respectfully,



Glen D. Katz, MAI, SRA, AI-GRS, AI-RRS
Realty Solutions Co., Inc.
P.O. Box 20983
Louisville, Kentucky 40250

Office: (502) 396-6664

Email: gkatz@usa.net

Web: www.RSAPPRAISE.com

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Summary of Facts and Conclusions

Problem Identification

Proximity impact is a frequent question in real estate. In the course of studying value influence due to proximity of private or public utility facilities to residential, commercial and agricultural properties, I have performed impact analysis on wireless communications tower facilities, high-voltage overhead transmission lines (HVOT), storage towers, oil pipelines, agricultural facilities, and federal interstates. For this report, the analysis consists of analyzing value trends of properties in proximity to public utility tower facilities.

Residential and commercial properties, whether urban, suburban or rural, and agricultural properties, follow similar demand patterns. In a 2012 study article published in *The Appraisal Journal* 80, (no. 1 (Winter 2012): 30-45), James A. Chalmers identifies three general characteristic that drive property sensitivity to price effects:

- use;
- size; and
- uniqueness.

The subject property is identified by a site and neighborhood analysis. Neighborhood and market characteristics are observed to understand the four forces that affect value; social forces, economic forces, governmental forces, and environmental forces.

Facility Identification

The facility will be in a low to medium density residential and commercial area. The construction improvements will be comprised of a 125' monopole structure with 4' lightning arrester, totaling a structure height of 129 feet. Base elevation will be 710 feet. The construction will be located on a generally 185' x 185' leased site area with a 75' x 75' fenced compound. There will be supporting storage cabinets, treed buffering, and gravel ground cover. There will be space for co-location of other wireless service providers in the facility. The facility will be accessed by a gravel covered easement driveway extending from the north side of Shelbyville Road. These characteristics are some of the most common for wireless communications facilities in similar areas of the United States.

Study Methodology

This impact study consists of studying real estate value trends at existing tower locations. The methodology is comprised of;

- paired sales and sale/resale analyses, focusing on measurement of value change due to market conditions, and;
- direct comparison of properties with, and without, distance or view proximity exposure.

Specifically, the following steps form the analysis:

- Identify existing tower locations with surrounding developed land uses.
- Examine the neighborhood and market area to determine if there are compatible and competing properties with adequate sale activity to provide reliable and valid results.
- Categorize property sales by proximity characteristics for measurement of influence: A distance of 500' to 750' is the threshold of measure for the close-proximity category, depending on the topography and direction of development characteristics. At further distances, the category changes to non-proximity, as tower views become blurred or obscured by trees, roofs, or topography. Other skyline features of power lines, towers, or tanks also absorb tower view.
- Track value change over time for the two proximity categories and compare the results to determine if there is a difference due to tower facility exposure, or;
- Track value change of properties before and after a tower facility is constructed. Then compare results to determine if there is a difference between the two categories attributed to tower facility exposure.

Based on the data and analysis for tower projects like the subject; values and rates of value change for proximity and non-proximity properties are similar. There is no compelling evidence that either the anticipation of, or the existence of, cell tower facilities negatively impacts surrounding property values. This is not unusual or unexpected. The market forces that drive real estate value also create complimentary demand for public utility projects. These market forces are discussed as follows:

- **Social Forces:** Social forces are influenced by; population, education, and lifestyles. There is an exponential increase in digital data, and the public demands satisfying that need as part of the core supply of public services. In particular, cellular service has become a predominant function in businesses, schools, and social services. Regarding households, over 50% are served solely by cellular phone service. Regarding emergency services, over 70% of emergency calls are made through cellular phones. As a result, anything less than consistent in-building service is detrimental to value or demand for real estate.
- **Economic Forces:** Economic forces are influenced by; employment, wages, business, schools, and regional community development. Communications facilities are required for education and efficient and competitive diversification of work forces. Cellular service has a direct connection to economic development. Cellular signal capacity creates a significant number of positive externalities for its users and their communities.
- **Governmental Forces:** Government responds to community needs for, laws and policies, public services, zoning, and building codes. Many jurisdictions have comprehensive plans

requiring government agencies to expand public utilities and services. The regulations enabling public utilities are a direct reaction to public needs, particularly for education, economic purposes, and health and safety services. Another major impact of governmental influence in expansion of public services is developing wider choices of service providers and related fee competition in the private sector. This helps erase the digital divide problem, which is the economic gap between those who have adequate access to services and those who do not. This gap is influenced by income, location, and level of education among other factors, and can affect further development in areas where the divide exists.

- **Environmental Forces:** Environmental forces are the final determining factor. They deal with climate, topography/soil, natural barriers, transportation systems and linkages, and the nature and desirability of the neighborhood surrounding a property. These forces shape population location, growth, and where supporting infrastructure will be most effective and valuable as a resource.

Market Concepts for Property Ownership

Frequently, concepts regarding property rights, property insurability, and property mortgage are topics for questions and discussion from property owners regarding value influences. In summary, the following information is provided for insight.

Property Rights: In regard to property rights, owners near cell tower facilities retain all rights normally associated with ownership. There are no additional easements, encroachments, or use restrictions on surrounding properties.

Insurability: In regard to insurability, there are no risk changes to physical property, ownership, or insurance availability or cost. Interviews with property owners, insurance professionals, mortgage lenders, and title companies, confirms there are no conflicts on availability or premiums for physical property or title insurance on properties located near cell towers.

Mortgage Terms: The following national programs influencing mortgages have been researched to determine status of cell towers in relation to mortgage financing. In regard to lending, there is no influence on mortgage availability or terms.

FHA: The Federal Housing Administration (FHA) through the Department of Housing and Urban Development (HUD), provides mortgage insurance on loans made by FHA-approved lenders throughout the United States. It is the largest insurer of mortgages in the world. FHA has minimum property standards for its loan programs contained in HUD Handbook 4000.1. In particular, there is a section on 'Externalities' and minimum requirements for property compliance. Externalities are identified by HUD as off-site conditions that have an adverse influence on a property, such as heavy traffic, special airport hazards, proximity to high pressure gas lines, overhead electric power transmission lines and local distribution lines, smoke, fumes, and other offensive or noxious odors, and stationary storage tanks.

Cell towers are not identified, mentioned, or considered a potential hazard for surrounding properties by FHA/HUD. Cell towers are not a criterion for hazard analysis in obtaining FHA/HUD funding insurance for mortgage lenders.

VA: The Veterans Administration (VA) helps Servicemembers, Veterans, and eligible surviving spouses become homeowners. VA provides home loan guaranty benefits and other housing-related programs to help buy, build, repair, retain, or adapt homes for occupancy. VA Home Loans are provided by private lenders, such as banks and mortgage companies. VA guarantees a portion of the loan and lowers risk as a result, enabling the lender to provide the borrower with more favorable terms.

VA guidelines (Chapters 10 and 12) identifies HUD Handbook 4000.1 as the resource for minimum property requirements. An addition, in reiterating hazard issues in the VA guidelines, cell towers are not identified, mentioned, or considered a potential hazard. Cell towers are not a criterion for hazard analysis for obtaining VA loans.

USDA: The United States Department of Agriculture (USDA), through its Rural Development program (RD), assists approved lenders in providing low- and moderate-income households the opportunity to own adequate, modest, decent, safe and sanitary dwellings as their primary residence in eligible rural areas. The program provides loan guarantees to approved lenders in order to reduce the risk of extending 100% loans to eligible rural homebuyers. USDA publishes Handbook 3550 (HB 3550) containing minimum property requirements for USDA loan programs. Cell Towers are not included for consideration. Cell towers are not a criterion in hazard analysis for obtaining loans under USDA/RHS programs.

FNMA: The Federal National Mortgage Association (FNMA), aka Fannie Mae, is a government-sponsored enterprise (GSE). Fannie Mae purchases and guarantees mortgages made to borrowers via the secondary mortgage market, creating liquidity for Banks and Credit Unions. The mortgages it purchases and guarantees must meet strict criteria. Its "Selling Guide" publication is a primary information guide for secondary mortgage market lending. The Selling Guide does not include cell towers for any specific analysis in the publication. Cell towers are not, and historically have not been, a hazard criterion in analysis for obtaining mortgage loans that will be purchased by Fannie Mae.

FHLMC: The Federal Home Loan Mortgage Corporation, (FHLMC), aka Freddie Mac, is a government-sponsored enterprise (GSE). Freddie Mac purchases and guarantees mortgages made to borrowers via the secondary mortgage market, creating liquidity for Banks and Credit Unions. The mortgages it purchases and guarantees must meet strict criteria. Its "Seller/Service Guide" publication is a primary information guide for secondary mortgage market lending. The Seller/Service Guide does not include cell towers for any specific analysis in the publication. Cell towers are not, and historically have not been, a hazard criterion in analysis for obtaining mortgage loans that will be purchased by Freddie Mac.

Study Analysis Conclusions

As illustrated by study results, both in this report and in published studies nationally, the forces of value are consistent. Public utilities and related services are essential to meeting current and future requirements for standards of living. Public utilities and related services, by nature, expand to meet demands of expanding population and community growth. The benefits of modern communication facilities for economic and community development are clear. Without adequate services, there will be a tendency for decreasing demand and property values in a neighborhood. Where services already exist, coverage and data capacity may need to be adjusted due to population changes. As a result of meeting population needs, telecommunications facilities have become a common part of the landscape in the same way that power, telephone, and other utilities have. Like all utilities, there is requirement for telecommunications facilities in strategic locations in any community.

Property owners near tower facilities, other highly visible utility structures, associated easements, etc., are not penalized on value. There are no changes to ownership rights. Insurability is not affected. Mortgage terms to buyers and owners are not influenced. Consistently, communications tower structures, like overhead electric distribution lines, signage, and buried utility easements, are beneficial. Due to expanding utilities and increased services, residential, commercial and agricultural neighborhoods and properties experience positive influences. Because of the deployment of cellular facilities over the past several decades, owners and buyers of real estate expect excellent cell phone reception, and that connectivity requires adequate infrastructure. Cell towers satisfy demand and are visibly absorbed by the landscape of a neighborhood and lifestyles of the population. Cell towers are much like other modern infrastructure. Although cell towers may be noticed initially, they quickly fade into the background and have no negative effect on value – just as telephone poles, utility lines, streetlights, and the other visible infrastructure components of modern life do not negatively affect real estate values.

Therefore, based on the actions of market participants buying, occupying, investing, and selling real estate properties, it is clear the proposed tower facility will not adversely impact the demand for, or value of, properties in the immediate or general area. Consistently, market evidence shows this type of tower facility has not, and does not, negatively impact surrounding property, and supports the positive influences on value and demand for real estate due to expansion of public utilities, which includes wireless telecommunications tower infrastructure.

Report Development – Scope of Work

Extent to which the property is identified

- The subject property is identified by a site and neighborhood analysis using aerial maps and government census data. Construction plans, aerial maps, and government census data is reviewed. Neighborhood and market characteristics are observed to understand the four forces that affect value:
 - social forces;
 - economic forces;
 - governmental forces, and;
 - environmental forces

Extent to which the property is inspected

- Review of maps and aerial photography of the surrounding neighborhood to recognize land uses and development patterns.
- Review of the tower facility development plans

Type and extent of the data researched

- Existing tower facilities, wireless communications, high-tension electrical transmission, or water tower storage tanks, are identified for analysis based on residential and commercial exposures.

Type and extent of analyses applied

Data extraction is available through several econometric methods. Sales of residential properties are tracked to establish rates of change in value due to market conditions, and to determine potential influence from proximity to tower facilities. Comparison is made between value trends of properties in proximity, and without proximity to tower facilities. Three methods of data extraction are discussed:

- First is analysis of “before and after” sale data. This method tracks value trends before and after installation of a tower facility. Property sale data before a facility is installed is compared to sale data occurring after a facility is installed. This method will have limitations when a facility installation occurred in the distant past. Older sales occurring before the installation frequently experience significant changes before they resell in a current market: physical changes such as renovation, updating, addition, and/or economic changes (i.e.; 2007-2009 recession, changes in highest and best use, etc.) In these cases, value change over a long time period is attributed to multiple sources, and allocating value change solely to tower influence would be misleading.
- Next is “unit-value” comparison of properties that are functionally identical in all aspects except proximity. The unit value will typically be price per-square-foot of gross living area (sale price / above-grade living area). The information will reveal any differences between the two proximity categories. While providing excellent evidence, this method has limitations due to the number of property differences and related difficulty in matching properties that are adequately similar with the exception of proximity.

