

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF TILLMAN INFRASTRUCTURE)	
LLC AND NEW CINGULAR WIRELESS PCS, LLC)	
D/B/A AT&T MOBILITY FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY TO CONSTRUCT A WIRELESS)	2017-00435
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF MARSHALL)	

ORDER

This matter is before the Commission on a request to intervene in an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a wireless communication tower. Scott Norman (“Mr. Norman”), whose home is located within 500 feet of the proposed tower, filed the request for intervention. Mr. Norman also owns a parcel to the west of the proposed tower site on which a competing wireless communication tower is presently located. This tower is owned by SBA Communications Corporation (“SBA”), which filed a motion to intervene in this case on December 27, 2017. SBA’s motion was denied on March 26, 2018.

On November 14, 2017, Tillman Infrastructure LLC (“Tillman”) and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (“AT&T”) filed an application requesting a CPCN to construct a wireless communications facility at 1641 Lee Burd Road, Benton, Kentucky (“Hansen Site”).

Mr. Norman's request to intervene was filed on April 10, 2018. He had previously filed a public comment with the Commission on January 9, 2018.¹ In the public comment, Mr. Norman initially stated that he opposes the location of the Hansen site cell tower due to concerns about the potential decrease in property value and the effect another tower would have on a "farm, quiet-like atmosphere."² Mr. Norman also states in this letter that he is concerned that Tillman and AT&T are not building the tower to "help service, but rather to make more money at the expense of local residents and homeowners."³ In his motion for intervention, Mr. Norman states that, as a local resident, he believes he has a special interest in this matter and that he is familiar with the rates being charged by carriers in the area and the quality of coverage and service. He also states that he is concerned that Tillman and AT&T have alleged that they do not have a reasonable opportunity to collocate, and that he believes that statement to be false.⁴

On January 31, 2018, Tillman and AT&T filed its response to Mr. Norman's letter of public comment. They state that Mr. Norman's concerns about property values should be viewed with some skepticism, as he has allowed SBA to build a wireless telecommunications tower on property that he owns.⁵ They also argue that this concern is without merit and offer a report from a property valuation expert which states

¹ Public Comment: Scott Norman Letter, 01/09/2018.

² *Id.*

³ *Id.*

⁴ Request of Scott Norman to Intervene in this Matter, April 10, 2018.

⁵ Response to Letter from Scott Norman, Jan. 31, 2018 at 1-2.

that the proposed tower will not have an impact on surrounding property values.⁶ Finally they point out that the United States Court of Appeals for the Sixth Circuit has upheld that generalized aesthetic concerns are not substantial evidence for purposes of rejecting an application.⁷

DISCUSSION

The only person with a statutory right to intervene in a proceeding before the Commission is the Attorney General.⁸ Intervention by all others is permissive and is within the sound discretion of the Commission.⁹

The standards the Commission must consider in exercising its discretion to determine permissive intervention are set forth in 807 KAR 5:001, Section 4(11). Pursuant to 807 KAR 5:001, Section 4(11)(a), a person seeking to intervene must file a written request that states the person's special interest, or facts he or she will develop to assist the Commission in fully considering the matter. 807 KAR 5:001, Section 4(11)(b), provides that the Commission:

shall grant a person leave to intervene if the [C]ommission finds that . . . he has a special interest in the case that is not otherwise adequately represented or that his intervention is likely to present issues or to develop facts that assist the [C]ommission in fully considering the matter without unduly complicating or disrupting the proceedings.

⁶ Response to Letter from Scott Norman, Jan. 31, 2018 Exhibit A.

⁷ *Id.* at 2-3.

⁸ See KRS 367.150(8)(b). The Attorney General has not requested to intervene in this matter.

⁹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

Based upon a review of the pleadings at issue, the Commission finds that Mr. Norman is unlikely to present issues or develop facts that will assist the Commission in fully considering this matter. In his motion to intervene, Mr. Norman states that he has a special interest in this matter because he is a “local resident and familiar with the area.”¹⁰ However, Mr. Norman does not elaborate what that special interest may be or any facts that he will be able to develop to assist the Commission. He does mention in his April 10, 2018 Motion to Intervene that he is familiar with “rates that are currently being charged by carriers in the area and the quality of coverage and service.”¹¹ However, he does not make the argument that this knowledge is unique to him or that it cannot be obtained from Tillman or AT&T. Moreover, the rates of wireless carriers are immaterial to this proceeding. Pursuant to KRS 278.54611(b), the Commission has no jurisdiction over the rates and services of wireless carriers and these are not factors that the Commission considers when reviewing an application for the construction of a wireless tower. The same is true with his assertion that he can present documentation regarding rental rates for collocation on the SBA Tower located on his property; that information is available to the Commission should the Commission require it.¹²

The Commission finds that, although Mr. Norman has not proven that he has a special interest or that he can present issues or develop facts that assist the Commission in fully considering this matter without undue complication or disruption of the proceedings, Mr. Norman should have an opportunity to file additional

¹⁰ Request of Scott Norman to Intervene in this Matter, Apr. 10, 2018.

¹¹ Request of Scott Norman to Intervene in this Matter.

¹² Reply of Scott Norman to Tillman Infrastructure LLC a Delaware Limited Liability Company, and New Cingular Wireless PCS, LLC, A Delaware Limited Liability Company, d/b/a AT&T Mobility Response Norman’s Motion to Intervene, Apr. 30, 2018, at 8.

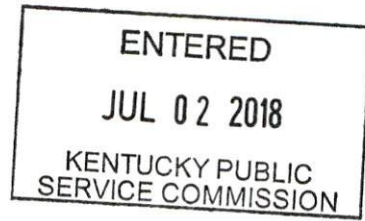
comments in this proceeding even though he has not been granted intervenor status. Mr. Norman may file comments as frequently as he chooses, and those comments will be entered into the record of this case. Mr. Norman can review all documents filed in this case and monitor the proceedings via the Commission's website.

IT IS THEREFORE ORDERED that:

1. Mr. Norman's Request to Intervene is denied.

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By the Commission



ATTEST:


Executive Director

Case No. 2017-00435

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