

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS )  
PCS, LLC FOR ISSUANCE OF A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT A WIRELESS COMMUNICATIONS ) CASE NO.  
FACILITY IN THE COMMONWEALTH OF ) 2013-00300  
KENTUCKY IN THE COUNTY OF HARLAN )  
)  
SITE NAME: EVARTS )

ORDER

On August 5, 2013, New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility ("Applicant") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a monopole antenna tower not to exceed 189 feet in height, with attached antenna, to be located at 9811 KY Highway 38, Evarts, Harlan County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 51' 58.04" by West Longitude 83° 11' 14.76".<sup>1</sup>

The Applicant has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon the information contained in the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and a Licensed Professional Engineer has certified the plans.

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<sup>1</sup> An existing tower owned by East Kentucky Network, LLC, d/b/a Appalachian Wireless and located near the proposed facility was identified by the Applicant as a suitable structure for co-location, but Applicant's request for co-location was denied by Appalachian Wireless.

Pursuant to 807 KAR 5:063, the Applicant has notified the County Judge/Executive of the proposed construction and filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited comments and informed the recipients of their right to request intervention. To date, no public comments have been filed with the Commission.

The Applicant provided notice to the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") of the proposed construction. However, the Applicant has received notification from both the FAA and KAZC that approval of the proposed construction is not required because the proposed tower's above ground-level height of 189 feet does not exceed the review criteria of 200 feet as set forth by both the FAA and KAZC.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the Applicant has demonstrated that a facility is necessary to provide adequate utility service and that, therefore, a Certificate of Public Convenience and Necessity to construct the proposed facility should be granted.

Pursuant to KRS 278.280, the Commission is required to determine proper practices to be observed when it finds, upon complaint or on its own motion, that the facilities of any utility subject to its jurisdiction are unreasonable, unsafe, improper, or insufficient. To assist the Commission in its efforts to comply with this mandate, the Applicant should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its application and this Order. Upon receipt of such notice, the Commission may, on its own motion, institute proceedings to consider the

proper practices, including removal of the unused antenna tower, which should be observed by the Applicant.

The Applicant also filed a motion requesting a deviation from the Commission's rules of procedure, 807 KAR 5:001, Section 7(1), to authorize the filing of an original application and four copies, rather than an original and ten copies, as specified in that regulation. However, as the application is for the construction of a cellular telecommunications tower, the applicable regulation, 807 KAR 5:063, Section 1(1)(a)1, requires only the filing of an original and five copies. Having considered the motion to deviate, the Commission finds that it should be granted.

IT IS THEREFORE ORDERED that:

1. The Applicant is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a monopole antenna tower not to exceed 189 feet in height, with attached antenna, and is to be located at 9811 KY Highway 38, Evarts, Harlan County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 51' 58.04" by West Longitude 83° 11' 14.76".

2. The Applicant shall immediately notify the Commission in writing if, after the antenna tower is built and utility service is commenced, the tower is not used for a period of three months in the manner authorized by this Order.

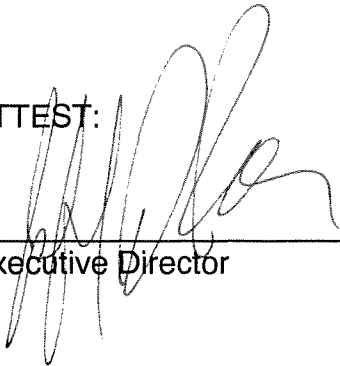
3. Documents filed, if any, in the future pursuant to ordering paragraphs 2 and 3 herein shall reference this case number and shall be retained in the utility's general correspondence files.

4. Applicant is granted deviation from the filing requirements in 807 KAR 5:063, Section 1(1)(a)1.

By the Commission

ENTERED  
SEP 11 2013  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2013-00300

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