- One of the most common analysis methods is “market conditions” value trend analysis. This compares value trends of properties located with proximity to existing tower facilities, to value trends of properties located without proximity. Rates of value change due to market conditions are compared between the two property types to extract any differences due to proximity to a tower facility. This is most meaningful with sale data from the post-recession period beginning in 2011, to the current market.

In all cases, the methodologies allow controlling the physical and locational attributes of the two sets of properties. In this way, price and value effects or differences due to other characteristics of the properties are held constant, and the effect, if any, due to proximity is isolated. For this study, because of the data currently available, the “before and after” and “market conditions” methods are utilized.

Purpose of Report

The purpose of this report is to develop an opinion of potential market value impact on surrounding properties from proximity to the identified wireless communications tower facility.

Intended User of the Report

This report is intended solely for use by Applicant, and the identified governmental review panel for the project, Louisville Metro Planning Commission.

Intended Use of the Report

The intended use of the reported opinions and conclusions is to assist Applicant, and the governmental review panel, Louisville Metro Planning Commission, in making permitting decisions regarding the subject property. This report is not intended for any other use. The undersigned, Glen D. Katz, recognizes this report will be submitted as part of the public record.

Definition of Value

This report analysis is based on ‘*market value*’ of real estate. The Appraisal Institute’s *The Dictionary of Real Estate Appraisal, 6th Edition*, includes the following entry for “market value”, which contains the most widely accepted components of market value.

- *The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all terms requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither party is under undue duress.*

Case Study Introduction

The following case studies are developed through researching market activity of residential properties in neighborhoods adjacent to tower facilities. After identification of a tower facility, whether wireless communications, high-tension electrical, or water storage tower, sale activity of homes are analyzed. Methods of data extraction are discussed as follows.

Market Conditions Value Trend Analysis

For projects that have been in place for a long period, market conditions analysis is very applicable. The steps of analysis consist of:

- Research properties with tower proximity that have sold repeatedly in the identified period.
- Determine the periodic rate of market value change, appreciation or depreciation, for properties in the proximity category.
- Research properties in the same neighborhood, without tower proximity, with repeat or back-to-back sales.
- Determine the periodic rate of market value change, appreciation or depreciation for properties in the non-proximity category.
- Compare value change trends between the two groups of properties to extract any value change differences related to proximity influence.

Before and After Method

For projects recently constructed, the before and after method steps of analysis consist of:

- Research residential properties with tower proximity that sold prior to the tower installation, and then sold again after the tower installation.
- Determine the periodic rate of market value change, appreciation or depreciation, for properties in the proximity category.
- Research properties in the same neighborhood without tower proximity that sold prior to the tower installation, and then sold again after the tower installation.
- Determine the periodic rate of market value change, appreciation or depreciation, for properties in the non-proximity category.
- Compare value change trends between the two groups of properties to extract any value change differences related to proximity influence.

Methodology Summary

The time range for sale data is from 2011 to the current market. This minimizes potential influence from the 2007-2009 recession. In order to track rates of value change during the period, repeat or back-to-back sales of individual residential properties inside and outside a proximity distance range of 500' to 750' from a facility are researched.

In order to focus on the influence market conditions and proximity on appreciation or depreciation, emphasis is placed on properties with stable physical characteristics, and without unusual sale conditions or buyer/seller motivation influences. Specifically, sales involving properties with the following characteristics are discounted from analysis:

- Properties with substantial physical changes that influence value between the initial and subsequent transfers, such as renovation, construction addition, or incursion of deferred maintenance or neglect resulting in unusual physical deterioration and market response.
- Properties with distress socioeconomic characteristics, such as foreclosure, short-sales, auctions, and sales of bank-owned homes.
- Properties with unusual buyer or seller motivations, such as family transactions, estate liquidation, or investor activity in a predominantly owner-occupied market.
- Properties close to interstates and limited access roads are avoided to ensure home sales were not affected by highway access or traffic noise variables.
- In the study, sale price is adjusted by netting out seller-paid concessions if they occur.

If the above types of transfer activity are prevalent in a neighborhood, the facility and neighborhood is removed from consideration. The focus is to measure market activity that is not influenced by unusual property-specific or market-specific characteristics.

The following case studies illustrate analysis for two categories of tower facilities; wireless communications tower facilities and high-tension electrical transmission lines. Two of the case studies compare rates of value change between proximity and non-proximity properties at existing facilities, and one case study additionally compares values of proximity and non-proximity properties before and after installation of a tower facility.

Case Studies

Case Study 1 – This study involves a high-tension overhead electric power line corridor with lattice construction towers. The corridor traverses a residential single-family and condominium neighborhood. The tower structures and overhead electric lines in this location are located in easements amidst residential subdivision development, crossing a public street in a long diagonal direction, and continuing through residential subdivision development.

The project was installed pre-1993. The value evidence represents sales and resales of properties within 500' proximity to the facility, and outside 500' proximity to the facility. Rates of value change for each of the categories measured, and the results of the two categories of proximity are compared to analyze any potential impact.

Case Study 2 – This study involves a wireless communications facility adjacent to a residential single-family and condominium neighborhood. The tower structure is 219' height, self-support construction.

Installation of the project occurred in 2002. The value evidence represents sales and resales of properties within 500' proximity to the facility, and outside 500' proximity to the facility. Rates of value change of each of the categories are measured, and the two categories are compared to analyze any potential impact.

Case Study 3 – This study involves a wireless communications facility adjacent to a residential single-family detached neighborhood. The structure is 140' height, monopole construction.

Installation of the project occurred in 2016. The value evidence represents sales and resales of properties within 750' proximity to the facility, and outside 750' proximity to the facility. Rates of value change in each of the categories are measured, and the two categories are compared to analyze any potential impact.

For Case Study 3, it is important to note there are repeat sales of individual properties in each category, before and after installation, that illustrate consistent values and rates of value change.

Case Study 1 – Group 1 (Proximity Sales)

- Facility: High tension overhead electric power lines and lattice construction towers, residential single-family detached and condominium subdivision location
- Address: Gutenberg Road, Louisville, Jefferson County, Kentucky
- FCC Identification: N/A
- Year of installation: Pre-1993
- Information source: Maps and individual research
- Neighborhood location: Jeffersontown
- Property Group Identification: Within 500' proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2013 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is 0.84% to 9.10%. The average rate of annual appreciation is 4.07%, and the median or middle point of the range is 4.28%.

Address		Sale Date	Sale Price	% Change	Months	% Change /Month	% Change /Year
4701 Silverado	Pl	10/26/2018 11/30/2016	\$273,000 \$264,000	3.41%	23	0.15%	1.79%
4704 Silverado	Pl	9/1/2016 3/21/2013	\$270,000 \$235,000	14.89%	41	0.36%	4.31%
4709 Stony Brook	Dr	5/31/2019 6/8/2017	\$195,000 \$186,000	4.84%	24	0.20%	2.44%
4723 Ferrer	Way	6/15/2018 12/5/2014	\$185,000 \$140,000	32.14%	42	0.76%	9.10%
4916 Bova	Way	4/29/2019 5/30/2014	\$193,000 \$155,000	24.52%	59	0.42%	4.98%
8804 Loch Lea	Ln	12/2/2016 12/6/2013	\$149,900 \$133,000	12.71%	36	0.35%	4.24%
9319 Villa Fair	Ct	5/18/2018 1/22/2015	\$174,000 \$150,000	16.00%	40	0.40%	4.82%
10509 Vintage Creek	Dr	9/11/2015 4/15/2014	\$255,000 \$252,000	1.19%	17	0.07%	0.84%
Average						0.34%	4.07%
Median						0.36%	4.28%

Case Study 1 – Group 2 (Non-Proximity Sales)

- Facility: High tension overhead electric power lines and lattice construction towers, residential single-family detached and condominium subdivision location
- Address: Gutenberg Road, Louisville, Jefferson County, Kentucky
- FCC Identification: N/A
- Year of installation: Pre-1993
- Information source: Maps and research
- Neighborhood location: Jeffersontown
- Property Group Identification: Outside 500' proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2015 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is 1.12% to 6.59%. The average rate of annual appreciation is 4.00%, and the median or middle point of the appreciation range is 3.64%.

Address		Sold Date	Sale Price	% Change	Months	% Change /Month	% Change /Year
4310 Lochridge	Pkwy	1/14/2016	\$195,000	0.52%	6	0.09%	1.12%
4310 Lochridge	Pkwy	7/30/2015	\$194,000				
4510 Jolynn	Dr	6/24/2019	\$225,400	12.70%	31	0.42%	4.98%
4510 Jolynn	Dr	12/6/2016	\$200,000				
5003 Fairwood	Ln	3/28/2019	\$175,000	21.53%	39	0.55%	6.57%
5003 Fairwood	Ln	12/18/2015	\$144,000				
5008 Bowcester	Dr	3/4/2019	\$176,000	21.38%	39	0.55%	6.59%
5008 Bowcester	Dr	12/7/2015	\$145,000				
5105 Cynthia	Dr	1/4/2019	\$163,500	7.57%	34	0.22%	2.69%
5105 Cynthia	Dr	3/15/2016	\$152,000				
8711 Michael Edward	Dr	11/13/2018	\$175,000	12.54%	44	0.28%	3.39%
8711 Michael Edward	Dr	3/4/2015	\$155,500				
8902 Loch Lea	Ln	8/7/2019	\$182,000	10.98%	52	0.21%	2.54%
8902 Loch Lea	Ln	4/16/2015	\$164,000				
9105 Talitha	Dr	2/22/2019	\$187,000	5.95%	27	0.22%	2.61%
9105 Talitha	Dr	11/14/2016	\$176,500				
9115 Marse Henry	Dr	5/15/2017	\$188,000	13.25%	24	0.55%	6.54%
9115 Marse Henry	Dr	5/7/2015	\$166,000				
9402 Talitha	Dr	9/27/2019	\$200,000	11.11%	34	0.32%	3.90%
9402 Talitha	Dr	11/21/2016	\$180,000				
10202 Saint Rene	Rd	5/9/2018	\$222,513	11.31%	32	0.35%	4.21%
10202 Saint Rene	Rd	9/1/2015	\$199,900				
10609 Wildflower Woods	Ct	9/4/2019	\$248,000	12.73%	54	0.24%	2.84%
10609 Wildflower Woods	Ct	3/13/2015	\$220,000				
Average						0.33%	4.00%
Median						0.30%	3.64%

Case Study 1 Reconciliation

The sale evidence represents sales and resales of residential properties in a neighborhood containing a high-tension overhead electric power lines with lattice construction towers. The tower facility existed prior to construction of homes in the neighborhood. There is volume sale evidence for analysis between 2013 and the current market. The proximity sales show a slightly higher average rate of appreciation, and a slightly higher median rate. The difference is negligible.

Additionally, the average sale price per square foot of gross living area and total living area for each proximity category is illustrated in the following table.

Category	In Proximity	Outside Proximity
Price Per Square Foot Gross Living Area	\$124	\$121
Price Per Sq. Foot Total Finished Area	\$103	\$95

The difference between all indications is negligible and not statistically significant. Comparing proximity sales to non-proximity sales in the neighborhood, both categories show a consistent trend of value change, and price based on dwelling size per square foot. In summary, there is no negative value impact from the tower facility.

Case Study 2 – Group 1 (Proximity Sales)

- Facility: Wireless Communications Facility, self-support construction, 219’ height, residential single-family detached and condominium subdivision location
- Address: 8400 Bardstown Road, Louisville, Jefferson County, Kentucky
- FCC Registration: 1232839
- Year of installation: 03/7/2002
- Information source: FCC recordings, maps and individual research
- Neighborhood location: Fern Creek
- Property Group Identification: Inside 500’ proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2014 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is 0.64% to 3.29%. The average annual appreciation is 2.25%, and the median or middle point of the range is 2.67%.

