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Talina R. Mathews
Commissioner

April 6, 2018

Michael L. Sparks
835 Breckinridge Street
Stanton, KY 40380

RE: Case No. 2018-00002

Application of East Kentucky Network, LLC d/b/a Appalachian Wireless For Issuance of a Certificate of Public Convenience and Necessity to Construct a Cellular Tower in the Commonwealth of Kentucky in the County of Powell

Dear Mr. Sparks:

This is in response to your letter received on March 20, 2018. The letter has been placed in the official case file of this proceeding and the Commission will carefully analyze this application before rendering its final decision.

By this letter, the attached public comment has been forwarded to the Applicant for a response. Commission Staff requests the Applicant to submit a written response to the public comment, with a copy to the Commission, within 15 days of the date of this letter.

Your letter indicates a desire to intervene in this matter. Although the notice you received in this proceeding may have suggested otherwise, for all persons other than the Attorney General intervention in a proceeding before the Commission is permissive. The standards the Commission must consider in exercising 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 full name, mailing address, electronic mail address, and a statement of the 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 . . . he or she has a special interest in the case that is not otherwise adequately represented or that his or 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.¹

At this time, Commission Staff does not believe that your letter meets the standards for a motion to intervene, as outlined above, and so your letter is being treated as a public comment. Should you wish to supplement your letter to seek intervention consistent with the standards above, you should do so within 30 days of the date of this letter. If no supplementation is received within that timeframe, the Commission Staff will continue to presume that your letter is a public comment and not a motion to intervene.

It may be helpful for you to know that intervenors in past actions have been directed to provide a list of specific potential and suitable alternative locations, other than the proposed site named in the application, where the proposed facility might be located.² Should the Commission determine that a hearing will be held in this matter, intervenors in past actions have been directed to file a list of witnesses they propose to produce at the hearing, together with prefiled testimony, in verified form, as well as a list of exhibits they propose to introduce at the hearing.³ If a hearing is held, the issues are typically limited to: (1) the public convenience and necessity for the construction and operation of the proposed facility; (2) the design, engineering, and construction of the proposed facility (jurisdictional safety issues); (3) the character of the general area concerned and the likely effects of the installation of the proposed facility on nearby land uses and values; (4) any suitable and acceptable alternate or collocation site that has been filed with the Applicant and the Commission in the case; and (5) any other issues that might arise during the course of the hearing.⁴

It may be helpful for you to know that state authority, specifically that of the Public Service Commission, in this matter has been limited by federal law. For example, Section 704 of the federal Telecommunications Act of 1996 prohibits the Commission from regulating the placement of personal wireless service facilities on the basis of environmental effects of the radio frequency emissions to the extent that facilities comply with Federal Communications Commission regulations. Section 704 also prohibits a state or local government from prohibiting personal wireless service facilities construction if such denial will have the effect of prohibiting service. In addition, the Commission is required by statute to ensure that utility service, including telecommunications service, is adequate and reliable. The Commission does, however, consider appropriate placement of necessary facilities within applicable engineering boundaries. It also pursues a policy of collocation of facilities whenever possible.

¹ Emphasis added.

² See, e.g., Case No. 2009-00064, *Application of East Kentucky Network Limited Liability Company for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Tower in Letcher County, Kentucky* (Ky. PSC May 8, 2009), at 2.

³ *Id.*


⁴ *Id.* at 1-2.

Mr. Michael Sparks
April 6, 2018
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You may view Orders issued by the Commission or other formal case documents on our website at <http://psc.ky.gov>.

Thank you for your letter of interest and concern in this matter.

Sincerely,


for
Gwen R. Pinson
Executive Director

Cc: Parties of Record

RECEIVED

MAR 20 2018

PUBLIC SERVICE
COMMISSION

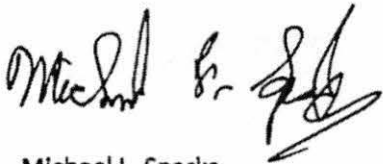
March 17, 2018

To Whom It May Concern:

In regards to case No. 2018-00002, as the property owner of 835 Breckinridge Street, I am officially opposed to the proposed construction of a 100' monopole tower.

The prospect of having such a structure in view of my backyard is simply unacceptable. This letter should serve as my request for intervention of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Sparks", with a stylized flourish at the end.

Michael L. Sparks

835 Breckinridge Street

Stanton, KY 40380

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