

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	)	2023-00043
CONSTRUCT A WIRELESS COMMUNICATIONS	)	
FACILITY IN THE COMMONWEALTH OF	)	
KENTUCKY IN THE COUNTY OF LOGAN	)	

ORDER

On February 8, 2023, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) tendered an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility. The application was found to be deficient. The application was amended and deemed filed on February 13, 2023.

The proposed facility consists of a tower not to exceed 199 feet in height, with attached antennas, to be located at Creekwood Drive, Russellville, Kentucky 42276. The coordinates for the proposed facility are North Latitude 36° 51' 50.30", West Longitude 86° 53' 09.85".

LEGAL STANDARD

No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.<sup>1</sup> To obtain a CPCN, the

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<sup>1</sup> KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>2</sup>

“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.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.<sup>3</sup>

“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.”<sup>4</sup> To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.<sup>5</sup> Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>6</sup> All relevant factors must be balanced.<sup>7</sup>

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<sup>2</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d 885 (Ky. 1952).

<sup>3</sup> *Kentucky Utilities Co.*, 252 S.W.2d at 890.

<sup>4</sup> *Kentucky Utilities Co.*, 252 S.W.2d at 890.

<sup>5</sup> Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005), Order at 11.

<sup>6</sup> See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

<sup>7</sup> Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

For construction of cellular antenna towers, KRS 278.655 authorizes the Commission to set the regulations found 807 KAR 5:063, Section 1.

### FILINGS

Verizon Wireless filed an application providing 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 at the address on file with the Logan County Property Valuation Administrator.<sup>8</sup> 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. Verizon Wireless has filed applications with the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) seeking approval for the construction and operation of the proposed facility.<sup>9</sup> Both applications have been approved.

Regarding need, Verizon Wireless indicated that the tower is necessary to improve cellular service in northern Russellville and provided a supporting recommendation from

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<sup>8</sup> Second Amended Application (filed Feb. 13, 2023), Exhibits K, L, and M.

<sup>9</sup> Second Amended Application, Exhibits F, G.

a radio frequency engineer.<sup>10</sup> The location and height were chosen to best effectuate this goal. Regarding lack of wasteful duplication, Verizon Wireless stated that was not able to find suitable co-location opportunities.<sup>11</sup>

### DISCUSSION AND FINDINGS

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Verizon Wireless should be granted a CPCN. The Commission finds that Verizon Wireless has demonstrated that a facility is necessary to provide adequate utility service based on its radio frequency engineer's recommendation that a new antenna at the proposed location is necessary to "offload existing traffic of existing Verizon sites in the area" and "improve cellular service in northern Russellville," where "the area is experiencing poor service and a high demand for wireless high-speed data."<sup>12</sup> The Commission also finds a lack of wasteful duplication due to the radio frequency engineer's assertion that Verizon Wireless was "unable to find a suitable structure within the center of demand area to collocate. . . ."<sup>13</sup> The Commission also finds that Verizon Wireless complied with all of the requirements found in 807 KAR 5:063, Section 1 in its second amended application.

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

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<sup>10</sup> Second Amended Application, Exhibit Q.

<sup>11</sup> Second Amended Application at 4.

<sup>12</sup> Second Amended Application, Exhibit Q.

<sup>13</sup> Second Amended Application, Exhibit Q. The radio frequency engineer further states "Verizon Wireless cares about the communities as well as the environment and prefers to collocate on existing structures when available. Verizon Wireless is currently collocated on many existing structures in the area. We prefer collocation due to reduced construction costs, faster deployment, and environment protection."

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 199 feet in height, with attached antennas, to be located at Creekwood Drive, Russellville, Kentucky 42276. The coordinates for the proposed facility are North Latitude 36° 51' 50.30", West Longitude 86° 53' 09.85".

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 a period of 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  
AUG 16 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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