Address		Sold Date	Sale Price	% Change	Months	% Change /Month	% Change /Year
8503 Missionary	Ct	9/27/2018	\$302,000	12.48%	50	0.25%	3.02%
		8/12/2014	\$268,500				
8505 Missionary	Ct	8/25/2017	\$239,000	6.22%	28	0.22%	2.67%
		4/28/2015	\$225,000				
8931 Gentlewind	Way	5/15/2018	\$280,000	1.82%	34	0.05%	0.64%
		7/13/2015	\$275,000				
8937 Gentlewind	Way	3/15/2019	\$282,000	5.22%	38	0.14%	1.64%
		1/8/2016	\$268,000				
10619 Glenmary Springs	Dr	11/14/2016	\$244,900	6.50%	24	0.27%	3.29%
		11/24/2014	\$229,950				
Average						0.19%	2.25%
Median						0.22%	2.67%

Case Study 2 – Group 2 (Non-Proximity Sales)

- Facility: Wireless Communications Facility, self-support construction, 219' height, residential single-family detached and condominium subdivision location
- Address: 8400 Bardstown Road, Louisville, Jefferson County, Kentucky
- FCC Registration: 1232839
- Year of installation: 03/7/2002
- Information source: FCC recordings, maps and individual research
- Neighborhood location: Fern Creek
- Property Group Identification: Outside 500' proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2014 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is -0.25% to 3.60%. The average annual appreciation is 2.26%, and the median or middle point of the range is 2.22%.

Address		Sold Date	Sale Price	% Change	Months	% Change /Month	% Change /Year
8607 Sanctuary Ln		3/30/2016 7/25/2014	\$245,000 \$231,000	6.06%	20	0.30%	3.60%
8622 Sanctuary Ln		12/21/2017 7/13/2015	\$265,000 \$257,500	2.91%	29	0.10%	1.19%
8627 Sanctuary Ln		10/31/2018 8/5/2016	\$279,300 \$280,900	-0.57%	27	-0.02%	-0.25%
8728 Broadwood Ct		6/11/2019 2/16/2016	\$204,000 \$166,000	22.89%	40	0.57%	6.90%
8737 Broadwood Ct		4/29/2019 6/6/2014	\$188,900 \$162,500	16.25%	59	0.28%	3.31%
8819 Gentlewind Way		5/18/2018 5/22/2015	\$255,000 \$243,000	4.94%	36	0.14%	1.65%
8903 Gentlewind Way		9/30/2016 8/1/2014	\$307,500 \$290,000	6.03%	26	0.23%	2.78%
10105 Cedar Garden Dr		11/1/2019 5/30/2018	\$299,900 \$286,130	4.81%	17	0.28%	3.38%
10500 Parkhurst Ct		8/27/2018 7/14/2017	\$220,000 \$219,500	0.23%	13	0.02%	0.20%
10502 Gentlewind Ct		2/29/2016 2/19/2014	\$270,000 \$267,500	0.93%	24	0.04%	0.46%
10504 Providence Dr		10/19/2017 7/3/2014	\$254,000 \$248,700	2.13%	40	0.05%	0.65%
10614 Providence Dr		9/20/2019 2/18/2014	\$290,000 \$245,000	18.37%	67	0.27%	3.28%
Average						0.19%	2.26%
Median						0.18%	2.22%

Case Study 2 Reconciliation

The evidence represents sales and resales of residential properties in a neighborhood containing a wireless communications tower facility. The tower existed prior to construction of homes in the project. There is volume sale evidence for analysis between 2014 and the current market. The rates of value change between the two categories are consistent. The non-proximity sales show a slightly higher average rate of appreciation, and the proximity sales show a slightly higher median rate.

Additionally, the average sale price per square foot of gross living area and total living area for each proximity category is illustrated in the following table.

Category	In Proximity	Outside Proximity
Price Per Square Foot Gross Living Area	\$111	\$116
Price Per Sq. Foot Total Finished Area	\$99	\$108

The difference between all indications is negligible and not statistically significant. Comparing proximity sales to non-proximity sales in the neighborhood, both categories show a consistent trend of value change, and price based on dwelling size per square foot. In summary, there is no negative value impact from the tower facility.

Case Study 3 – Group 1 (Proximity Sales)

- Facility: Wireless Communications Facility, monopole construction, 140’ height, residential single-family detached location
- Address: 7200 Woodhaven Road, Louisville, Jefferson County, Kentucky
- FCC Registration: 1298049
- Year/Date of installation: 05/13/2016
- Information source: FCC recordings, maps and individual research
- Neighborhood location: Woodhaven
- Property Group Identification: Inside 750’ proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2011 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is 2.79% to 9.47%. The average appreciation is 5.73%, and the median or middle point of the range is 5.58%. Note that sales of 5900 Woodhaven Ridge Court, 5921 Woodhaven Ridge Court, and 6005 Hurstview Road occur before and after the facility installation. The rates of value change are consistent.

Street #	Street	St	Sale Date	Adj Sale Price	Percent Change	Months	% Annual Change
5900	Woodhaven Ridge	Ct	8/22/2011	\$180,000			
5900	Woodhaven Ridge	Ct	10/19/2017	\$211,000	17.22%	74	2.79%
5914	Woodhaven Ridge	Ct	12/14/2012	\$155,000			
5914	Woodhaven Ridge	Ct	8/1/2014	\$172,675	11.40%	20	7.00%
5921	Woodhaven Ridge	Ct	12/20/2011	\$125,000			
5921	Woodhaven Ridge	Ct	1/24/2013	\$138,000	10.40%	13	9.47%
5921	Woodhaven Ridge	Ct	10/22/2014	\$148,000	7.25%	21	4.16%
5921	Woodhaven Ridge	Ct	7/25/2018	\$187,400	26.62%	45	7.08%
6005	Hurstview	Rd	7/30/2013	\$124,900			
6005	Hurstview	Rd	4/20/2018	\$148,000	18.49%	57	3.91%
						Annual Average	5.73%
						Annual Median	5.58%

Case Study 3 – Group 2 (Non-Proximity Sales)

- Facility: Wireless Communications Facility, monopole construction, 140’ height, residential single-family detached and condominium subdivision location
- Address: 7200 Woodhaven Road, Louisville, Jefferson County, Kentucky
- FCC Registration: 1298049
- Year/Date of installation: 05/13/2016
- Information source: FCC recordings, maps and individual research
- Neighborhood location: Woodhaven
- Property Group Identification: Outside 750’ proximity to facility installation
- Reconciliation: The data represents sale activity between 01/01/2011 and the current market. Each property transferred two or more times in the period. The price difference between transfers of each property is value change due to market conditions. The range of annual value change is 2.31% to 7.99%. The average appreciation is 4.97%, and the median or middle point of the range is 5.21%. Note that sales of 7118 Ridge Creek Road, 7102 Ridge Creek Road, and 7403 Covey Place occurred before and after the tower facility installation. The rates of value change are consistent.

Street #	Street	St	Sale Date	Adj Sale Price	Percent Change	Months	% Annual Change
5904	Bluffington	Ct	7/28/2011	\$124,000			
5904	Bluffington	Ct	11/21/2012	\$130,685	5.39%	16	4.08%
7102	Ridge Creek	Rd	10/3/2011	\$135,500			
7102	Ridge Creek	Rd	5/6/2016	\$149,900	10.63%	55	2.31%
7118	Ridge Creek	Rd	3/28/2011	\$119,000			
7118	Ridge Creek	Rd	3/25/2016	\$150,000	26.05%	60	5.21%
7215	Chestnut Tree	Ln	6/10/2011	\$131,000			
7215	Chestnut Tree	Ln	11/1/2013	\$140,000	6.87%	29	2.87%
7403	Covey	Pl	2/26/2014	\$135,500			
7403	Covey	Pl	10/31/2016	\$156,000	15.13%	32	5.65%
7404	Covey	Pl	2/8/2013	\$109,000			
7404	Covey	Pl	12/30/2015	\$130,000	19.27%	35	6.67%
7405	Stone Bluff	Ct	3/28/2017	\$190,000			
7405	Stone Bluff	Ct	8/27/2018	\$211,500	11.32%	17	7.99%
						Annual Average	4.97%
						Annual Median	5.21%

Case Study 3 Reconciliation

The evidence represents sales and resales of residential properties in a neighborhood containing a wireless communications tower facility. Tower installation occurred after homes were constructed in the neighborhood. There is volume sale evidence for analysis between 2011 and the current market. The non-proximity sales show a slightly higher median rate of appreciation, and the proximity sales show a slightly higher average rate. As noted, properties with sales both before and after the installation date illustrate consistent values trends.

(continued next page)

Additionally, the average sale price per square foot of gross living area and total living area for each proximity category is illustrated in the following table.

Category	In Proximity	Outside Proximity
Price Per Square Foot Gross Living Area	\$116	\$115
Price Per Sq. Foot Total Finished Area	\$93	\$88

The difference between all indications is negligible and not statistically significant. Comparing proximity sales to non-proximity sales in the neighborhood, both categories show a consistent trend of value change, and price based on dwelling size per square foot. In summary, there is no negative value impact from the tower facility.

Study Analysis Conclusions

As illustrated by study results, both in this report and in published studies nationally, the forces of value are consistent. Public utilities and related services are essential to meeting current and future requirements for standards of living. Public utilities and related services, by nature, expand to meet demands of expanding population and community growth. The benefits of modern communication facilities for economic and community development are clear. Without adequate services, there will be a tendency for decreasing demand and property values in a neighborhood. Where services already exist, coverage and data capacity may need to be adjusted due to population changes. As a result of meeting population needs, telecommunications facilities have become a common part of the landscape in the same way that power, telephone, and other utilities have. Like all utilities, there is requirement for telecommunications facilities in strategic locations in any community.

Property owners near tower facilities, other highly visible utility structures, associated easements, etc., are not penalized on value. There are no changes to ownership rights. Insurability is not affected. Mortgage terms to buyers and owners are not influenced. Consistently, communications tower structures, like overhead electric distribution lines, signage, and buried utility easements, are beneficial. Due to expanding utilities and increased services, residential, commercial and agricultural neighborhoods and properties experience positive influences. Because of the deployment of cellular facilities over the past several decades, owners and buyers of real estate expect excellent cell phone reception, and that connectivity requires adequate infrastructure. Cell towers satisfy demand and are visibly absorbed by the landscape of a neighborhood and lifestyles of the population. Cell towers are much like other modern infrastructure. Although cell towers may be noticed initially, they quickly fade into the background and have no negative effect on value – just as telephone poles, utility lines, streetlights, and the other visible infrastructure components of modern life do not negatively affect real estate values.

Therefore, based on the actions of market participants buying, occupying, investing, and selling real estate properties, it is clear the proposed tower facility will not adversely impact the demand for, or value of, properties in the immediate or general area. Consistently, market evidence shows this type of tower facility has not, and does not, negatively impact surrounding property, and supports the positive influences on value and demand for real estate due to expansion of public utilities, which includes wireless telecommunications tower infrastructure.

Disclosure Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, in any capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined opinion that favors the cause of the client, the magnitude of the opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal consulting report.
- No one provided significant real property analysis assistance to the person signing this certification.



Glen D. Katz, MAI, SRA, AI-GRS, AI-RRS

Professional Qualifications

GLEN D. KATZ, MAI, SRA, AI-GRS, AI-RRS

P.O. Box 20983, Louisville, Kentucky 40250

Office: (502) 396-6664 · Email: gkatz@usa.net · Web: www.rsappraise.com

Professional Experience

Glen Katz has been involved in the appraisal of real estate for over 25 years. Beginning in both the commercial and residential fields, he has transitioned to roles as consultant, reviewer, and subject matter expert witness. As owner of Realty Solutions Co. Inc., relationships have been developed with user clients, peer appraisers and appraisal firms. Resulting projects have been performed individually and as coordinating peer groups.

In general practice, Mr. Katz has achieved the Appraisal Institute MAI (general) designation, and SRA (residential) designation. In specialized practice, Mr. Katz has achieved the Appraisal Institute appraisal review designations of AI-GRS (general) and AI-RRS (residential), as well as completing the following Appraisal Institute Professional Development Programs:

- Litigation
- Valuation of the Components of a Business Enterprise
- Valuation of Conservation Easements
- Valuation of Sustainable Buildings: Residential
- Valuation of Sustainable Buildings: Commercial

As a reviewer of appraisals, Mr. Katz serves clients in both the litigation and lending fields. Appraisal review reports are commonly performed under Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisitions (Yellowbook), and local jurisdictional guidelines.

