

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY NETWORK, LLC FOR THE)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2023-00264
CONSTRUCT A REPLACEMENT TOWER IN)	
ESTILL COUNTY, KENTUCKY)	

ORDER

On September 15, 2023, East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility.¹ The proposed facility consists of a replacement tower not to exceed 300 feet in height, with attached antennas, to be located at 5700 Winchester Road, Irvine, Estill County, Kentucky 40336. The coordinates for the proposed facility are North Latitude 37°46'54.600" by West Longitude 84°00'01.800".

Pursuant to 807 KAR 5:063, Appalachian Wireless has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Appalachian Wireless has filed evidence that the county judge/executive and all property owners within 500 feet and contiguous to the cell site have been notified of

¹ Appalachian Wireless tendered its application on August 14, 2023. By letter dated August 17, 2023, the Commission rejected the application for filing deficiencies. Appalachian Wireless tendered its application a second time on August 22, 2023. By letter dated August 28, 2023, the Commission accepted the application for filing. On September 15, 2023, Appalachian Wireless submitted a motion for leave to amend its application. By Order entered October 13, 2023, the Commission granted Appalachian Wireless' motion for leave to amend and the application was deemed filed on September 15, 2023.

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.

Appalachian Wireless filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. No Federal Communications Commission approval is required prior to the construction of this facility. Once service is established from the proposed tower, Appalachian Wireless must immediately notify the Federal Communications Commission of its operation.

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

Appalachian Wireless has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.³ Appalachian Wireless has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁴

² Application, Exhibit 5.

³ Application, Exhibit 7.

⁴ Application at 4.

To obtain a CPCN, Appalachian Wireless must demonstrate a need for such facilities and an absence of wasteful duplication.⁵

“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.”⁶ “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.”⁷ 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.⁸

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Appalachian Wireless has 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 Estill County by providing interconnection between Appalachian Wireless’ other sites forming a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a replacement tower to improve telecommunication services and

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

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

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

⁸ See KRS 278.54611.

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.

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, Appalachian Wireless 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 Appalachian Wireless.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a replacement tower not to exceed 300 feet in height, with attached antennas, to be located at 5700 Winchester Road, Irvine, Estill County, Kentucky 40336. The coordinates for the proposed facility are North Latitude 37°46'54.600" by West Longitude 84°00'01.800".

2. Appalachian 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
DEC 05 2023
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Krystal Branham
Attorney
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*Michael L Johnson
East Kentucky Network, LLC
101 Technology Trail
Ivel, KY 41642

*East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*Raina Helton
East Kentucky Network, LLC
101 Technology Trail
Ivel, KY 41642