

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY NETWORK,)	
LLC DBA APPALACHIAN WIRELESS FOR THE)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE TO CONSTRUCT A TOWER IN)	2016-00326
MAGOFFIN COUNTY, KENTUCKY)	

ORDER

On December 15, 2016, East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”) filed an application (“Application”) seeking a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a wireless telecommunications facility in Magoffin County, Kentucky. On December 20, 2016, Thomas W. Keeth filed a letter with the Commission in which he disputed the title to the land upon which Appalachian Wireless proposed to build the telecommunications facility and requested to intervene in the proceeding.

Mr. Keeth alleged that there was a defect in the deed under which the current owner of the property, Eagle Well Service, Inc., took ownership. He also alleged that he and his brother were entitled to one-half of the property. Mr. Keeth further alleged that the boundaries of the one-half of the property to which he claimed an interest had yet to be determined, and therefore it was not known if the tower would be built upon the half of land to which he claims he is entitled.

On January 5, 2017, the Commission’s Executive Director sent a letter to Mr. Keeth advising him that the Commission did not have jurisdiction over property disputes

and requested that Mr. Keeth provide any proof, in the form of a court order or other documents, that the ownership of the subject property was being disputed before a court of law. The January 5, 2017 letter also required Appalachian Wireless to respond to Mr. Keeth's letter.

Mr. Keeth filed his response on January 12, 2017, stating that the matter of the ownership of the property was first brought to his attention by an attorney for the Kentucky Department of Transportation who had performed a title search. Mr. Keeth stated that the dispute was not currently being litigated, but that he intended to initiate legal action at some point in the future. Mr. Keeth also stated that he was aware that the Commission did not get involved in property disputes, but thought that the Commission needed to know about the property dispute.

Appalachian Wireless filed its response on January 17, 2017, and attached a letter that it had sent to Mr. Keeth.¹ Appalachian Wireless argued that Mr. Keeth's allegations lacked merit and could only be adjudicated in a court. Appalachian Wireless stated that it understood, pursuant to a previous meeting with Mr. Keeth, that he did not object to the building of the cell tower, but that he merely wanted to obtain a portion of the rent proceeds from the placement of the telecommunications facility if he could prove an ownership interest in the property.

Appalachian Wireless, in the January 11, 2017 letter, stated that it had performed a title search for the disputed property and remained convinced that Eagle Well Service, Inc. was the proper owner of the property. Appalachian Wireless contended that Mr.

¹ Letter from Cindy D. McCarty to Thomas W. Keeth, dated January 11, 2017 (January 11 Letter").

Keeth had previously filed suit against Eagle Well Service, Inc. regarding a boundary dispute, but did not raise any issues regarding the ownership of the property. Appalachian Wireless stated that Eagle Well Service, Inc. had been receiving lease payments for several months and would continue to do so unless a judge ordered otherwise.²

On February 1, 2017, Mr. Keeth filed a reply to Appalachian Wireless's response, again claiming ownership of one-half of the property. Mr. Keeth attached to his reply a deed dated June 2, 1966, and recorded with the Magoffin County Clerk on January 22, 1976, that he alleged evidences his ownership interest in the property. Mr. Keeth stated that he was aware he could not prevent the cell tower from being constructed on the property, and reiterated that he would seek legal action in the future.

DISCUSSION

In exercising our discretion to determine intervention, there are both statutory and regulatory limitations on the Commission. The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."³ 807 KAR 5:001, Section 4(11), provides that a motion to intervene "shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." The regulation further provides that:

² See Application, Exhibit 8, for a copy of the executed Memorandum of Lease.

³ *Enviropower, LLC v. Public Service Comm'n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention 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.

It is under these statutory and regulatory criteria that the Commission reviews a motion for intervention.

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Mr. Keeth does not have a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented. The Commission also finds that Mr. Keeth is not likely to present issues or develop facts that will assist the Commission in considering this matter. It is likely that if the Commission permitted Mr. Keeth to intervene, his intervention would unduly and complicate this proceeding.

As noted above, the Commission's jurisdiction is limited to the rates and services of a utility, and the review of the application is limited to those areas, and not to property disputes. Mr. Keeth has not raised any issues related to rates and services of Appalachian Wireless. The only issue raised by Mr. Keeth a property dispute that has not been brought in court and is not within the Commission's statutory authority to consider. In his January 12, 2017 response, Mr. Keeth acknowledges that the Commission, "does not get involved in property disputes" ⁴ Mr. Keeth opines,

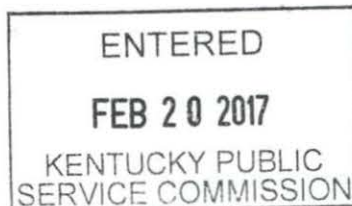
⁴ Letter from Thomas Keeth to the Executive Director (Jan. 10, 2017).

however, that when Appalachian Wireless applies to construct a cellular tower, it should have to certify ownership of the property.⁵

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.⁶

IT IS THEREFORE ORDERED that Mr. Keeth's request to intervene is denied.

By the Commission



ATTEST:


Executive Director

⁵ *Id.*

⁶ It appears that Appalachian Wireless has conducted a title search and determined that Eagle Well Service, Inc. is the proper owner of the property. See January 11, 2017 Letter at 2-3.

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