As a subject matter expert witness, Mr. Katz has participated in cases regarding land and building damage, insurance claims, property tax assessment, construction defects, divorce settlements, boundary disputes, zoning noncompliance, bankruptcy, and alleged fraud.

Areas of expertise include:

- Commercial, industrial, complex residential, agricultural, special purpose properties
- Appraisal review, commercial and residential
- Value impact study
- Eminent domain
- Expert witness/litigation support
- Property damages
- Insurance claims and cost analysis
- Tax Appeal
- Estate valuation
- Green/high performance residential and commercial construction (sustainable/energy efficient)

Significant Achievements

- Condemnation and right-of-way; 2008 to 2011 - Right of way value analysis for Keystone and Keystone XL pipeline segments in South Dakota, both East River and West River areas. The project included a market study on pipeline eased properties, sale book, and appraisals.
- Representing Walgreen Co., performed county level tax appeals, appraised and testified as expert witness before the Kentucky Board of Tax Appeals regarding methodology in developing a value opinion for "Absolute NNN" properties for ad valorem tax purposes.
- Development panel member for the Appraiser Supervisor and Associate Training program curriculum for the Kentucky Real Estate Appraisers Board, Commonwealth of Kentucky.

Education

- Bachelor of Science in Business Administration, Marketing, 1984, University of Louisville
- Study focusing on real estate economics, 1990 to 1993, Eastern Kentucky University
- Ongoing real estate economics education since 1993 has been obtained through the Appraisal Institute, and from professional groups serving specific real estate related fields.

Professional Qualifications and Memberships

- Certified General Real Property Appraiser, Kentucky License #1533
- Certified General Real Estate Appraiser, Tennessee License #5312
- MAI designated Member, Appraisal Institute
 - *(The MAI membership designation is held by professionals who can provide a wide range of services relating to all types of real property, such as providing value opinions, evaluations, review, consulting and advice regarding investment decisions, among others. Property types may include commercial, industrial, agricultural, residential, vacant land and others.)
- SRA designated Member, Appraisal Institute
 - *(The SRA membership designation is held by professionals who can provide a wide range of services relating to residential properties, including providing opinions of value, evaluations, reviews, consulting and advice regarding investment decisions, among others)
- AI-GRS designated Member, Appraisal Institute
 - *(The AI-GRS membership designation is held by professionals who can provide reviews of appraisals of a wide range of property types, including commercial, industrial, agricultural, residential, vacant land and others. They assist clients in satisfying issues related to due diligence and risk management)
- AI-RRS designated Member, Appraisal Institute
 - *(The AI-RRS membership designation is held by professionals who have the tools to provide reviews and address the related issues unique to residential real property appraisals. They assist clients in satisfying issues related to due diligence and risk management)
- Professional Development Programs – Appraisal Institute
 - Litigation
 - Valuation of the Components of a Business Enterprise
 - Valuation of Sustainable Buildings: Commercial
 - Valuation of Sustainable Buildings: Residential
 - Valuation of Conservation Easements
- Member, International Right of Way Association (IRWA)

Appraisal Institute Service

- 2018 to present – National Education Committee Liaison, Region V, Appraisal Institute
- 2018 – President, Bluegrass Chapter, Appraisal Institute
- 2008 to 2017 – Education Committee, Chair, Bluegrass Chapter, Appraisal Institute
- 2014 to 2017 – Vice President, Bluegrass Chapter, Appraisal Institute
- 2012 and 2013 – Second Vice President, Bluegrass Chapter, Appraisal Institute
- 2016 and 2017 – Government Relations Committee, Bluegrass Chapter, Appraisal Institute
- 2016 and 2017 – Regional Representative, Bluegrass Chapter, Appraisal Institute
- 2015 to present – Region V Regional Nominating Committee, Appraisal Institute
- 2013, 2014 and 2016 – Leadership Development & Advisory Council, Appraisal Institute
- 2009 - 2012, 2014 – Alternate Regional Representative, Bluegrass Chapter, Appraisal Institute
- 2007 – Membership Development/Retention Committee, Bluegrass Chapter, Appraisal Institute
- MAI, SRA, AI-GRS, and AI-RRS, Candidate Advisor, Appraisal Institute

ADVANCED STUDY CURRICULUM

PROVIDER/TITLE	YEAR
APPRAISAL INSTITUTE PROFESSIONAL DEVELOPMENT PROGRAMS	
VALUATION OF SUSTAINABLE BUILDINGS: COMMERCIAL - REGISTRY	2018
VALUATION OF SUSTAINABLE BUILDINGS: RESIDENTIAL - REGISTRY	2017
VALUATION OF THE COMPONENTS OF A BUSINESS ENTERPRISE - REGISTRY	2013
LITIGATION PROFESSIONAL DEVELOPMENT PROGRAM - REGISTRY	2010
VALUATION OF CONSERVATION EASEMENTS - REGISTRY	2008
GENERAL DEMONSTRATION REPORT - CAPSTONE PROGRAM	2014
INSTRUCTOR QUALIFYING CONFERENCE	2016
LEADERSHIP DEVELOPMENT AND ADVISORY COUNCIL - WASHINGTON D.C.	2013/14/16
APPRAISAL INSTITUTE, COURSES	
APPRAISAL OF MANUFACTURED HOMES FEATURING NEXT-GENERATION MANUFACTURED HOMES	2019
APPLICATION & INTERPRETATION OF SIMPLE LINEAR REGRESSION	2019
PRACTICAL APPLICATIONS IN APPRAISING GREEN COMMERCIAL PROPERTIES	2018
UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS	2017
RESIDENTIAL & COMMERCIAL VALUATION OF SOLAR	2017
CASE STUDIES IN APPRAISING GREEN RESIDENTIAL BUILDINGS	2016
REVIEW THEORY - GENERAL	2014
REVIEW THEORY - RESIDENTIAL	2014
QUANTITATIVE ANALYSIS	2013
FUNDAMENTALS OF SEPARATING REAL PROPERTY, PERSONAL PROPERTY, & INTANGIBLE BUSINESS ASSETS	2012
THE APPRAISER AS AN EXPERT WITNESS: PREPARATION AND TESTIMONY	2010
LITIGATION APPRAISING: SPECIALIZED TOPICS AND APPLICATIONS, COURSE 705GRE	2010
CONDEMNATION APPRAISING: PRINCIPLES & APPLICATIONS	2009
ADVANCED SALES COMPARISON & COST APPROACHES	2008
VALUATION OF CONSERVATION EASEMENTS CERTIFICATE PROGRAM	2008
ADVANCED RESIDENTIAL REPORT WRITING, PART II	2007
ADVANCED RESIDENTIAL APPLICATIONS & CASE STUDIES, PART I	2007
APPRAISAL INSTITUTE, SEMINARS	
HOT TOPICS AND MYTHS IN APPRAISER LIABILITY	2018
DRONE TECHNOLOGY & ITS IMPACT ON THE APPRAISAL INDUSTRY	2017
RESIDENTIAL APPLICATIONS: USING TECHNOLOGY TO MEASURE & SUPPORT APPRAISAL ASSIGNMENT RESULTS	2017
RESIDENTIAL APPLICATIONS 2: USING MICROSOFT EXCEL TO ANALYZE & SUPPORT APPRAISAL ASSIGNMENT RESULTS	2015
INCOME APPROACH FOR RESIDENTIAL APPRAISERS	2014
MARKETABILITY STUDIES: ADVANCED CONSIDERATIONS AND APPLICATIONS	2013
ADVANCED SPREADSHEET MODELING FOR VALUATION APPLICATIONS	2011
APPRAISING DISTRESSED COMMERCIAL REAL ESTATE: HERE WE GO AGAIN	2010
EVALUATING RESIDENTIAL CONSTRUCTION	2009
REO APPRAISAL: APPRAISAL OF RESIDENTIAL PROPERTY FORECLOSURE	2009
REGRESSION ANALYSIS IN APPRAISAL PRACTICE: CONCEPTS AND APPLICATIONS	2008
SELF STORAGE ECONOMICS AND APPRAISAL	2007
SUBDIVISION VALUATION: A COMPREHENSIVE GUIDE	2007
APPRAISING CONVENIENCE STORES	2005
EVALUATING COMMERCIAL CONSTRUCTION	2005
APPRAISAL CONSULTING: A SOLUTIONS APPROACH FOR PROFESSIONALS	2003
APPRAISING THE TOUGH ONES	2003
ATTACKING & DEFENDING AN APPRAISAL IN LITIGATION	2002
APPRAISAL OF NONCONFORMING USES	2000
DYNAMICS OF OFFICE BUILDING VALUATION	1998
ENVIRONMENTAL RISK AND THE APPRAISAL PROCESS	1995
APPRAISAL OF SPECIAL-PURPOSE PROPERTIES	1996

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PROVIDER/TITLE	YEAR
INTERNATIONAL RIGHT OF WAY ASSOCIATION	
COURSE 105 - THE UNIFORM ACT - EXECUTIVE SUMMARY	2017
MARSHALL & SWIFT	
COMMERCIAL COST APPROACH CERTIFICATION PROGRAM	2015
AMERICAN BANKERS ASSOCIATION	
FEDERAL APPRAISAL POLICIES: HOTLINES, COMPLAINT FORMS, AND REVISED POLICY STATEMENTS	2013
CCIM INSTITUTE	
COURSE CI-101, FINANCIAL ANALYSIS FOR COMMERCIAL INVESTMENT REAL ESTATE	2006
COURSE CI-103, USER DECISION ANALYSIS FOR COMMERCIAL INVESTMENT REAL ESTATE	2006
COURSE CI-104, INVESTMENT ANALYSIS FOR COMMERCIAL INVESTMENT REAL ESTATE	2006
COURSE 411, GAP ANALYSIS AND REAL ESTATE MARKET DYNAMICS	2006
COURSE 412, ECONOMICS OF COMMERCIAL LEASES, AND 1031 EXCHANGES	2006
HUD/FHA	
HUD/FHA APPRAISER TEST AND CERTIFICATION	2000
THE MODEL ENERGY CODE (MEC), U.S. DEPARTMENT OF ENERGY	1997
APPRAISING FHA PROPERTIES	1997
HOME BUILDERS ASSOCIATION OF LOUISVILLE	
SITE PLANNING	1997
BASICS OF BUILDING; BLUEPRINT READING, BUILDING CODES, SITING	1996
SHELBY COUNTY INDUSTRIAL FOUNDATION	
ENVIRONMENTAL ISSUES SEMINAR	1997
LORMAN EDUCATION SERVICES	
CURRENT ISSUES IN KENTUCKY REAL ESTATE DEVELOPMENT	2000
CLE INTERNATIONAL	
EMINENT DOMAIN, THE LAW OF CONDEMNATION AND LAND USE	2002
EASTERN KENTUCKY UNIVERSITY	
REAL ESTATE FINANCE, RST 330	1993
ADVANCED APPRAISAL APPLICATION / INCOME PROPERTY VALUATION, RST 410	1991
APPRAISAL OF RESIDENTIAL PROPERTY, RST 330	1990
UNIVERSITY OF LOUISVILLE	
BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION - MARKETING	1984

William E. Grigsby,

1320 Main Street
Shelbyville, KY 40065

Report of Structural Engineering and Safety Considerations Application for Wireless Communications Facility

TO: Louisville Metro Planning Commission

RE: Applicant: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility
Site Name: Montevista
Proposal: New Wireless Communication Facility
Location: 15203 Shelbyville Road; Louisville, KY 40245

Dear Commissioners:

My name is Bill Grigsby. I am a Structural Engineer, licensed in the Commonwealth of Kentucky. My qualifications are outlined in the resume attached as a part of this report. As set out below, I have reviewed the engineering drawings for the above referenced proposed new tower. The Structural Engineer of Record (SER) has certified that this tower meets or exceeds all building code requirements and engineering standards for a structure of this type. That being the case, in my opinion, it does not pose a threat to public health or safety for the following reasons:

Tower Description:

125' Tall Monopole with a 4' tall (approximate) lightning arrestor.

An eighteen-sided, tapered steel tower with approximate 18" and 50.26" (across the flats) diameters at the top and base respectively.

Designed to support antennae at the 120', 108', 96' and 84' elevations.

