

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW	)	
CINGULAR WIRELESS PCS, LLC D/B/A AT&T	)	
MOBILITY AND VB 500 II, LLC FOR ISSUANCE	)	
OF A CERTIFICATE OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY TO CONSTRUCT A WIRELESS	)	2023-00157
COMMUNICATIONS FACILITY IN THE	)	
COMMONWEALTH OF KENTUCKY IN THE	)	
COUNTY OF POWELL	)	

ORDER

On May 12, 2023, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T Mobility) and VB 500 II, LLC (VB 500 II) (jointly, Joint Applicants) 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 199-feet in height, with attached antennas, to be located at 503 Shuler Road, Clay City, Powell County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 51' 58.65" by West Longitude 83° 57' 21.74".

Pursuant to 807 KAR 5:063, Joint Applicants have filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Joint Applicants have 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. Pursuant to KRS 278.665(2) and 807 KAR 5:063 Joint Applicants provided the Property Value Administrator data on which they relied to populate the list of property owners required to be notified. The notices solicited any

comments and informed the recipients of their right to request intervention. No requests for intervention have been filed.

Joint Applicants originally 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. Joint Applicants were informed by the FAA that notice of the proposed construction was not required. Similarly, the KAZC informed Joint Applicants that approval by the KAZC for the proposed construction was not required.

Joint Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.<sup>1</sup> 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.

Joint Applicants have provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.<sup>2</sup> Joint Applicants have also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.<sup>3</sup>

To obtain a CPCN, Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>4</sup>

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<sup>1</sup> Application, Exhibit C.

<sup>2</sup> Application, Exhibit N.

<sup>3</sup> Application at 4, paragraph 12.

<sup>4</sup> *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952).

“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.”<sup>5</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>6</sup> 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.<sup>7</sup>

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Joint Applicants have demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to assure adequate coverage in the area, and to improve service in Powell County by providing interconnection between Joint Applicants’ other sites forming a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. The Commission, therefore, finds that a CPCN to construct the proposed facility should be granted.

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<sup>5</sup> *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>6</sup> *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952)


<sup>7</sup> See KRS 278.54611.

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 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 199-feet in height, with attached antennas, to be located at 503 Shuler Road, Clay City, Powell County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 51' 58.65" by West Longitude 83° 57' 21.74".
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  
AUG 22 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

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