

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2022-00385
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF BALLARD)	

ORDER

On November 22, 2022, Celco Partnership d/b/a Verizon Wireless and Horvath V. LLC (collectively, Joint Applicants) submitted an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The application was accepted for filing on December 2, 2022. The proposed facility consists of a tower not to exceed 295 feet in height, with attached antennas, to be located on the east side of Wayside Inn Road, Wickliffe, Ballard County, Kentucky. The coordinates for the proposed facility are North Latitude 36°01'45.61" by West Longitude 89°00'07.63".

Pursuant to 807 KAR 5:063, Joint Applicants filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Joint Applicants 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, no public comments or requests for intervention have been received.

Joint Applicants filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

Joint Applicants has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.¹ 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.²

Joint Applicants has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage,³ including a sworn statement from Verizon Wireless's Radio Frequency Engineer that the tower is necessary to address coverage and capacity issues arising from high demand for wireless high-speed data and growth forecasts in the area.⁴ Joint Applicants has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁵

¹ Application, Exhibit D.

² Application, Exhibit D at 24.

³ Application, Exhibit P.

⁴ Application, Exhibit Q-1.

⁵ Application at 4, paragraph 10, Exhibit Q-1.

To obtain a CPCN, Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.⁶ “Need” requires “a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”⁷ “Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁸ The wireless market is competitive and, other than the placement of towers and interconnection with other telecommunications providers, the Commission has little jurisdiction over wireless providers, including no jurisdiction over the rates and earnings of a wireless provider.⁹

When determining whether to grant a CPCN for a cell tower pursuant to KRS 278.650, *et. seq.*, the Commission is also permitted to consider the effect of the cell tower on the character of the general area and nearby land uses and values.¹⁰ However, the scope and nature of Commission’s review is limited by federal law, which partially

⁶ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885 (Ky. 1952).

⁷ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁸ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁹ See KRS 278.54611.

¹⁰ See KRS 278.650 (“the commission *may* take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values”) (emphasis added).

preempts state law in this area and seeks to promote access to wireless telecommunications facilities.¹¹

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Joint Applicants has demonstrated that there is a need for the proposed facility in order to address coverage and capacity issues in the area arising from high demand for wireless high-speed data and growth forecasts.¹² The Commission also finds that the proposed facility will not result in wasteful duplication because of the lack of reasonable opportunities to co-locate the Joint Applicants' equipment on existing structures.¹³ The Commission, therefore, finds that a CPCN to construct the proposed facility is 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, Joint Applicants shall 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

¹¹ See 47 U.S.C. § 332(c)(7)(B) (limiting the ability of States to prohibit the construction of wireless facilities, particularly where it will limit access to services offered by those facilities); *Telespectrum, Inc. v. Public Service Com'n*, 227 F.3d 414, 423 (6th Cir. 2000) (where the Sixth Circuit noted that the aim of 47 U.S.C. § 332(c)(7) was to “facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers); see also *T-Mobile Cent., LLC Charter Township of West Bloomfield*, 691 F.3d 794, 798-809 (6th Cir. 2012)(discussing federal preemption of state law generally regarding the construction of cell towers and more specifically discussing the substantial evidence standard and when a state decision is said to have denied access to wireless services in violation of 47 U.S.C. § 332(c)(7)(B)(i)(I)-(II)).

¹² See Application, Exhibit Q-1.

¹³ Application at 4, paragraph 10, Exhibit Q-1.

practices, including removal of the unused antenna tower, which shall be observed by Joint Applicants.

IT IS THEREFORE ORDERED that:

1. Joint Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 295 feet in height, with attached antennas, to be located on the east side of Wayside Inn Road, Wickliffe, Ballard County, Kentucky. The coordinates for the proposed facility are North Latitude 36°01'45.61" by West Longitude 89°00'07.63".

2. Joint Applicants 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.

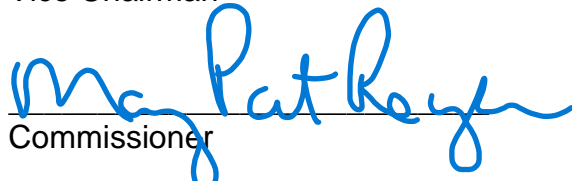
3. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the post-case correspondence file.

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

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ENTERED
FEB 23 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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