The SER has provided a drilled pier (caisson) foundation design for this tower. The drawing indicates an 7'-0" diameter by 26'-6" long reinforced concrete drilled pier centered under the tower. The drilled pier is in native soil and rock (SILTY CLAY, Medium Stiff, brown to 9' below grade and ROCK, Limestone, moderately to slightly weathered, moderately hard, gray below that to the bottom of the drilled pier at 26'-0" below grade). The SER has also provided a mat foundation design. The drawings indicated a 24'-6" square by 1'-6" thick reinforced concrete mat bearing on native soil (SILTY CLAY, Medium Stiff, brown) at 6'-0" below finish grade. There is a 7'-0" diameter reinforced concrete pier under the tower. The drilled pier foundation and the concrete pier on the mat foundation are both shown to extend to 6" above finish grade at the tower base.

All concrete elements will be reinforced in accordance with applicable codes and standards.

Blasting will not be used in any way in the construction of the foundation of this tower.

The structural steel material specified for the construction of towers of this type is typically ASTM A572, Grade 65 material. The tower base plate material for this tower is ASTM A572, Grade 50.

Design Standards:

The 2018 Kentucky Building Code - KBC (which is the 2015 International Building Code – IBC) governs construction within the Commonwealth of Kentucky. The IBC references ANSI Standard TIA/EIA-222 as the controlling standard for the design of these types of structures.

This tower was designed to conform to the requirements of ANSI Standard TIA/EIA-222-G, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures". (ANSI is the American National Standards Institute; EIA is the Electronic Industries Association; TIA is the Telecommunications Industry Association.) Revision G is the current revision of TIA/EIA-222.

This communication tower was designed by a Professional Engineer, registered in the Commonwealth of Kentucky. The SER has certified that the tower design conforms to the requirements of TIA/EIA-222-G.

The design wind speed specified for Kentucky in EIA/TIA-222-G is a wind speed of 89 miles per hour (mph) for a 3-second gust.

The "design wind speed" must not be construed as a "collapse wind speed". That is; saying that the tower is designed for 89-mph wind does not mean that the tower will collapse if subjected to a 90-mph wind. It can be demonstrated that towers of this nature can withstand wind speeds far more than 90-mph. In fact, some monopole cell towers have survived, intact, a direct hit from a tornado.

In addition to the wind load, the design of this tower assumes that the entire structure along with the antennae and other miscellaneous attachments are covered with a 0.75"-thick layer of ice along with a 30-mph wind. EIA/TIA-222 allows for this reduction of the design wind speed in combination with this radial ice loading.

Construction Procedures and Standards:

The Power of Design Group, LLC prepared a geotechnical report for this project (Re: Report No. 17-19666, dated 08/05/19). The geotechnical report provides foundation design data and criteria along with recommendations for foundation construction. The geotechnical report was based on testing performed and samples taken at the tower site. The report was prepared by a Licensed Professional Engineer registered in the Commonwealth of Kentucky.

The tower foundation design was based on the criteria and recommendations contained in the geotechnical engineer's report as well as recognized engineering principles. The tower foundation was designed by a Licensed Professional Engineer registered in the Commonwealth of Kentucky.

When the tower foundation is constructed, a representative of the geotechnical engineering firm will be on site for inspections to ensure that the findings outlined in the geotechnical report are consistent with the subsurface conditions encountered during construction and that the recommendations set forth in the geotechnical report are followed. Again, the geotechnical engineer is a Licensed Professional Engineer.

Construction of the tower foundation and erection of the tower are monitored by a "Special Inspector" under the provisions Chapter 17 of the International Building Code (2015 IBC).

All these levels of inspection and engineering control give the construction of cell towers a high level of quality assurance in the commercial construction industry.

Discussion of Structural Integrity:

There are conservatisms inherent in all tower construction regardless of the tower height. For example, wind is a “dynamic load”. However, the analysis of the tower is based on an “equivalent static force” that is calculated to model the dynamic load of the wind. The conversion of the dynamic load of the wind into an equivalent static force is very conservative. In other words, the calculation of the equivalent static force significantly **overestimates** the actual wind forces on the tower.

There are additional conservatisms involved in the analysis of the tower to distribute the equivalent static wind forces to the individual tower structural members. There are also conservatisms involved in the calculation of stress in the individual tower structural members.

There are factors of safety and conservatisms involved in determining the allowable stress levels in each individual tower structural member. For example, the code allows the engineer to utilize only 60% of the specified elastic strength or “yield strength” of a structural member in tension. The “elastic limit” for a structural member is defined as the point beyond which a member deflecting under a load will not rebound to its original shape when a load is removed. This is distinguished from the “ultimate strength”, where the structural member breaks under the load.

The specified elastic limit for the types of steel used to fabricate these types of structures is generally very conservative. For example, A572, Grade 65 steel would typically be specified for a tower of this type. This is a common grade of steel used to fabricate structural elements in the construction industry. The yield strength for grade 65 material is a stress of 65,000 pounds per square inch (psi). The actual yield strength for Grade 65 material is almost always greater than 65,000 psi and sometimes greater than 70,000 psi. Limiting the calculated stress to 70% of the specified yield strength of 65,000 psi for Grade 65 material can underestimate the actual capacity of a steel member by as much as fifty percent or more.

The specified ultimate strength of A572, Grade 65 material is typically around 80,000 psi or 1.24 times the specified yield strength. Again, the engineer is limited to about 70% of the yield strength when designing structural members. In other words, if the engineer pushed the stress levels right to the code allowable limit (which few engineers will do), the stress levels in the structural members subjected to a 90-mph wind will be less than 50% of the stress that would fracture that member.

There are fourteen (14) anchor bolts specified for this tower that are to be fabricated using 2.25” diameter ASTM A615, Grade 75 material. Anchor bolts are designed utilizing the “ultimate strength” of the anchor bolt material. The engineer is limited to about sixty-five percent (65%) of the “ultimate strength” (breaking strength) or eighty-five percent (85%) of the yield strength the anchor bolt material. And, just like the specified yield strength of Grade 65 material discussed above, the specified value for the breaking strength of the anchor bolt is conservative.

The accumulated effect of all these conservatisms and factors of safety (and others not discussed here) is that the actual wind speed at which this tower will “fail” is significantly higher than 90 mph. It is important to understand that the use of the word “fail” in the paragraphs above does not imply that the tower will fall over. The tower foundation is designed to ensure that it is not the weak link. In other words, the tower foundation is much stronger than the tower itself. The code prescribes a factor of safety against overturning of 1.67. The methodology used by engineers to calculate this factor of safety is conservative. The “allowable” design parameters provided by the geotechnical engineer and used in the foundation design typically have a factor of safety of at least 3.

The tower geometry assures that the tower is stronger at the base than at higher elevations. A structural failure of the tower will manifest itself in the top of the tower bending over, not breaking off and falling to the ground. It is my understanding that towers "failed" in exactly this fashion during Hurricane Andrew in Florida (wind speeds exceeded 140-mph during Hurricane Andrew). That is, the tops of the towers bent over, but did not break off and did not become wind-generated missiles.

"Failure" of the communication tower does not imply that the tower will break off at the base and fall over. Any discussion of "fall radius" is misleading because the tower will not simply fall over except in circumstances of sabotage, human misadventure, faulty construction practices or faulty materials. Because of the levels of control and inspection, the probability of faulty construction materials or faulty workmanship resulting in a catastrophic failure is minimal. Any failure in the tower will occur only under a very high wind and will manifest itself in the top of the tower bending over, not in the tower breaking off at the base and falling over.

In large cities around the country, there are buildings that are as tall as or taller than this proposed communication tower. I am unaware of any discussion of "fall radius" relative to any of these buildings. The design and construction of a monopole communication tower is much less complex than that of a so-called "skyscraper" and yet the communication tower is designed and constructed with levels of control and inspections like those for a skyscraper. It is safe to say that a heavily occupied skyscraper "falling" over in a large city, would be a far greater catastrophic disaster than a falling communication tower.

Extreme Winds (Tornadoes):

Building codes do not address designing for tornado level winds except for certain special structures, such as nuclear power plants. There are several reasons for this, the primary one being the very low probability of occurrence of a tornado at any given location. Another reason is that the cost to "tornado proof" a structure would exceed the cost to re-build a conventional structure in the aftermath of a tornado.

It is not clear that this tower would withstand a "direct hit" from a tornado. However, since the engineering controls over the design and construction of cell towers far exceeds that of any of the residential structures in the vicinity, it is almost certain that a communication tower will be the "last structure standing" in the aftermath of a tornado.

A major concern with respect to tornadoes is the issue of "tornado-generated missiles". A tornado-generated missile is any object picked up by the tornado and thrown great distances at fantastic speeds by the tremendous force of the wind. In the design of nuclear power plants, one of the more devastating design scenarios is a tornado-generated missile consisting of a telephone pole hitting the structure at 300-mph.

The communication tower will likely survive a "near-miss" by a tornado in one piece. The top of it may "bend over" but the tower will not break apart. If this communication tower takes a "direct hit" by a tornado, there is the possibility that pieces of the antennae assembly may become tornado-generated missiles. However, there are literally thousands of other objects near this communication site, most notably utility poles, which would be just as potentially devastating as tornado-generated missiles. To the extent that this communication tower is "one more potential missile", it does represent a minuscule increase in the risk of tornado related damage. However, this increase in risk is so small as to be zero for all practical purposes.

Below is photographic evidence of a monopole communication towers surviving extreme winds. The first photos show the aftermath of an F2/F3 tornado near Dunwoody, Georgia. An F2 tornado has wind speeds of 113 to 157-mph. An F3 tornado has wind speeds of 158 to 206-mph. This storm occurred at about 10:30pm on April 8, 1998. Records from the Climatic Data Center in Asheville, North Carolina indicate wind speeds up to 175-mph in this storm system. As can be seen in the photograph, the tower structure is undamaged. Dunwoody, Georgia is in DeKalb County. According to the EIA/TIA-222 standard the design wind speed for DeKalb County, Georgia is the same as that for Kentucky. Yet, this tower withstood a maximum wind speed of 175-mph.

ATLANTA TORNADO AFTERMATH



The next photos were taken at Mexico Beach, Florida several days after Hurricane Michael made landfall. Michael was a Category 4 hurricane with maximum, sustained wind speeds of 155 mph. Mexico Beach is just south of Panama City, Florida. The destruction of residential structures is evident in these photographs. Also evident is the collapse of the Mexico Beach Water tower. Water towers are designed to a higher standard than cellular antennae. ANSI TIA/EIA 222 specifies a design wind speed of 130 mph for this area of the Florida Coast. Yet, this tower withstood a maximum wind speed of 155-mph.

HURRICANE MICHAEL AFTERMATH



These photos from Georgia and Florida are very powerful illustrations of the conservatism inherent in the design of these types of structures.

In conclusion, the proposed communication tower has been certified to meet or exceed all building and engineering standards for towers of this type and will not pose a threat to public health or safety.

Respectfully Submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'W' followed by a horizontal line that curves upwards at the end.

William E. Grigsby
1302 Main Street / Shelbyville, KY 40065

William Edward Grigsby, Jr. PE SE
1302 Main Street
Shelbyville, Kentucky 40065

EDUCATIONAL BACKGROUND:

Anderson County High School – 1974
Curriculum: College Prep

Central Kentucky Area Vocational-Technical School – 1976
(Now Bluegrass Kentucky Technical College)
Curriculum: Civil and Architectural Drafting

University of Kentucky – BSCE 1980
Curriculum: Civil Engineering – Structural Emphasis

University of South Carolina – Graduate Studies 1981 to 1982
Curriculum: Structural Engineering
Completed 30% of courses for Masters Degree

PROFESSIONAL EXPERIENCE:

William Grigsby has over 35-years of experience as a structural engineer. He has been a licensed professional engineer for over 30-years and a licensed structural engineer for over 15-years. During his career, Mr. Grigsby has worked as a structural engineer on a variety of projects including the design of buildings and other structures associated with industrial, commercial, residential, educational, health care and utility facilities. He has designed structures using a wide variety of materials of construction including concrete, masonry, steel, wood, aluminum, fiberglass reinforced plastic, carbon fiber, etc. As a part of this experience, Mr. Grigsby has been working on cell towers for over 20-years starting as a consultant designing cell tower foundations for Bell South Mobility. He has worked on roughly 200 cell towers since then in many different roles from designing tower foundations to serving as an expert witness on tower safety before a variety of Planning Commissions and Public Service Commissions.

