

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS	)	
PCS, LLC, D/B/A AT&T MOBILITY FOR ISSUANCE	)	
OF A CERTIFICATE OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY TO CONSTRUCT A WIRELESS	)	2018-00031
COMMUNICATIONS FACILITY IN THE	)	
COMMONWEALTH OF KENTUCKY IN THE	)	
COUNTY OF OWEN	)	

ORDER

On February 15, 2018, New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (“AT&T Mobility”), filed an application seeking a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a wireless telecommunications facility. On March 23, 2018, Don Arnold and Deborah Arnold (the “Arnolds”) sought intervention in this matter and requested that the Commission conduct an evidentiary hearing or public meeting in which they could participate. Having considered the materials at issue and being otherwise sufficiently advised, the Commission denies the Arnolds’ request for intervention and for the scheduling of an evidentiary hearing or public hearing.

The wireless telecommunications facility proposed by AT&T Mobility consists of a tower to be located at 410 Fortner Ridge Road, Owenton, Kentucky, on a parcel of land located entirely within Owen County, Kentucky. AT&T Mobility filed evidence that all property owners within 500 feet or contiguous to the proposed site for the wireless telecommunications facility, including the Arnolds, had been notified of the proposed construction.

On March 7, 2018, the Arnolds filed a public comment with the Commission, which was placed into the public record for this matter. On March 23, 2018, the Arnolds filed a request for intervention and for an evidentiary hearing, stating in whole:

We (Don M. and Deborah L. Arnold) wish to intervene in the matter of the Proposed Wireless Communications Facility, Docket# 2018-00031.

Therefore, per 807 KAR 5:063, Section 4, we are hereby requesting a Public Hearing regarding the proposed Wireless Communications Facility, Docket #2018-00031 be held.

Requestors:  
Don M. and Deborah L. Arnold  
99 Pleasant Ridge Avenue  
Fort Mitchell, KY 41017

We oppose the construction of a Wireless Communications Facility at the location proposed and wish to participate in an evidentiary hearing on the matter.

Per 807 KAR 5:063, Section 4(3), we are hereby including our request to intervene in the Public Service Commission proceedings on the application.

Thank you for your consideration in this matter.

The Attorney General is the only person with a statutory right to intervene in a case before the Commission.<sup>1</sup> The Commission's regulations allow other parties to intervene pursuant to 807 KAR 5:001, Section 4(11)(a), which states, in relevant part:

A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to

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<sup>1</sup> Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting all Other Required Approvals and Relief*, (Ky. PSC Aug. 3, 2017), Order at 1.

present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings. . . .

Motions to intervene must be served on the other parties to an action pursuant to 807 KAR 5:001, Section 4(8), and proof of service must be filed pursuant to 807 KAR 5:001, Section 6. Motions to intervene are granted based upon the timely filing of a motion to intervene, pursuant to the rules established by the Commission, and a finding that the person seeking intervention has a special interest in the case that is not otherwise adequately represented or is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.<sup>2</sup>

Here, the Arnolds' March 7, 2018 public comment addressed their substantive complaints regarding the wireless communication facility at issue herein, and the Commission will review and consider those comments in reaching its substantive decision, along with any other comments and responses thereto by AT&T Mobility to the extent allowed by law. However, in making their request to intervene, the Arnolds made no indication of how they would contribute to the adjudication of this matter in a manner justifying intervention pursuant to 807 KAR 5:001, Section 4(11); therefore, the Commission is unable to find that they are entitled to intervene.<sup>3</sup> Moreover, the request for intervention was procedurally deficient pursuant to 807 KAR 5:001, Section 4(8) and

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<sup>2</sup> See 807 KAR 5:001, Section 4(11)(b)(discussing the standard for intervention).

<sup>3</sup> This is especially true given the evidentiary standards imposed on the Commission by federal law that limit what the Commission is permitted to consider in determining whether to permit the construction of a wireless communication facility. See *Telespectrum, Inc. v. Public Service Com'n of Kentucky*, 43 F.Supp. 2d 755 (E.D. Ky. 1999) (where a federal district court ordered the Commission to issue a Certificate of Public Convenience and Necessity based on federal law).

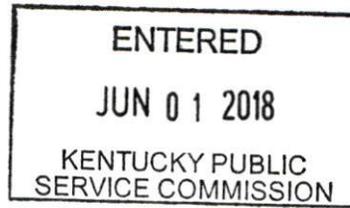
(11)(a), and 807 KAR 5:001, Section 6. Thus, the Commission denies the Arnolds' request for intervention.

In seeking to intervene, the Arnolds simultaneously requested that the Commission conduct an evidentiary hearing at which they would be permitted to participate as a party or a public meeting at which they would be permitted to comment as member of public. However, because the Commission has denied the Arnolds' motion to intervene, they would not be permitted to participate as a party at any evidentiary hearing. They would be permitted to present public comments at an evidentiary hearing or public meeting as a member of the public, if such hearing or meeting were conducted. However, there has been no indication that allowing them to present their comments at a hearing or public meeting, as opposed to in writing as they have done through public comment, would facilitate the presentation of their concerns to the Commission. The Commission also observes that AT&T Mobility has similarly presented its evidence and arguments solely in writing. Thus, the Commission denies the Arnolds' request for an evidentiary hearing or public meeting in this matter.

IT IS THEREFORE ORDERED that:

1. Don Arnold and Deborah Arnold's motion to intervene and for an evidentiary hearing or public meeting is denied.
2. Nothing in this order shall affect a member of the public's right to file public comments with the Commission or the Commission's consideration of those comments in a manner consistent with the relevant statutes and regulations.

By the Commission



ATTEST:

  
Executive Director

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