

April 13, 2018

Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602

RECEIVED

APR 16 2018

PUBLIC SERVICE
COMMISSION

Re: Case No. 2018-00095
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 Whitley

Dear Ms. Pinson:

Please find enclosed for filing in your usual manner one (1) original and ten (10) copies of *East Kentucky Network, LLC's Response to Motion to Intervene of Linda Reynolds*. If you have any questions or concerns regarding the enclosed, please do not hesitate to contact me.

Sincerely,

Krystal Branham

Krystal Branham
Regulatory Compliance Attorney
(606) 477-2355 ext. 1009
kbranham@ekn.com

Enclosure(s)

APR 16 2018

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

EAST KENTUCKY NETWORK, LLC'S RESPONSE TO
MOTION TO INTERVENE OF LINDA REYNOLDS

NOW COMES East Kentucky Network, LLC d/b/a Appalachian Wireless (“Applicant”),
by counsel, and for its response in opposition to the Motion to Intervene of Linda Reynolds
 (“Movant”) states as follows:

1. Pursuant to 807 KAR 5.001, Section 4(11)(a)(1), an individual seeking
intervention is required to “state his or her interest in the case and how intervention is likely to
present issues or develop facts that will assist the [C]ommission in fully considering the matter
without unduly complicating or disrupting the proceedings.”

2. In her motion to intervene filed on April 9, 2018, Movant failed to set forth any
substantial evidence to demonstrate that she meets the standard for intervention. Instead, Movant
sets forth only speculative and generalized claims - unsupported by evidence and without
relevant¹ legal basis.

3. Though Movant’s objections are merely unsupported personal opinion, Applicant
will address each basis for objection, as follows: (1) alleged diminution in property values; (2)

¹ The only legal authorities presented in Movant’s motion are certain Kentucky statutes and regulations
relating to placement of billboards, which have no relevance in this proceeding.

aesthetic concerns; (3) safety concerns relating to traffic; (4) impact on wildlife; (5) lack of necessity; and (6) alleged failure to give notice to adjacent property owners.

4. With respect to Movant's allegation that the proposed construction of a cell tower would negatively impact property values, Movant has not demonstrated that she has any expertise on this topic, and accordingly, her statements are mere lay opinion with no evidentiary value. Courts considering whether cell tower applications may be denied based on unsubstantiated lay opinion of the potential effect on property values have uniformly answered in the negative. See, eg. Cellco Partnership v. Franklin County, 533 F. Supp. 2d 838 (E.D. Ky. 2008) ("Area residents questioned the safety of the proposed tower, the need for it, whether there were other suitable locations for it, and whether it would affect property values. There is no evidence, however, that any of these residents had any personal knowledge regarding these issues. Nor did any of these residents offer any evidence supporting the Planning Commission's denial of the application. Thus, this testimony is 'unsupported opinion' and does not constitute evidence"...).

5. In addition to the legal insufficiency of Movant's arguments, Movant also presents conflicting factual information. Although Movant represents on page 5 of her motion that the community has "some of the highest property values in Whitley County," Movant also alleges on page 2 of her motion that the property on which Applicant seeks to construct a cell tower "has been known for drug trafficking." Movant also asserts that a cell tower would destroy the "natural rural scenic beauty of the area (p. 5 of Movant's motion), yet she states elsewhere that the property is located in close proximity to an interstate highway (p. 2). Indeed, as shown on Exhibit 9 to the Application, the property on which Applicant seeks to construct a cell tower is approximately 20 feet from the I-75 right of way fence.

6. Because the area is not subject to any planning and zoning restrictions, property values would already reflect the reality that property owners are generally free to make whatever lawful uses of their property they may desire. For example, Movant explains that she has established a fully functioning livestock farm on her own property. Some may believe that proximity to such a facility is undesirable, but Movant was not hampered by the preference of others in the use of her own property; likewise, Movant has no reasonable basis to expect that her personal preferences should dictate what lawful uses others may make of their own property.