PROFESSIONAL REGISTRATION:

E.I.T Exam passed July 1980
P.E. Exam passed February 1985
Structural Engineer II Exam passed 2002
Structural Engineer I Exam passed 2006

Currently registered as a Licensed Professional Engineer in the following states:
Kentucky, West Virginia, North Carolina and Missouri

Currently registered as a Licensed Structural Engineer in the following states:
Kentucky and Illinois



December 11, 2019

Louisville Metro Planning Commission
c/o Steve Hendrix
Metro Development Center
444 S. 5th Street, Suite 300
Louisville, KY 40202

RE: Radio Frequency Engineering Statement
Application to Construct a Wireless Communications Facility
Location: 15203 Shelbyville Rd., Louisville, KY 40245
Applicant: New Cingular Wireless, PCS, LLC, d/b/a AT&T Mobility
Site Name: Montevista

Dear Commission Members:

I am providing this letter in reference to the above-referenced Application. The Radio Frequency Engineering Statement submitted as Exhibit N to the subject Uniform Application was prepared by my colleague, Mike Salvo, and by this letter I hereby state that I have reviewed said Statement and adopt the Statement's content and findings as my testimony in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Brian Matthews". The signature is stylized and cursive.

Brian Matthews
Senior RAN Engineer
AT&T Mobility

FW: 15203 Shelbyville Road-19-cell-0005

Hendrix, Steve <Steve.Hendrix@louisvilleky.gov>

Thu 11/14/2019 9:38 AM

To: Stephen Lentz <slentz@pikelegal.com>

fyi

From: Dutrow, Mark B
Sent: Thursday, November 07, 2019 3:28 PM
To: Hendrix, Steve
Subject: 15203 Shelbyville Road-19-cell-0005

Steve,

My only comment on this project is:

- Please add the following note to the plan set: "Easement shall be recorded prior to construction approval."
- Additional comments may be made once revised plan is submitted to case manager for review.
- If there are questions regarding Metro Public Works comments, please feel to meet with staff for clarification. We are located on the 3rd floor of the Metro Development Center. Appointments are not required but may reduce your wait time and are appreciated. If you would like to schedule a specific time, please contact Mark Dutrow at mark.dutrow@louisvilleky.gov or at (502)574-5542.

Mark B. Dutrow
Engineer
Planning & Design Services
Department of Develop Louisville
LOUISVILLE FORWARD
444 South Fifth Street, Third Floor
Louisville, KY 40202
502.574.5542
<https://louisvilleky.gov/government/planning-design>



**DEVELOP
LOUISVILLE**
LOUISVILLE FORWARD



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Bobbie Holsclaw
Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Jefferson County Clerk's Office.



INST # 2018294652

BATCH # 161174

JEFFERSON CO, KY FEE \$29.00

PRESENTED ON: 12-19-2018 8 08:33:02 AM

LODGED BY: BLUE WAVE DEPLOYMENT SERVICES LLC

RECORDED: 12-19-2018 08:33:02 AM

BOBBIE HOLSCLAW
CLERK

BY: BECKY SEARCY
INDEXING CLERK

BK: D 11310

PG: 695-702

Prepared by:

Dustin Billman

Blue Wave Deployment Services, LLC

13804 Lake Point Circle, Suite 101

Louisville, KY 40223



Return to:

New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration

575 Morosgo Drive NE

Atlanta, GA 30324

Re: Cell Site #: KYLSU1555
Cell Site Name: Montevista (KY)
Fixed Asset Number: 12568791
State: Kentucky
County: Jefferson

MEMORANDUM
OF
EASEMENT

This Memorandum of Easement is entered into on this 26 day of November, 2018 by and between Highview Baptist Church, Inc., a Kentucky non-profit corporation (a/k/a Trustees of Highview Baptist Church, Inc.), having a mailing address of 15203 Shelbyville Road, Louisville, KY 40245 (hereinafter referred to as "**Grantor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "**Grantee**").

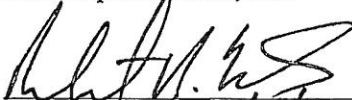
1. Pursuant to that certain Option and Easement Agreement between Grantor and Grantee ("**Agreement**") dated the 26 day of November, 2018 Grantor has granted Grantee an exclusive easement for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The easement term will be twenty five (25) years ("**Term**"), commencing on the effective date of written notification by Grantee to Grantor of Grantee's exercise of the Option (the "**Term Commencement Date**") subject to early termination as set forth in the Agreement.
3. The portion of the land granted to Grantee and associated access and utility easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Easement is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this

Memorandum of Easement and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Easement as of the day and year first above written.

"GRANTOR"

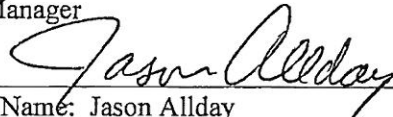
Highview Baptist Church, Inc.

By: 
Print Name: Robert H. Evans
Its: Director & operations Pastor
Date: 10/22/18

"GRANTEE"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

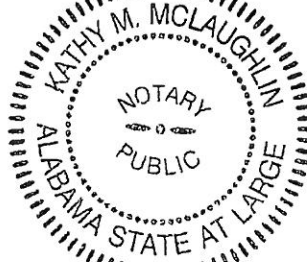
By: 
Print Name: Jason Allday
Its: Area Manager Network Engineering TNKY Site Acquisition
Date: 4/26/18

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

GRANTEE ACKNOWLEDGMENT

STATE OF ALABAMA)
) ss:
COUNTY OF JEFFERSON)

On the 26 day of November, 2018, before me personally appeared Jason Allday, and acknowledged under oath that he is the Area Manager Network Engineering TNKY Site Acquisition of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Grantee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Grantee.



Kathy M. McLaughlin
Notary Public: Kathy M. McLaughlin
My Commission Expires: 10-20-2020

GRANTOR ACKNOWLEDGMENT

STATE OF Kentucky)
) ss:
COUNTY OF Jefferson)

I CERTIFY that on October 22, 2018, Robert Evans [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the Director [title] of Highview Baptist Church, Inc., the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Rhonda Woodworth
Notary Public: LD 563352
My Commission Expires: 09/04/2020

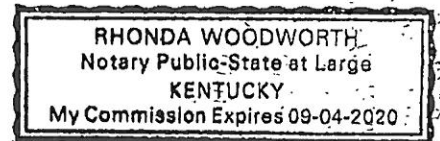


EXHIBIT 1

DESCRIPTION OF EASEMENT

Page 1 of 4

to the Memorandum of Easement dated November 26, 2018, by and between Highview Baptist Church, Inc, a Kentucky non-profit corporation, as Grantor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Grantee.

The Property is legally described as follows:

15203 Shelbyville Road

Located on the North side of Shelbyville Road (US 60) and being Revised Tract 1, containing 27.506 acres, as shown on the Minor Subdivision Plat attached to Deed of Consolidation of record in Deed Book 8509, Page 979, in the Office of the Clerk of the County Court of Jefferson County, Kentucky.

Being a part of the same property conveyed to Highview Baptist Church, Inc. by these instruments:

- Deed dated March 29, 2001, recorded in Deed Book 7618, Page 155**
- Deed dated March 29, 2001, recorded in Deed Book 7618, Page 162**
- Deed dated March 29, 2001, recorded in Deed Book 7618, Page 168**
- Deed dated March 29, 2001, recorded in Deed Book 7618, Page 174**

all in the Office of the Clerk of Jefferson County, Kentucky.

The Easement is described and/or depicted as follows:

PROPOSED EASEMENT AGREEMENT AREA

THE FOLLOWING IS A DESCRIPTION OF THE PROPOSED EASEMENT AGREEMENT AREA TO BE GRANTED FROM THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN THE JEFFERSON COUNTY, KENTUCKY CLERKS OFFICE AS DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARING DATUM USED HEREIN IS BASED UPON KENTUCKY STATE PLANE COORDINATE SYSTEM, SINGLE ZONE, NAD 83, FROM A REAL TIME KINEMATIC GLOBAL POSITIONING SYSTEM OBSERVATION USING THE KENTUCKY TRANSPORTATION CABINET REAL TIME GPS NETWORK COMPLETED ON JANUARY 2, 2014.

BEGINNING AT A FOUND 1/2" REBAR IN THE NORTHEAST CORNER TO THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000 AND BEING THE NORTHWEST CORNER TO THE PROPERTY CONVEYED TO MICHAEL R. MOUSER AS RECORDED IN DEED BOOK 6358, PAGE 633, ALSO BEING THE SOUTH LINE OF THE PROPERTY CONVEYED TO SHS PROPERTIES I, LLC AS RECORDED IN DEED BOOK 9744, PAGE 885, FOR REFERENCE SAID REBAR IS N23°54'50"E 626.99' FROM A FOUND 1/2" PIPE IN THE CORNER TO SAID HIGHVIEW BAPTIST AND MOUSER; THENCE WITH THE LINE OF SAID HIGHVIEW BAPTIST AND MOUSER, S23°54'50"W 185.00' TO A SET 1/2" REBAR, 18" LONG, CAPPED "PATTERSON PLS 3136", HEREAFTER REFERRED TO AS A "SET IPC"; THENCE LEAVING SAID COMMON LINE AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST, N65°27'56"W 185.00' TO A SET IPC; THENCE N23°54'50"E 185.00' TO A SET IPC IN THE LINE OF SAID HIGHVIEW BAPTIST AND SHS PROPERTIES; THENCE WITH THE LINE OF SAID HIGHVIEW BAPTIST AND SHS PROPERTIES, S65°27'56"E 185.00' TO THE POINT OF BEGINNING CONTAINING 34,222.993 SQUARE FEET AS PER SURVEY BY MARK E. PATTERSON, PLS #3136 DATED JANUARY 2, 2014.

