

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SKYWAY TOWERS, LLC AND)	
KENTUCKY RSA NO. 1 PARTNERSHIP D/B/A)	
VERIZON WIRELESS FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO CONSTRUCT A WIRELESS)	CASE NO.
COMMUNICATIONS FACILITY IN THE)	2016-00390
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF CALLOWAY)	

ORDER

On April 6, 2017, the Commission issued an Order granting the application of Skyway Towers, LLC, and Kentucky RSA No. 1 Partnership, a Delaware General Partnership, d/b/a Verizon Wireless (collectively Verizon Wireless) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The proposed facility consisted of an antenna tower not to exceed 310 feet in height, with attached antenna, to be located on Derek Trail, Murray, Calloway County, Kentucky. The coordinates for the proposed facility are North Latitude 36°35'54.27" by West Longitude 88° 09'40.12".

On April 5, 2018, Verizon Wireless filed a motion seeking to extend the time in which to commence construction of the proposed facility. The Commission will reopen this case to consider Verizon Wireless's motion.

In its motion, Verizon Wireless stated that construction had not started, and would not be able to begin construction prior to the expiration of the one-year period in which to

exercise the CPCN from the date of the grant of the CPCN.¹ Verizon Wireless states that it could not begin construction within the time due to federal law restrictions regarding the Indiana bat and long-eared bat. Specifically, the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) limits the time frames for tree and vegetation clearance so that the bats have ample natural habitat in which to roost during migration.² Verizon Wireless asserts that these restrictions limit its ability to start construction on the site for the proposed facility. Verizon Wireless requests an extension through April 6, 2019, in which to exercise its authority under to the CPCN. Verizon Wireless asserts that the extension is warranted to allow sufficient time to clear the site within the timeframes established in the Endangered Species Act of 1973. Verizon Wireless also asserts that the construction of the proposed facility is still necessary to provide adequate service in this area.

KRS 278.020(1)(e) provides that construction authorized by a CPCN must commence within one year from the date of the issuance of the CPCN. It further provides an exclusive exception to the one-year rule and allows an extension of the time in which construction must commence “for delay due to . . . failure to obtain any necessary grant or consent.” The delay that Verizon Wireless is experiencing due to its compliance with the Endangered Species Act of 1973 in order to protect migratory bats is squarely within the meaning of the exception in the statute. Verizon Wireless must comply with the

¹ See KRS 278.020(1).

² For a discussion about the migratory habits of Indiana bats and protection of the bats' migratory habitats, see, *House v. U.S. Forest Service, U.S. Dept. of Agriculture*, 974 F. Supp. 1022 (E.D.KY 1997).

Endangered Species Act of 1973 in order to receive the consent of the federal government to clear the trees and vegetation

IT IS THEREFORE ORDERED that:

1. Verizon Wireless's motion is granted.
2. Verizon Wireless shall have until April 6, 2019, to begin construction and exercise its authority under the CPCN approved in this case on April 6, 2017.
3. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:



Executive Director

Case No. 2016-00390

*Honorable David A Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*Kentucky RSA #1 Partnership
One Verizon Way
Mailcode VC53S475
Basking Ridge, NJ 07920