7. Because Movant has failed to present any substantial or legally sufficient evidence in support of her claim that property values would be negatively impacted, this is not a valid basis to permit intervention.

8. Movant's next objection is based on aesthetic concerns. Movant states that she does "not want to see a 300+ foot tower in the middle of our beautiful rural community" (p. 2 of Movant's motion).

9. However, such complaints are insufficient to bar construction of a cell tower. "General concerns from a few residents that the tower would be ugly or that a resident would not want it in his backyard are not sufficient." T-Mobile Central, LLC v. Charter Township of West Bloomfield, 691 F.3d 794, 802 (6th Cir. 2012), citing, New Par v. City of Saginaw, 301 F.3d 390, 399 n.4 (6th Cir. 2002) and Petersburg Cellular P'ship v. Bd. of Supervisors, 205 F.3d 688, 695 (4th Cir. 2000).

10. Similarly, in Cellco Partnership v. Franklin County, 533 F. Supp. 2d 838 (E.D. Ky. 2008), the Court rejected generalized complaints that a tower would be "unsightly" and noted that "[t]hese objections could be made by any resident in any area where a tower was

proposed.” In other words, tower construction cannot be prohibited on the basis that the tower may offend the subjective aesthetic standards of anyone who may be within sight distance.

11. Movant’s next objection is that Applicant should not be permitted to use a County Road (Harold Leforce Road – County Road 1110) to access the property for tower construction because it would interfere with the ability of others to ride bikes, walk dogs, run, and walk on the county road (p. 4 of Movant’s motion). Movant speculates that if Applicant were permitted to use County Road 1110, it would “significantly impact the safety of most community members” (p. 4 of Movant’s motion).

12. Applicant is not aware of any legal basis upon which use of County Road 1110 to access the subject property may be prospectively restricted due to a generalized anxiety that a driver might not yield if a pedestrian is in the road.

13. Movant’s next basis for objection is impact on local wildlife (pp. 4 & 5 of Movant’s motion). However, the proposed construction site is in a previously developed area and, as mentioned above, the lot boundary is only approximately 20 feet from I-75 right of way and runs parallel thereto. Moreover, federal law requires Applicant to undergo review under the National Environmental Policy Act (NEPA) to evaluate potential environmental impacts of the proposed construction.

14. Movant’s final basis for objection is the conclusory statement that there is no need for a cellular tower in this area (p. 5 of Movant’s motion). Movant has again failed to provide any evidence for her statement. Movant has not established that she has any expertise concerning design of wireless telecommunications networks and, accordingly, her statement is merely speculative lay opinion and insufficient to establish a right to intervention.

15. Construction of the subject tower is necessary to fulfill a mandated condition of licenses issued by the Federal Communication Commission (FCC). Specifically, Applicant holds (1) License WQIZ558 – KY 11 – Clay (B-Block License), and (2) License WPWV284 – KY 11 – Clay (C-Block License), both of which cover Bell, Clay, Harlan, Knox, Leslie, and Whitley counties. Applicant must develop infrastructure sufficient to provide coverage to 75% of the general population and 70% of the geographic areas in these counties no later than June 13, 2019. See, Exhibit A, Affidavit of Michael Johnson, Technical Operations Director of Appalachian Wireless.

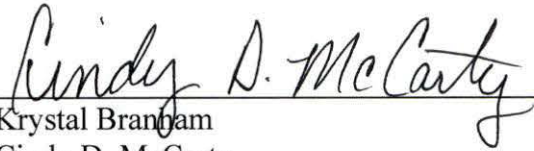
16. In order to fulfill its obligations under the federal licenses, Applicant determined the locations where various towers would need to be placed to establish an interconnected network sufficient to meet the federal coverage requirements. Applicant then sought to secure property rights as close as possible to the coordinates of each of those sites. All of the planned sites (including the site that is the subject of this proceeding) must be constructed in order to maintain network continuity. See, Exhibit A. Finally, the construction of a cell tower is a significant financial expenditure, and Applicant simply would not be seeking to build a tower in this location if it were not necessary.