PROPOSED 10' UTILITY EASEMENT

THE FOLLOWING IS A DESCRIPTION OF THE PROPOSED 10' UTILITY EASEMENT TO BE GRANTED FROM THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN THE JEFFERSON COUNTY, KENTUCKY CLERKS OFFICE AS DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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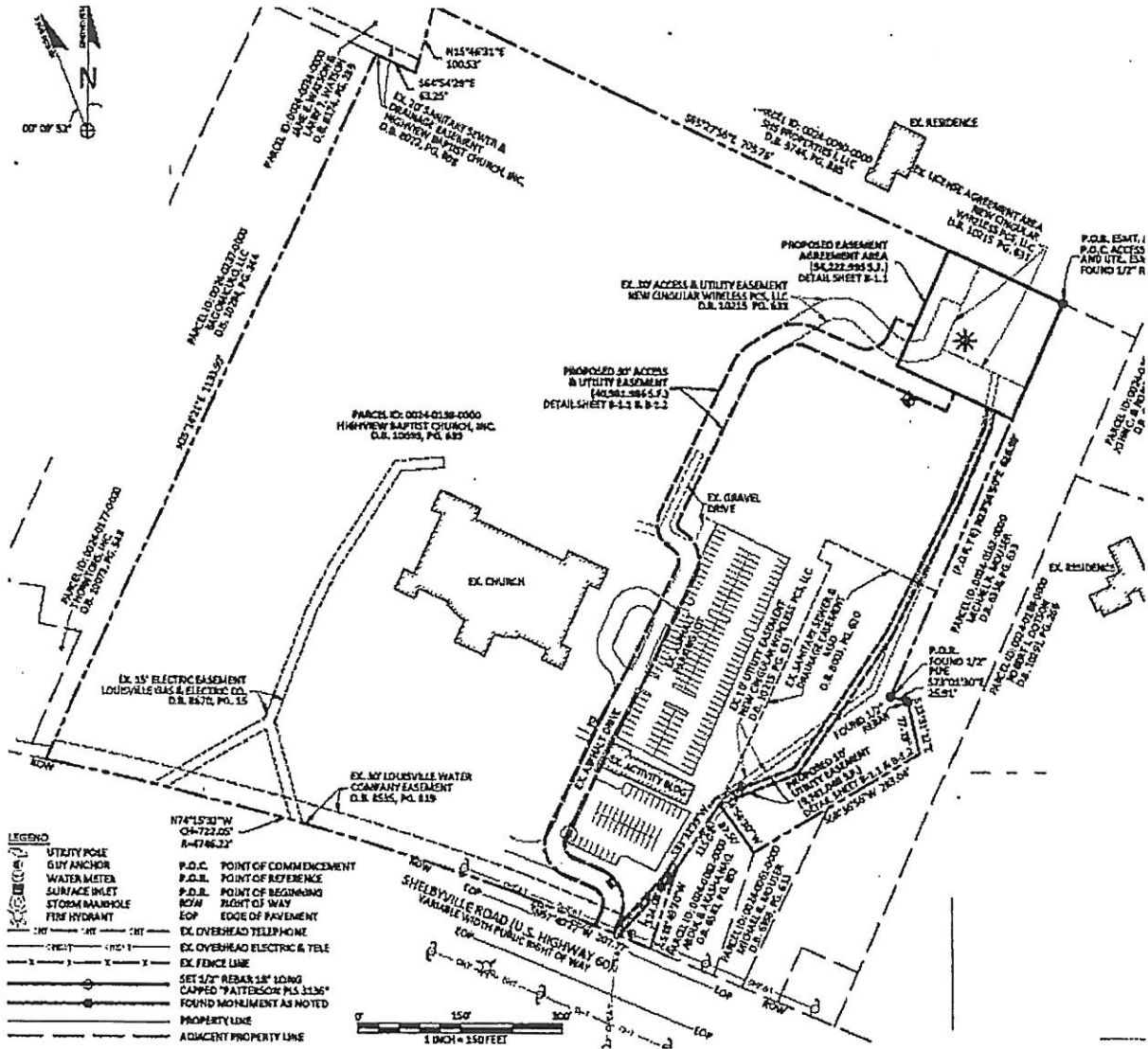
COMMENCING AT A FOUND 1/2" REBAR IN THE NORTHEAST CORNER TO THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000 AND BEING THE NORTHWEST CORNER TO THE PROPERTY CONVEYED TO MICHAEL R. MOUSER AS RECORDED IN DEED BOOK 6358, PAGE 633, ALSO BEING THE SOUTH LINE OF THE PROPERTY CONVEYED TO SHS PROPERTIES I, LLC AS RECORDED IN DEED BOOK 9744, PAGE 885, FOR REFERENCE SAID REBAR IS N23°54'50"E 626.99' FROM A FOUND 1/2" PIPE IN THE CORNER TO SAID HIGHVIEW BAPTIST AND MOUSER; THENCE WITH THE LINE OF SAID HIGHVIEW BAPTIST, MOUSER AND SAID EASEMENT AGREEMENT AREA, S23°54'50"W 185.00' TO A SET 1/2" REBAR, 18" LONG, CAPPED "PATTERSON PLS 3136", HEREAFTER REFERRED TO AS A "SET IPC"; THENCE LEAVING SAID COMMON LINE AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST, N65°27'56"W 28.06' TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASEMENT AGREEMENT AREA, S10°49'54"W 26.37'; THENCE S23°22'09"W 117.85'; THENCE S27°05'12"W 217.62'; THENCE S34°24'05"W 242.56'; THENCE S68°08'31"W 123.61' TO THE CORNER OF THE PROPERTY OF SAID HIGHVIEW BAPTIST AND CORNER TO THE PROPERTY CONVEYED TO ABDUL & AKASHA HAQ AS RECORDED IN DEED BOOK 8583, PAGE 852; THENCE WITH SAID COMMON LINE, S33°32'39"W 137.92' (LEAVING SAID COMMON LINE AT 115.04' AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST); THENCE S43°10'49"W 99.80'; THENCE S23°23'38"W 8.14' TO THE SOUTH LINE OF SAID HIGHVIEW BAPTIST AND THE NORTH LINE OF THE RIGHT OF WAY OF SHELBYVILLE ROAD (U.S. HIGHWAY 60); THENCE WITH SAID LINE N67°40'27"W 10.00'; THENCE LEAVING SAID LINE AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST, N23°23'38"E 10.08'; THENCE N43°10'49"E 100.70'; THENCE N33°32'39"E 140.19'; THENCE N68°08'31"E 123.69'; THENCE N34°24'05"E 238.88'; THENCE N27°05'12"E 216.66'; THENCE N23°22'09"E 116.42'; THENCE N10°49'54"E 27.71' TO THE SOUTH LINE OF SAID EASEMENT AGREEMENT AREA; THENCE WITH SAID EASEMENT AGREEMENT AREA, S65°27'56"E 10.29' TO THE POINT OF BEGINNING CONTAINING 9,741.048 SQUARE FEET AS PER SURVEY BY MARK E. PATTERSON, PLS #3136 DATED JANUARY 2, 2014.

PROPOSED 30' / VARIABLE WIDTH ACCESS & UTILITY EASEMENT

THE FOLLOWING IS A DESCRIPTION OF THE PROPOSED 30' / VARIABLE WIDTH ACCESS & UTILITY EASEMENT TO BE GRANTED FROM THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN THE JEFFERSON COUNTY, KENTUCKY CLERKS OFFICE AS DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARING DATUM USED HEREIN IS BASED UPON KENTUCKY STATE PLANE COORDINATE SYSTEM, SINGLE ZONE, NAD 83, FROM A REAL TIME KINEMATIC GLOBAL POSITIONING SYSTEM OBSERVATION USING THE KENTUCKY TRANSPORTATION CABINET REAL TIME GPS NETWORK COMPLETED ON JANUARY 2, 2014.

COMMENCING AT A FOUND 1/2" REBAR IN THE NORTHEAST CORNER TO THE PROPERTY CONVEYED TO HIGHVIEW BAPTIST CHURCH, INC. AS RECORDED IN DEED BOOK 10699, PAGE 639, PARCEL ID: 0024-0138-0000 AND BEING THE NORTHWEST CORNER TO THE PROPERTY CONVEYED TO MICHAEL R. MOUSER AS RECORDED IN DEED BOOK 6358, PAGE 633, ALSO BEING THE SOUTH LINE OF THE PROPERTY CONVEYED TO SHS PROPERTIES I, LLC AS RECORDED IN DEED BOOK 9744, PAGE 885, FOR REFERENCE SAID REBAR IS N23°54'50"E 626.99' FROM A FOUND 1/2" PIPE IN THE CORNER TO SAID HIGHVIEW BAPTIST AND MOUSER; THENCE WITH THE LINE OF SAID HIGHVIEW BAPTIST, MOUSER AND SAID EASEMENT AGREEMENT AREA, S23°54'50"W 185.00' TO A SET 1/2" REBAR, 18" LONG, CAPPED "PATTERSON PLS 3136", HEREFTER REFERRED TO AS A "SET IPC"; THENCE LEAVING SAID COMMON LINE AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST, N65°27'56"W 92.50' TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASEMENT AGREEMENT AREA, S24°32'04"W 30.00'; THENCE N65°27'56"W 224.37'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 35.00', S86°23'51"W 33.01'; THENCE S58°15'38"W 40.43'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 35.00', S42°22'04"W 19.17'; THENCE S26°28'29"W 242.46'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 10.00', S17°47'44"E 13.96'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00', S17°49'20"E 69.77'; THENCE S26°25'15"W 162.03'; THENCE S29°08'23"W 83.01'; THENCE S25°15'41"W 185.39'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00', S20°51'25"E 28.83'; THENCE S66°58'31"E 43.39'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 55.37', S21°47'27"E 78.55'; THENCE S23°23'38"W 23.59' TO THE SOUTH LINE OF SAID HIGHVIEW BAPTIST AND THE NORTH LINE OF THE RIGHT OF WAY OF SHELBYVILLE ROAD (U.S. HIGHWAY 60); THENCE WITH SAID LINE N67°40'27"W 30.01'; THENCE LEAVING SAID LINE AND TRAVERSING THE LAND OF SAID HIGHVIEW BAPTIST, N23°23'38"E 24.14'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 25.37', N21°47'27"W 35.99'; THENCE N66°58'31"W 43.39'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00', N20°51'25"W 72.08'; THENCE N25°15'41"E 186.40'; THENCE N29°08'23"E 83.32'; THENCE N26°25'15"E 161.32'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00', N17°49'20"W 27.91'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 40.00', N17°47'44"W 55.84'; THENCE N26°28'29"E 242.46'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 65.00', N42°22'04"E 35.60'; THENCE N58°15'38"E 40.43'; THENCE WITH THE CHORD OF A CURVE TO THE RIGHT HAVING A RADIUS OF 65.00', N86°23'51"E 61.31'; THENCE S65°27'56"E 66.49'; THENCE WITH THE CHORD OF A CURVE TO THE LEFT HAVING A RADIUS OF 35.00', N69°13'27"E 49.76'; THENCE N23°54'50"E 26.75'; THENCE S66°05'10"E 30.00' TO THE WEST LINE OF SAID EASEMENT AGREEMENT AREA; THENCE WITH SAID EASEMENT AGREEMENT AREA, S23°54'50"W 62.45' TO A SET IPC; THENCE S65°27'56"E 92.50' TO THE POINT OF BEGINNING CONTAINING 40,981.986 SQUARE FEET AS PER SURVEY BY MARK E. PATTERSON, PLS #3136 DATED JANUARY 2, 2014.





1578 Highway 44 East, Suite 6
P.O. Box 369
Shepherdsville, KY 40165-0369
Phone (502) 955-4400 or (800) 516-4293
Fax (502) 543-4410 or (800) 541-4410

December 11, 2019

VIA FEDEX

Louisville Metro Planning Commission
c/o Steve Hendrix
Metro Development Center
444 S. 5th Street, Suite 300
Louisville, KY 40202

RE: Exclusion of Radio Frequency Considerations Regarding
Application to Construct a Wireless Communications Facility
Location: 15203 Shelbyville Road, Louisville, KY 40245
Applicant: New Cingular Wireless, PCS, LLC, d/b/a AT&T Mobility
Site Name: Montevista

Dear Commission Members:

I am providing this correspondence for inclusion in the administrative record of the above proceeding and am providing a contemporaneous copy to Planning Commission Attorney. The purpose of this correspondence is to address a potential issue that the Planning Commission ("Commission") may face in the course of consideration of the above-referenced matter and to request for appropriate measures to be taken by the Commission and/or staff or legal counsel to exclude receipt of testimony and other evidence regarding the environmental effects of radio frequency emissions in connection with any public hearing held to review the Uniform Application for construction of a cellular tower.

From our experience handling similar applications we have come to anticipate the possibility that radio frequency interference issues or health effect concerns may be raised from time to time in the context of public hearings. However, these issues are outside the scope of the Commission's, since radio frequency emissions are the subject of federal regulation, including regulation by the Federal Communications Commission (the "FCC").

Local regulation of wireless communications facility siting based upon radio frequency issues is prohibited specifically by the Telecommunications Act of 1996 and generally as a result of the FCC's pervasive jurisdiction over this area of regulatory concern. The Telecommunications Act of 1996 flatly prohibits local regulation of

wireless communications facilities on the basis of the environmental effects of radio frequency emissions. This prohibition is codified at 47 USC Section 332(c)(7), as follows:

“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s regulations concerning such emissions.” (emphasis added). *Id.* at 47 U.S.C. Section 332(c)(7).

A copy of the relevant FCC license granted to Applicant for the area to be served by the proposed wireless telecommunications facility was provided as part of the Uniform Application. As an FCC licensee, Applicant is subject to the FCC regulation referenced at 47 U.S.C. Section 332(7)(B)(iv), and courts have recognized that the Telecommunications Act prohibits state and local governments from regulating wireless telecommunications facilities on the basis of radio frequency interference issues.

Even though federal law makes Kentucky planning commissions subject to the aforementioned statutory prohibition regardless of any companion state statute, the Kentucky Legislature has used almost identical language in adopting the same statutory prohibition in KRS 100.986(1).

For further reference by the Commission's attorney, I have attached a memorandum discussing case law authority on these issues.

In light of federal and state statutory prohibitions, it is clear that an inquiry into alleged radio frequency issues by the Commission as part of this review would put the Commission directly at odds with the Federal Communications Act, the Telecommunications Act of 1996, FCC policy, and Kentucky law. Consequently, the introduction of any radio frequency interference or health effects evidence during the public hearing would likely be improperly and unfairly prejudicial to the Applicant and outside the Commission's proper scope of review.

