

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS)
PCS, LLC FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
CONSTRUCT A WIRELESS COMMUNICATIONS)
FACILITY AT 114 RISING SON LANE,) CASE NO.
PRESTONSBURG, FLOYD COUNTY, KENTUCKY,) 2009-00093
41653)
)
)
SITE NAME: BIG BRANCH (474G0111))

O R D E R

On March 25, 2009, New Cingular Wireless PCS, LLC, a Delaware limited liability company ("New Cingular"), filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 310 feet in height, with attached antenna, to be located at 114 Rising Son Lane, Prestonsburg, Floyd County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 39' 18.04" by West Longitude 82° 47' 17.11".

New Cingular has 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, New Cingular has notified the County Judge/Executive of the proposed construction. New Cingular 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. The FAA application has been approved, but the KAZC decision is still pending.

New Cingular has filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited comments and informed the recipients of their right to request intervention. On April 1, 2009, the Commission received a letter from Floyd Skeans seeking information regarding the proposed construction and requesting intervention in this matter.

By Order dated April 3, 2009, the Commission placed this matter in abeyance. When it initially filed the application, New Cingular stated that the proposed tower would be constructed at a location within the political boundary of the city of Prestonsburg’s planning commission, which has adopted planning and zoning regulations in accordance with KRS Chapter 100. The question of whether or not the Commission has jurisdiction over such an application is currently pending in the matter of *L. Glenn Shadoan, et al. v. Kentucky Public Service Commission, et al.*, Kentucky Supreme Court Case No. 2009-SC-000053-DR (“Shadoan”). The Commission’s jurisdiction over New Cingular’s application was largely dependent upon the Supreme Court’s decision and, for this reason, the Commission held that final decision upon the application would not be issued until the Shadoan matter had been resolved.

On April 6, 2009, the Commission issued a letter to Mr. Skeans stating that the matter was being placed in abeyance and the Commission would not undertake a review of his comments or request for intervention until the case became active again.

On June 11, 2009, New Cingular moved the Commission for a decision on the application. By Order dated July 7, 2009, the Commission denied the motion, as the Supreme Court had not rendered a decision on the request for discretionary review.

However, on December 10, 2009, New Cingular amended its application to state that the proposed construction of the tower would lie outside the jurisdiction of a planning commission. In the amendment, New Cingular stated that the proposed tower would not be situated within the boundaries of the city of Prestonsburg, as originally stated in the application. New Cingular stated that the tower would actually be physically located within the boundaries of Floyd County, which does not have a planning and zoning commission. By Order dated January 25, 2010 ("January 25 Order"), the Commission held that New Cingular's application was not dependent upon the Commission's motion for discretionary review before the Supreme Court in the Shadoan proceeding and the application was to be relieved of the abeyance status.

In the January 25 Order, the Commission also ordered New Cingular to respond to Mr. Skeans' comments, filed on April 1, 2009, within 20 days of the date of the Order. Additionally, Mr. Skeans was instructed to notify the Commission, within 10 days of receiving New Cingular's response, as to whether New Cingular had addressed his concerns or whether he continued to have objections and desired to become an intervenor in this matter. On January 28, 2010, New Cingular filed with the Commission a copy of its response to Mr. Skeans. Pursuant to the January 25 Order, Mr. Skeans was required to submit a reply by February 8, 2010. To date, the Commission has received no further notice from Mr. Skeans concerning New Cingular's response or his desire to intervene in this matter.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that New Cingular has demonstrated that a facility is necessary to provide adequate utility service and that, therefore, a Certificate of Public Convenience and Necessity 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, New Cingular should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its 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 New Cingular.

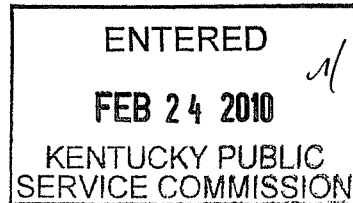
IT IS THEREFORE ORDERED that:

1. New Cingular is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 310 feet in height, with attached antenna, and is to be located at 114 Rising Son Lane, Prestonsburg, Floyd County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 39' 18.04" by West Longitude 82° 47' 17.11".

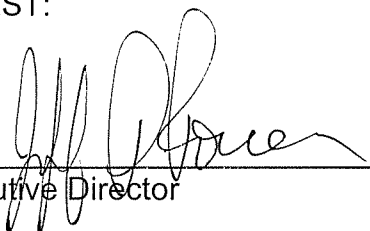
2. New Cingular shall file a copy of the final decision regarding the pending KAZC application for the proposed construction within 10 days of receiving the decision.

3. New Cingular 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.

By the Commission



ATTEST:



Executive Director

Honorable Todd Briggs
Attorney at Law
Briggs Law Office, PSC
1301 Clear Springs Trace, Suite 205
Louisville, KY 40223

Tony A Taylor
New Cingular Wireless PCS, LLC dba AT&T
601 W. Chestnut Street
4th Floor East
Louisville, KY 40203