

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY NETWORK,)	
LLC D/B/A APPALACHIAN WIRELESS FOR THE)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT)	2018-00136
A REPLACEMENT TOWER IN LETCHER COUNTY,)	
KENTUCKY)	

ORDER

On May 2, 2018, East Kentucky Network, LLC, d/b/a Appalachian Wireless, (“Appalachian Wireless”) filed an application seeking a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a wireless communications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 310 feet in height, with attached antenna, to be located on a tract of land near 1739 Raven Rock, Jenkins, Letcher County, Kentucky. The proposed tower will replace an existing tower on the same property. The coordinates for the proposed facility are 37°10'15.6701" North latitude, 82°36'53.3858" West longitude. Appalachian Wireless has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. Based upon 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.

Pursuant to 807 KAR 5:063, Appalachian Wireless filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Appalachian Wireless filed evidence that the county judge/executive and all

property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction. The notices solicited any comments and informed the recipients of their right to request intervention. To date, one public comment has been filed with the Commission. No requests for intervention have been filed with the Commission.

Gary N. Royalty filed a public comment with the Commission on May 24, 2018, stating that the property on which the proposed replacement tower would be built encroaches on his adjoining property. He further stated in his letter that he would like this issue addressed prior to the approval of the new tower construction. On June 4, 2018, the Commission responded to Mr. Royalty by letter stating that his public comment has been placed in the official case file of this proceeding and that the Commission will carefully analyze his comment as part of its review before rendering a final decision in this matter. The Commission forwarded a copy of Mr. Royalty's comment to Appalachian Wireless and requested that Appalachian Wireless submit a written response to the comment, with a copy to the Commission, within fifteen days of the date of the letter, dated June 4, 2018.

On June 8, 2018, Appalachian Wireless filed with the Commission a copy of the letter that it had mailed to Gary Royalty on June 7, 2018, via certified mail, as requested by the Commission. In that letter, Appalachian Wireless stated that, prior to filing its application with the Commission, a licensed professional land surveyor surveyed the site and that the surveyor was consulted again regarding his survey after receipt of Mr. Royalty's letter. The letter from Appalachian Wireless further states that it remains confident that neither existing structures nor any proposed structures, including the tower, equipment building, and fencing encroach or will encroach upon Mr. Royalty's property.

The record does not support any further Commission action to resolve Mr. Royalty's claim that property on which the tower is planned to be built encroaches on his property. Mr. Royalty has provided no evidence of a formal contest of the alleged encroachment in a court of competent jurisdiction, nor has he requested intervention in this matter. Appalachian Wireless is under no statutory duty to certify ownership of the property upon which the cellular tower is proposed to be constructed when filing its Application for a CPCN for a cellular tower. 807 KAR 5:063, Section 1, governs the contents of an application to build a cellular tower. With regard to the ownership of the property, 807 KAR 5:063, Section 1(f), requires that an applicant file a copy of the lease or sale agreement in its application, but it does not require that the applicant conduct or include a title search in the application. Appalachian Wireless has met the necessary filing requirements regarding control of the property upon which the cellular tower is to be located.

The Commission notes that Appalachian Wireless' predecessor company, Mountaineer Cellular General Partnership, purchased the property upon which the current tower resides, and upon which the replacement tower is proposed to be built, in 1996. Appalachian Wireless included in its application the deed for purchase of the property, which was filed in Letcher County, Kentucky, on March 15, 1996.¹ The Commission also notes that the existing tower that Appalachian Wireless proposes to replace was approved for construction more than 20 years ago,² and that no party at the time alleged

¹ Application, Exhibit 8.

² Case No. 97-011, *The Application of Mountaineer Cellular General Partnership for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Tower*, (Ky. PSC Mar. 22, 1997).

that the parcel of property upon which the WCF was to be constructed encroached on any surrounding property.

Appalachian Wireless has filed applications with the Federal Aviation Administration (“FAA”) and the Kentucky Airport Zoning Commission (“KAZC”) seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Appalachian Wireless has demonstrated that a facility is necessary to provide adequate utility service and, therefore, a CPCN 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, Appalachian Wireless should notify the Commission if this antenna tower is not used to provide service in the manner set out in the 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 Appalachian Wireless.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 310 feet in height, with attached antenna, and is to be located on a

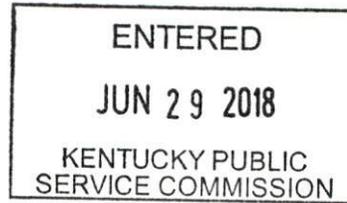
tract of land near 1739 Raven Rock, Jenkins, Letcher County, Kentucky. The coordinates for the proposed facility are 37°10'15.6701" North latitude, 82°36'53.3858" West longitude.

2. Appalachian Wireless 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 paragraph 2 herein shall reference this case number and shall be retained in the utility's general correspondence file.

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By the Commission



ATTEST:


Executive Director

Case No. 2018-00136

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