Applicant requests that the Commission implement affirmative measures to prevent introduction and consideration of testimony and other evidence on radio frequency issues at the public hearing and from its deliberations on the subject application. Excluding radio frequency and health effect evidence from the public hearing will avoid potential conflicts with federal law and the proper exercise of jurisdiction over these matters by the FCC and will protect the validity of the Commission's ultimate decision on my client's proposal. It is our expectation that the Commission will cut off and bar improper discussion in order to avoid the introduction of prohibited evidence so that the hearing will remain focused on the land use planning issues which are within the Commission's jurisdiction.

Please file this correspondence and enclosures in the administrative case file for the Application and do not hesitate to contact us should you have any questions or comments concerning this information.

Sincerely,

A handwritten signature in blue ink that reads "David A. Pike". The signature is written in a cursive style with a prominent initial "D".

David A. Pike
Attorney for Applicant

Enclosure

(Via E-mail to John Carroll and Laura Ferguson & Overnight Delivery to Planning Commission Staff)

MEMORANDUM

FEDERAL PROHIBITION ON LOCAL REGULATION OF WIRELESS COMMUNICATIONS FACILITIES ON THE BASIS OF THE ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS

Radio frequency considerations have been preempted specifically by the Telecommunications Act of 1996 and generally as a result of the Federal Communications Commission's ("FCC's") pervasive jurisdiction over this area of regulatory concern. Because of this preemption, local zoning bodies should take care to avoid the introduction of improper radio frequency evidence in proceedings on an application requesting approval for a wireless communications facility so that the focus remains on the land use planning issues that are the proper subject for review and decision.

The Federal Telecommunications Act of 1996, as codified at 47 U.S.C. Section 332(7)(B)(iv) (the "Act"), provides: "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's regulations concerning such emissions." Accordingly, federal and state courts have recognized that the Telecommunications Act prohibits state and local governments from regulating wireless telecommunications facilities on the basis of radio frequency interference issues.

Case precedent supports the Federal statutory prohibition in reference to applications of the type now pending. The U.S. Supreme Court's 2015 Opinion in T-Mobile South, LLC v. City of Roswell Georgia, 135 S.Ct. 808, 190 L.Ed.2d 679 (U.S. 2015) explains: "The Act provides that localities ... may not regulate the construction of personal wireless service facilities "on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications Commission's] regulations concerning such emissions." §§332(c)(7)(B)(i)(I), (iv)." *Id.* at 688-689.

As far back as 2000, the U.S. Court of Appeals for the Sixth Circuit¹ recognized the statutory exclusion of radio frequency emissions issues in wireless site permitting cases in its Opinion in Telespectrum, Inc. v. PSC, 227 F.3d 414 (6th Cir. 2000).² The U.S. Court of Appeals explained:

¹ Kentucky, Tennessee, Ohio, and Michigan are in the jurisdiction of the Sixth Circuit.

²Even before the Act's specific exemption as to wireless service facilities, FCC preemption on emissions issues had long since been established. Broyde v. Gotham Tower, Inc., 13 F.3rd 994 (6th Cir. 1994) explained the preeminence of FCC regulation:

"... [W]e recognize that concerns of health risks due to the emissions may not constitute substantial evidence in support of denial by statutory rule, as no state or local government or instrumentality thereof may regulate the construction of personal wireless facilities "on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." 47 U.S.C. § 332(c)(7)(B)(iv)." *Id.* at 424.

Another controlling precedent supporting the prohibition is the U.S. Court of Appeals for the Sixth Circuit Opinion in New Par d/b/a Verizon Wireless v. City of Saginaw, 301 F.3d 390 (6th Circuit 2002). In a decision overturning a local government denial of a tower permit, the U.S. Court of Appeals stated:

"We conclude that the Board's denial of New Par's variance request was not supported by substantial evidence contained in a written record. Only three concerns about the cellular tower were raised at the Board meetings: (1) aesthetics, (2) health and safety issues regarding electromagnetic emissions; and (3) whether New Par could instead put the tower on railroad property owned by CSX. [T]he Act explicitly prohibits local board decision making "on the basis of the environmental effects of radio frequency emissions to the extent such facilities comply with the Commission's regulations concerning such emissions." *Id.* at 398.

Of course, in any judicial review of a denial of the Uniform Application by the Commission, a District Court would apply the law of the Sixth Circuit. Fortunately, the Sixth Circuit's direction is unambiguous. In 2012, the U.S. Court of Appeals for the Sixth Circuit in its T-Mobile Central, LLC v. Charter Township of West Bloomfield, 691 F.3d 794, 800 (6th Cir. 2012) Opinion was very clear regarding the express application of the Telecommunications Act's limitations on local governments authority to consider RF

The plaintiffs, residents of a nearby neighborhood, claim that the radio signals broadcast from Gotham Tower cross their property, leaving behind a wake of malfunctioning household appliances.

...

Resolution of this matter, however, turns on a single issue: the existence of an irreconcilable conflict between the FCC's exercise of exclusive jurisdiction over the regulation of radio frequency interference and the imposition of common law standards in a damages action. As the Supreme Court recognizes, the FCC jurisdiction "over technical matters" associated with the transmission of radio signals "is clearly exclusive." *Head v. New Mexico [Board/Commission] of City Councils in Optometry*, 374 U.S. 424, 430 n. 6, ... (1963)) ... The radio signal interference at issue here falls within the FCC's technical domain. *Id.* at 996-997.

emissions evidence. In reviewing a local government denial of a wireless facility application, the Sixth Circuit explained:

"... There was no evidence whatsoever that the wireless facility would have any impact on the conifers, beyond Mr. Grondin's accusation. Further, concerns that RF emissions could potentially impact trees or children at the daycare were prohibited by statute as grounds to deny a wireless permit. "No state or local government or instrumentality thereof may regulate the construction of personal wireless facilities on the basis of environmental effects of RF emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions. 47 U.S.C. Section 332(c)(7)(B)(iv)...." (Emphasis added) *Id.* at 800.

Thus, the U.S. District Courts and local governments in the Sixth Circuit have unequivocal guidance from the relevant U.S. Court of Appeals on the continuing validity of the prohibition on regulation of the permitting of wireless facilities on the basis of purported environmental effects of radio frequency emissions. Other federal circuits have similarly applied the statutory prohibition.³ The U.S. District Courts in the Sixth Circuit are obligated to and have followed this guidance.⁴

³ T-Mobile Northeast LLC v. Loudon County Board of Supervisors, 748 F.3d 185 (4th Cir. 2014), the Fourth Circuit Court of Appeals strongly supported the statutory prohibition on reliance on radio frequency emissions testimony:

"The Board contends on appeal that the district court erred in ordering it to grant T-Mobile permits to construct the facility at the Silo Site in Lovettsville on the basis that the Board illegally relied on the environmental effects of radio frequency emissions. See 47 U.S.C. § 332(c)(7)(B)(iv). The Board argues that this reason, albeit illegal, was given by only one Board member and therefore was "not binding on the Board as a whole." The Board also argues that even if this reason were binding on it, its decision to deny the application was also based on valid reasons that were sufficient to deny the application, and that therefore the court's injunction was simply punishment for the inclusion of an illegal reason.

At its October 17, 2011 meeting, the Board rejected T-Mobile's application for the Silo Site, citing the silo's "significant structural presence" and related aesthetic complaints. At the suggestion of Supervisor Miller, the Board also included as a reason for rejection the antenna's "negative environmental impact." As Supervisor Miller explained, "We've had speaker after speaker come in here and talk to us about their concerns of being exposed to radiation from an evolving, dynamic technology." With particular relevance to the issue before us, in proposing his amendment, Supervisor Miller told the Board that it was made "notwithstanding the prohibition on what I'm going to propose [i]n the Telecommunications Act of 1996."

The Sixth Circuit recently reemphasized the federal statutory prohibition of consideration of radio frequency emissions effects in its 2017 Opinion styled Robbins v. New Cingular Wireless PSC, LLC, 854 F.3d 315 (6th Cir. 2017):

"Congress passed the TCA to foster industry competition in local markets, encourage the development of telecommunications technology, and provide consumers with affordable access to telecommunications services. *Telecommunications Act of 1996*, Preamble, *Pub. L. No. 104-104*, 110 Stat. 56 (1996). The TCA furthers those goals by preventing

Based on this record, it is thus indisputable that the Board as a whole regulated on the basis of radio frequency emissions, a prohibited basis under the Act. See 47 U.S.C. § 332(c)(7)(B)(iv). This explicit statutory prohibition against regulating the placement, construction, and modification of wireless facilities "on the basis of the environmental effects of radio frequency emissions" is a limitation imposed by the Act on the Board's authority. And the fact that the Board relied on valid reasons to support its decision does not immunize its violation of a statutory limitation."

We also agree with the district court that in the circumstances presented -- where radio frequency emissions were a genuine and substantial concern of the Board and where the County Planning Commission, when considering factors other than radio frequency emissions, found the Silo Site application in compliance with the existing criteria for evaluating such applications -- the matter should not be remanded to the Board. The district court properly interpreted the record in concluding that while the Board would, on remand, omit its concerns over radiation when giving reasons for denial of the application, the radiation concerns would nonetheless persist as part of the decision making process. To reject the district court's conclusions in the circumstances presented in this case would mock Congress's prohibition against the use of radio frequency emissions as a basis for regulating wireless facilities when those emissions were in compliance with FCC regulations. See 47 U.S.C. § 332(c)(7)(B)(iv)." *Id.* at 192-195.

⁴Am. Towers, Inc. v. Wilson County, 2014 U.S. Dis. LEXIS 131 (M.D. Tenn. 2014)("The legal problem for Wilson County - and the reason the stated worries about the tower's impact on the school are not substantial evidence that can support the county's denials - is that health concerns are an impermissible ground of denial under the TCA. See 47 U.S.C. Section 332(c)(7)(B)(iv)..."); T-Mobile Central, LLC v. City of Fraser, 675 F.Supp.2d 721, 732 (S.D. Michigan 2009).

local governments from impeding the siting and construction of cell towers that conform to the FCC's RF-emissions standards. See 47 U.S.C. § 332(c)(7)(B)(iv). By delegating the task of setting RF-emissions levels to the FCC, Congress authorized the federal government—and not local governments—to strike the proper balance between protecting the public from RF-emissions exposure and promoting a robust telecommunications infrastructure. See *id.*; *In the Matter of Procedures for Reviewing Requests for Relief from State & Local Regulations Pursuant to Section 332(c)(7)(b)(v) of the Commc'ns Act of 1934 in the Matter of Guidelines for Evaluating the Env'tl. Effects of Radiofrequency Radiation*, 12 F.C.C. Rcd. 13494, 13505 (1997)." *Id.* at 319-320.

In short, the U.S. Court of Appeals for the Sixth Circuit, in multiple published opinions from 2000 to 2017 has upheld and enforced the federal Telecommunications Act of 1996 prohibition on regulation of proposed cellular towers based on environmental effects of radio frequency emissions.

KENTUCKY STATUTORY PROHIBITION ON LOCAL REGULATION OF WIRELESS COMMUNICATIONS FACILITIES ON THE BASIS OF THE ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS

The Kentucky Legislature has effectively incorporated the federal statutory prohibition into KRS100.986(1):

"In regulating the placement of cellular antenna towers, a planning commission shall not:

(1) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;" (Emphasis added). *Id.* at KRS 100.986(1).

KRS 446.010(39) provides "As used in the statute laws of this state, unless the context requires otherwise: ... (39) "shall" is mandatory;" Thus, a planning commission has no discretion to fail to comply with KRS 100.986(1). The statutory prohibition against consideration of environmental effects of radio frequency emissions is mandatory.

CONCLUSION

In summary, the statutory prohibition of basing a wireless permitting decision on the effects of radio frequency emissions is unquestionably binding on local governments in Kentucky. 47 U.S.C. § 332(c)(7)(B)(iv) has been recognized by the U.S. Supreme Court, the federal courts in the Sixth Circuit, and the federal courts of other circuits since shortly after adoption of the Act in 1996. The Kentucky Legislature has adopted the same prohibition at KRS 100.986(1).

Applicant requests the Commission make its decision on the Application consistent with such federal and state statutes and precedent in order to avoid violation of the Applicants' clear rights in connection with the consideration of the Application pursuant to all applicable law.