

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLUEGRASS WIRELESS, LLC)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS TELECOMMUNICATIONS FACILITY)
(WHITLEY WEST) IN RURAL SERVICE AREA #11)
(WHITLEY) OF THE COMMONWEALTH OF)
KENTUCKY)

CASE NO.
2009-00145

O R D E R

On May 15, 2009, Bluegrass Wireless LLC ("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 self-supporting antenna tower not to exceed 255 feet in height, with attached antenna, to be located at 351 Ernest Alsip Road, Corbin, Whitley County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 52' 31.61" by West Longitude 84° 12' 59.04".

The Applicant 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, the Applicant has notified the County Judge/Executive of the proposed construction. The Applicant 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 decisions are pending.

The Applicant has 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. Prior to the submission of the application, the Commission received letters of concern regarding the proposed construction from John and LaDonna Dopel, Ricky and Katrina Davis, and Ray and Justine Young. After the application was filed, the Commission received letters of concern from Dale and Sherry Hensley and from Shane A. Romines, an attorney in Corbin, Kentucky, stating that he represented the interests of Keith and Charlotte Barnett and Kim and Darrell Barnett. On June 24, 2009, the Commission ordered the Applicant to respond to each letter of concern within 20 days. Additionally, each property owner was given 10 days to respond to the Applicant and the Commission after receiving the Applicant’s response. To date, the Commission has received no further correspondence from any of the concerned property owners.

The comments received in this matter have all been related to health concerns and traffic issues concerning the access road to the tower site. The Applicant’s response to the comments of the property owners addressed both issues. The Commission cannot consider health concerns in determining whether or

not to issue a Certificate of Public Convenience and Necessity.¹ As to the traffic issues, the Commission assumes that the Applicant's response sufficiently eased the property owners' concerns and has resolved this issue, since no replies were filed by any of the property owners.

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.

¹ The Federal Communications Commission ("FCC") has exclusive jurisdiction over radio transmission, including radio frequency interference. The Commission is not authorized to consider the "environmental effects of radio frequency emissions" (including health issues) that comply with the FCC standards. See 47 U.S.C. § 332(c)7(7). See also Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 199 F. 3d 1185 (10th Cir. 1999). Accordingly, this issue will not be considered in making this determination.

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 self-supporting antenna tower not to exceed 255 feet in height, with attached antenna, and is to be located at 351 Ernest Alsip Road, Corbin, Whitley County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 52' 31.61" by West Longitude 84° 12' 59.04".

2. The Applicant shall file a copy of the final decisions regarding the pending FAA and KAZC applications for the proposed construction within 10 days of receiving the decisions.

3. 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.

4. The Applicant shall also notify the Commission in writing, within 20 days of completion, that it has finished construction of the tower and the date upon which said construction was complete.

By the Commission

ENTERED
AUG 19 2009 *A*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2009-00145

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