

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	)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	2017-00435
NECESSITY TO CONSTRUCT A WIRELESS	)	
COMMUNICATIONS FACILITY IN THE	)	
COMMONWEALTH OF KENTUCKY IN THE	)	
COUNTY OF MARSHALL	)	

ORDER

On November 14, 2017, Tillman Infrastructure, LLC (Tillman), and New Cingular Wireless, PCS, d/b/a AT&T Mobility (Applicants), filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 325 feet in height, with attached antennas, to be located at 1641 Lee Burd Road, Benton, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49'24.34" by West Longitude 88° 28'25.57".

Applicants have 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 conform to applicable nationally recognized building standards, and a licensed professional engineer has certified the plans.

Pursuant to 807 KAR 5:063, Applicants have filed statements of having provided

the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Applicants have 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.

SBA Properties filed a motion to intervene on December 27, 2017, and it was denied by Order of the Commission dated March 26, 2018. Mr. Scott Norman filed a motion to intervene on April 10, 2018, and it was denied by Order of the Commission dated July 2, 2018. No other requests to intervene or public comments have been filed with the Commission.

Both motions to intervene raised the issue of whether co-location was reasonably available (Applicants facilities are currently located on SBA Properties' structure pursuant to a lease agreement). Although the motions to intervene were denied, Commission Staff issued, and Applicants responded to, one round of data requests on this issue. The data requests revealed that within a 50-mile radius of the site of the proposed wireless communication facility, the rent on towers owned by SBA Properties are 58.7% greater than the rent on wireless communication facilities owned by other companies. Applicants also provided information that the rent on the proposed tower would be less than half of what they are presently paying SBA Properties. Therefore the Commission believes that Applicants have met their burden of showing that co-location is not reasonably available, even with the close physical proximity of SBA Properties' wireless communication facility.

AT&T Mobility 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. The FAA application has been approved and the application with KAZC is pending approval.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Applicants have 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, Applicants should notify the Commission if the 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 Applicants.

IT IS THEREFORE ORDERED that:

1. Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of an antenna tower not to exceed 325 feet in height, with attached antennas, and to be located at 1641 Lee Burd Road, Benton, Kentucky. The coordinates for the proposed facility are North Latitude 36° 49'24.34" by West Longitude 88° 28'25.57".
2. Applicants shall file with the Commission notice of KAZC's approval of their application within ten days of receiving said approval.

3. Applicants shall immediately notify the Commission in writing, if, after the 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. Documents filed, if any, in the future pursuant to ordering paragraph 2 or 3 herein, shall reference this case number and shall be retained in the post-case correspondence file.

5. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:

  
Executive Director

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