

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS)	
FOR THE ISSUANCE OF A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	CASE NO.
CONSTRUCT A WIRELESS)	2020-00139
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF CARROLL)	

ORDER

On April 23, 2020, 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 255 feet in height, with attached antennas, to be located at 1002 Fairview Ridge, Milton, Kentucky 40045. The coordinates for the proposed facility are North Latitude 38°42'20.66" by West Longitude 85°16'51.00".

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

Pursuant to 807 KAR 5:063, Verizon Wireless filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Verizon Wireless 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 of their right to request intervention. As of the date of this Order, two public comments have been received and no requests for intervention have been received.

On May 11, 2020, Alexander S. Johnson and Rachel B. Grimes (Mr. Johnson and Ms. Grimes) made public comment by way of a letter to the Commission that voiced their generalized concerns about the aesthetics of the proposed tower. Their main concerns are with the proposed size of the proposed tower in relation to its surroundings and the effects of nighttime lighting of the proposed tower.¹ Mr. Johnson and Ms. Grimes requested that the nighttime lighting be red, rather than white.² In its response, Verizon Wireless stated that the tower placement at the chosen location is “the most suitable and least intrusive method of resolving the existing coverage and/or capacity gap in this area.”³ In response to concerns about the tower lighting Verizon Wireless stated that the system is designed with an alternating white light in the daytime and a red light at nighttime to minimize visibility to area residents.⁴ In its response to Mr. Johnson and Ms. Grimes, Verizon Wireless stated that a lower tower height would greatly reduce coverage and result in the inability of the facility to operate properly in the Verizon Wireless network.⁵ Verizon Wireless further stated that engineers determined an optimum area for

¹ May 11 Letter of Johnson and Grimes.

² *Id.*

³ Verizon Wireless Response to Public Comments of Johnson and Grimes, at page 2.

⁴ *Id.*

⁵ *Id.*

the placement of the proposed facility in terms of elevation and location to provide the best quality service to customers in the service area.⁶

Mr. Johnson and Ms. Grimes have not presented any expert opinions regarding these issues. Verizon Wireless is correct in its response when it states that the U.S. Court of Appeals for the Sixth Circuit has upheld that lay opinion or generalized concerns are not considered substantial evidence justifying a rejection of the application.⁷

In his May 12, 2020 letter to the Commission, Timothy W. Dermon (Mr. Dermon) voiced generalized concerns regarding the health effects of radio frequency emissions, property values, and aesthetics for the proposed tower. The Commission notes that radio frequency emissions are the subject of federal regulation and, by law, the Commission cannot reject an application on these grounds.⁸ Mr. Dermon has neither requested intervention nor presented any expert opinions regarding his concerns about property values. Verizon Wireless provided a report from a property valuation expert, concluding that the proposed tower will not have a negative impact on surrounding property values.⁹ Mr. Dermon has not produced sufficient grounds within the scope of the Commission's jurisdictional authority for denial of the application, and substantial evidence supports approval of the requested CPCN.

Verizon Wireless has filed applications with the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) seeking approval for the

⁶ *Id.* at 3.

⁷ *Cellco Partnership v. Franklin Co.*, KY, 553 F. Supp. 2d 838 (E.D. Ky. 2008).

⁸ 47 U.S.C. Section 332(7)(B)(iv)

⁹ Verizon Wireless Response to Public Comments of Timothy W. Dermon, at page 4.

construction and operation of the proposed facility. Both applications have been approved.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Verizon Wireless has demonstrated that a facility is necessary to provide adequate utility service and therefore 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 should 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 should 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 255 feet in height, with attached antennas, to be located at 1002 Fairview Ridge, Milton, Kentucky 40045. The coordinates for the proposed facility are North Latitude 38°42'20.66" by West Longitude 85°16'51.00".

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. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the post-case correspondence file.


4. This case is closed and removed from the Commission's docket.

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By the Commission

ENTERED
AUG 18 2020 rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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