17. The final objection lodged by Movant on page 5 of the motion is that Applicant allegedly failed to provide notice to adjacent property owners. The record demonstrates that this allegation is factually incorrect. See, March 23, 2018, Commission Letter.

18. In conclusion, applicable law requires that Movant present substantial evidence if she wishes to intervene and challenge the proposed construction, but Movant has presented nothing other than generalized concerns in the nature of speculative lay opinion, which is inadequate. Applicant has addressed and refuted each basis for objection raised by Movant.

WHEREFORE, there being no grounds for denial of the subject application, Applicant respectfully requests that the Commission deny Movant's motion to intervene, issue a Certificate of Public Convenience and Necessity for the proposed tower construction, and grant such other relief as the Commission may deem just and proper.

RESPECTFULLY SUBMITTED



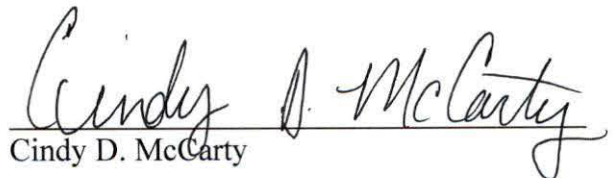
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*Counsel for East Kentucky Network, LLC
d/b/a Appalachian Wireless*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was sent by US Postal Service first class mail, postage prepaid, to the following, on this 13th day of April, 2018:

Linda L. Reynolds
PO Box 1356
Williamsburg, KY 40769



Cindy D. McCarty

EXHIBIT

A

AFFIDAVIT OF MICHAEL JOHNSON

COMES NOW AFFIANT MICHAEL JOHNSON (“Affiant”), first being duly sworn, and states as follows:

1. I am the Technical Operations Director of East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”) and have been in this position for approximately 5 years. Prior thereto, I was the Manager of Technical Operations for several years.

2. I have approximately 26 years of experience in the wireless telecommunications industry, and for the past 15 years, my job duties have included network engineering and design, including determining the location and height of towers necessary for Appalachian Wireless’s network operation.

3. Appalachian Wireless holds (a) License WQIZ558 – KY 11 – Clay (B-Block License), and (b) License WPWV284 – KY 11 – Clay (C-Block License), both of which cover Bell, Clay, Harlan, Knox, Leslie, and Whitley counties. Appalachian Wireless must develop infrastructure sufficient to provide coverage to 75% of the general population and 70% of the geographic areas in these counties no later than June 13, 2019.

4. In order for Appalachian Wireless to fulfill its obligations under the federal licenses, I determined the locations where various towers would need to be placed to establish an interconnected network sufficient to meet the federal coverage requirements. All of the planned sites (including the site that is the subject of Case No. 2018-00095) must be constructed in order to maintain network continuity.

5. As part of my job responsibilities, I am responsible for ensuring that financial expenditures for infrastructure are reasonably necessary. Construction of unnecessary towers would not be a sustainable business model.

6. In conclusion, the subject tower is necessary for network continuity and for fulfilling the requirements of Appalachian Wireless's federal licenses.

7. I have personal knowledge of the matters stated herein, which are true and correct to the best of my knowledge and are informed by my many years of experience in the wireless telecommunications industry.

Further this Affiant sayeth naught.


MICHAEL JOHNSON

COMMONWEALTH OF KENTUCKY
COUNTY OF Floyd

The foregoing *Affidavit of Michael Johnson* was subscribed and sworn to before me on this 13th day of April, 2018, by Michael Johnson, Technical Operations Director of East Kentucky Network, LLC d/b/a Appalachian Wireless.


Notary Public

My Commission Expires 9-2-2020

