

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2023-00139
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY)	

ORDER

On June 7, 2023, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) 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 a tower not to exceed 235 feet in height, with attached antennas, to be located at Gray Road, Leitchfield, Grayson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 22' 03.84" by West Longitude 86° 22' 25.86".

On July 10, 2023 Verizon Wireless submitted an amended application with amended exhibits¹ Pursuant to 807 KAR 5:001(5),

Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

¹ Amended Application for Certificate of Public Convenience and Necessity for Construction of Wireless Communications Facility (Amended Application) (filed July 10, 2023).

The amended application included an Exhibit 1 which is a list of all property owners within 500 feet of the proposed tower, accompanied by screenshots from of each property record including parcel number and mailing address.² According to Verizon Wireless, this was conducted by Verizon Wireless on July 6, 2023, utilizing the Grayson County PVA. All ownership information and addresses were verified as unchanged. According to the amended application nine notices were sent to surrounding property owners; as of July 6, 2023, six notice green cards have been returned and three notice envelopes have been returned. According to Verizon Wireless, there are no unaccountable notices. Copies of the mailed envelopes, returned green cards and returned notice envelopes are included as Exhibit 2 in the amended application. As of the date of this Order, no public comments or requests for intervention have been received.

The Commission finds that Verizon Wireless has shown good cause to allow the original application to be amended as of July 10, 2023. The amendments to the application update what Verizon Wireless has done to satisfy 807 KAR 5:063; 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 amended application shall not relate back to the date of the filing of the original application on June 7, 2023.

Pursuant to 807 KAR 5:063, Verizon Wireless has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Verizon Wireless has 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

² Amended Application, Exhibit 1.

of their right to request intervention. Exhibit K of the original application includes a map drawn to an appropriate scale that shows the location of the proposed tower and identifies every owner of real estate within 500 feet of the proposed tower according to the records maintained by the County Property Valuation Administrator. This map and the associated Notice List is accompanied by a certificate signed and stamped by the registered surveyor that said information is from the PVA records, dated March 2, 2023. Verizon Wireless verified and updated the notification list with the Grayson County PVA on May 22, 2023, at <https://graysoncountypva.com/>, attached as Exhibit L in the original application.

Verizon Wireless 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 submitted and approved. The approval for the KAZC application is pending and will be submitted when received.

Verizon Wireless has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.³ 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.

Verizon Wireless has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service

³ Application, Exhibit D.

coverage.⁴ Verizon Wireless has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁵

To obtain a CPCN, Verizon Wireless must demonstrate a need for such facilities and an absence of wasteful duplication.⁶

“Need” requires “a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”⁷ “Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁸ The wireless market is competitive and, other than the placement of towers and interconnection with other telecommunications providers, the Commission has little jurisdiction over wireless providers, including no jurisdiction over the rates and earnings of a wireless provider.⁹

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Verizon Wireless has demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to assure adequate coverage in the area, and to improve service in Grayson County by

⁴ Application, Exhibit Q.

⁵ Application, Exhibit R.

⁶ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885 (Ky. 1952).

⁷ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁸ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁹ See KRS 278.54611.

providing interconnection between Verizon Wireless's other sites forming a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. The Commission, therefore, finds that 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, Verizon Wireless shall 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 shall be observed by Verizon Wireless.

IT IS THEREFORE ORDERED that:

1. Verizon Wireless is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 235 feet in height, with attached antennas, to be located at Gray Road, Leitchfield, Grayson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 22' 03.84", by West Longitude 86° 22' 25.86".

2. Verizon Wireless 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 three months in the manner authorized by this Order.

3. Verizon Wireless shall file a copy of the final decision regarding the KAZC application for the proposed construction within ten days of receiving a decision.

4. Documents filed, if any, in the future pursuant to ordering paragraphs 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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PUBLIC SERVICE COMMISSION


Chairman


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Commissioner



ATTEST:


Executive Director

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