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March 16, 2018

PARTIES OF RECORD

Re: Case No. 2017-00143

Attached is a copy of a memorandum, which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the memorandum, please do so within five days of receipt of this letter.

If you have any questions, please contact Brittany Koenig, Staff Attorney II, at 502-782-2591.

Sincerely,

A handwritten signature in blue ink that reads "Gwen R. Pinson".

Gwen R. Pinson
Executive Director

BHK/ph

Attachment

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2017-00143

FROM: Brittany Koenig, Staff Attorney

DATE: March 2, 2018

RE: Informal Conference of February 5, 2018

Pursuant to Commission Staff's ("Staff") Notice of Informal Conference ("IC") filed into the record on January 31, 2018, an IC was held in this matter on February 5, 2018. A copy of the sign-in sheet is attached. Brittany Koenig, attended on behalf of the Commission. Mr. John K. Potts and Mr. Corey Biddle attended. Doug Updegraff, Leila Rezanavaz, Tim Ash, and Kerry Ingle attended as representatives of Kentucky RSA #3 Cellular General Partnership ("Bluegrass Cellular"). Legal counsel for Bluegrass Cellular, Mr. Felix Sharpe II and Mr. Tipp Depp, attended as well.

During the conference, Ms. Koenig stated that Staff would prepare minutes of the conference to enter in the case record, and that the parties would have an opportunity to submit written comments. Ms. Koenig stated that Staff is not a party to the case and the views of Staff are not binding on the Commission.

Staff stated the history of the case, recounting that Bluegrass Cellular filed an application for approval of a new cellular facility on October 25, 2017 and there had already been a public comment filed by Mr. Potts on April 10, 2017 stating he did not want the tower built on the proposed location. Mr. Biddle had followed by filing public comments by email on April 20, 2017 and May 17, 2017, explaining that he owned property along the same ridge where the proposed tower would be located. Mr. Biddle asked that the cell tower location be moved to a more desirable location because he purchased the land to build a home that took advantage of the view of the river and the cell tower would obstruct the view. The Commission acknowledged receipt of Mr. Biddle and Mr. Potts comments in the record and advised them of the federal restrictions on the Commission's review of wireless facilities. The Commission advised Mr. Potts and Mr. Biddle of the process to request to intervene and that the Commission follows a policy of colocation whenever possible.

Legal counsel for Bluegrass Cellular responded to Mr. Potts and Mr. Biddle's comments on December 13, 2017. Bluegrass Cellular explained their basis for locating the cell tower at the proposed site stating that their choice of location was related to: 1) its elevation; 2) the nature of the terrain; and 3) its proximity to Kentucky Highways 144 and 2779 to maximize optimum cell coverage. Bluegrass Cellular cited PSC Case No.

March 5, 2018

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2005-00445 in which they entered expert testimony to refute arguments of property devaluation.

Mr. Biddle filed an additional public comment on December 21, 2017 purporting to have studied coverage maps for Bluegrass Cellular and claiming that no coverage gaps existed in the immediate area of the proposed tower. Mr. Biddle proposed that the Lawrence Eskridge Road existing tower was closer to any gaps marked on the coverage maps and its elevation was 217 feet higher than the proposed location.

On December 27, 2017, Mr. Biddle and Mr. Potts filed requests for intervention within 30 days of the Commission's letter responding to their public comments. The requests for intervention are pending before the Commission. The basis for intervention echoes the arguments contained in previous public comments, but they also propose colocation as an alternative. Mr. Biddle and Mr. Potts put forth five possible existing towers in close proximity to the proposed cell site at issue. Mr. Biddle and Mr. Potts reasoned that if Bluegrass Cellular approached adjacent landowners for permission to use their land in the past that this indicates that Bluegrass Cellular was willing to use a different location previously.

On January 29, 2018, Bluegrass Cellular filed a response to the requests for intervention and specifically addressed the five structures in close proximity to the proposed location, explaining their basis for determining that colocation was not feasible in each instance.

At the informal conference held on February 5, 2018, Mr. Biddle and Mr. Potts brought a map of the area and explained what property they own. They explained that it has been surveyed and separated into lots to develop as a subdivision. Mr. Biddle has purchased multiple lots as his dream investment and developed a road. The proposed site for the cell tower is Lot #4 directly in the center of the planned subdivision. Mr. Biddle offered his property at either end as possible sites for an alternative. Mr. Biddle opposed the fact that Bluegrass Cellular described the lots as forested and unpopulated in their application. Mr. Biddle also disagreed with Bluegrass Cellular's assessment that there was no option for colocation.

Bluegrass Cellular's representatives filed a response to Biddle's alternatives previously, but also noted that the proposed site has had a cell tower on it for ten years. The engineer noted her surprise at the opposition to this site because there has been a cell tower on the property for so long. Mr. Biddle did not respond to Staff when asked what date he purchased the property and whether he had notice of the site of the current cell tower prior to purchasing the riverfront property. The proposed cellular facility will be taller. Mr. Biddle asked if the type of tower that is proposed could be different and less obtrusive. He also asked about studies into whether the alternative sites could be used. Bluegrass Cellular said it would start at \$60,000 to look into a different site because of archaeological, historic preservation, engineering, and FCC requirements, etc.

The property in Breckinridge County is not zoned. Mr. Biddle made the argument that if this property was in a bigger county that was zoned; he felt that Bluegrass Cellular would entertain options to put the cell tower in a less obtrusive location. Bluegrass Cellular's representative noted that if you go to the property now, there is no indication that it has been developed or lined out into lots as Mr. Biddle's map indicated. Mr. Biddle explained that the work he has done on the site included putting an access road to the sites.

Bluegrass Cellular's attorney noted that there are many factors that go into the location of site, including attorney fees for attending the IC. The engineer explained the process of picking the site to begin with and how many factors go into picking the location. Mr. Biddle and Bluegrass Cellular explored many different options that Mr. Biddle proposed at length. There were suggestions made by Mr. Biddle that included colocation with competitors of Bluegrass Cellular and building two cell towers to cover the gaps. These suggestions were both opposed by Bluegrass Cellular based upon cost and business competition factors.

There being no further business, the informal conference adjourned.

Attachments:
Sign-in Sheet

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