

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY NETWORK,)	
LLC D/B/A APPALACHIAN WIRELESS FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT)	2018-00095
A CELLULAR TOWER IN THE COMMONWEALTH)	
OF KENTUCKY IN THE COUNTY OF WHITLEY)	

ORDER

This matter is before the Commission on Linda Reynolds's motion to intervene in an application for a Certificate of Public Convenience and Necessity (CPCN) to construct a wireless communication facility.

On March 23, 2018, East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless) filed an application requesting a CPCN to construct a wireless telecommunications facility near 658 Harold Leforce Road, Williamsburg, Whitley County, Kentucky.¹

Ms. Reynolds, who owns property contiguous to the property upon which the construction is proposed, filed a motion to intervene on April 9, 2018, and supplemented that motion on April 17, 2018. She had previously filed a public comment with the

¹ Appalachian Wireless tendered its application on March 14, 2018. By letter dated March 20, 2018, the Commission notified Appalachian Wireless that its application was rejected for filing due to filing deficiencies. Appalachian Wireless cured the filing deficiencies and the application was deemed filed on March 23, 2018.

Commission on March 26, 2018.² In her motion to intervene, Ms. Reynolds provides several reasons for her opposition the construction of the facility, including that the facility “would greatly diminish property values in the area and have a detrimental impact on the local landscape,” and the construction of the facility will be a nuisance, unsafe to community members, and negatively impact local wildlife. Ms. Reynolds also argues that KRS 177.841 and related statutes and regulations prohibit the placement of a billboard at the proposed facility location. Additionally, Ms. Reynolds argues that the facility is not necessary and that Appalachian Wireless has not provided appropriate notice. In her April 17, 2018 supplement to her motion, she states that her “major concern is health issues” from the placement of the facility; a concern she had originally raised in her public comment.

Appalachian Wireless filed a response in opposition to Ms. Reynolds’s motion to intervene on April 16, 2018. Appalachian Wireless asserts that Ms. Reynolds has not met her burden under 807 KAR 5:001, Section 4(11)(a)(1) for intervention. Appalachian Wireless argues that Ms. Reynolds sets forth only “speculative and generalized claims – unsupported by evidence and without relevant legal basis.” More specifically, Appalachian Wireless states that Ms. Reynolds provides only unsupported personal opinion, rather than expert opinion, as to her arguments regarding diminution in property values and necessity of the facility. Appalachian Wireless further argues that Ms. Reynolds presents conflicting facts or arguments and that her aesthetic concerns are legally insufficient to bar construction of the facility. Moreover, Appalachian Wireless argues that: (1) Ms. Reynolds’s wildlife concerns are inconsistent with Appalachian

²Public Comment: Linda Reynolds Letter, March 26, 2018.

Wireless's review of the potential environmental impacts; (2) the facility is necessary under its Federal Communication Commission license and related mandate; (3) Appalachian Wireless has provided sufficient notice; and (4) Ms. Reynolds has otherwise failed to provide sufficient legal argument to support her position.

On April 26, 2018, the Commission entered an Order in this matter allowing Ms. Reynolds to file a reply in support of her motion to intervene within seven days of the date of that Order. Ms. Reynolds did not file any reply.

DISCUSSION

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky (Attorney General), pursuant to KRS 367.150(8)(b). The Attorney General has not sought to intervene in this matter. Intervention by all others is permissive and is within the sound discretion of the Commission.³

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 motion 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 . . . she has a special interest in the case that is not otherwise adequately represented or that . . . her 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.

³ *Inter-County Rural Elec. Coop. Corp. v. Pub. Serv. Comm'n of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

Based upon a review of the pleadings at issue, the Commission finds that Ms. Reynolds does not have a special interest in the proceeding. The Commission also finds that Ms. Reynolds is not likely to present issues or develop facts that will assist the Commission in fully considering this matter. Additionally, it is likely that if the Commission permitted Ms. Reynolds to intervene, her intervention would unduly complicate this proceeding.

Ms. Reynolds's supplement to her motion to intervene notes that her main concern is the potential effect of the facility on individual health; however, the Federal Telecommunications Act of 1996 prohibits the Commission from regulating the location of a wireless telecommunications facility on the basis of the environmental effects of radio frequency emissions.⁴

Ms. Reynolds's concerns regarding safety, aesthetics, necessity of the facility, property values, and impact on the local wildlife are generalized concerns and an unsupported personal opinion. Pursuant to relevant case law, unsupported lay opinions regarding the siting of wireless telecommunications facilities, such as that offered by Ms. Reynolds, are not sufficient evidence on which to base a denial of a wireless telecommunications facility CPCN application.⁵

Further, the law cited by Ms. Reynolds, KRS 177.841 and related statutes and regulations, does not apply to the siting of wireless telecommunications facilities.

⁴ 47 U.S.C. § 332(7)(B)(iv); *Telespectrum, Inc. v. Pub. Serv. Comm'n*, 227 F.3d 414, 424 (6th Cir. 2000).

⁵ See *Ceilco P'ship v. Franklin Cnty.*, 553 F.Supp. 2d 838 (E.D. Ky. 2008); *T-Mobile Cent. v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 802 (6th Cir. 2012) (citations omitted).

Finally, Ms. Reynolds has not demonstrated that her knowledge of the facts presented is unique to her or cannot otherwise be obtained by the Commission.

For these reasons, Ms. Reynolds has not established that she meets the standard in 807 KAR 5:001, Section 4(11)(b), and her motion to intervene should be denied.

Ms. Reynolds will have an opportunity to participate in this proceeding even though she is not granted intervenor status. Ms. Reynolds can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: http://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?case=2018-00095. In addition, Ms. Reynolds may file comments as frequently as she chooses, and those comments will be entered into the record of this case.

IT IS THEREFORE ORDERED that the motion to intervene filed by Ms. Reynolds is denied.

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By the Commission

ENTERED
SEP 07 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00095

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