

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY NETWORK,	)	
LLC D/B/A APPALACHIAN WIRELESS FOR	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	2018-00095
A CELLULAR TOWER IN THE COMMONWEALTH	)	
OF KENTUCKY IN THE COUNTY OF WHITLEY	)	

ORDER

On March 23, 2018, 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.<sup>1</sup> The proposed facility consists of a tower not to exceed 300 feet in height, with attached antennas, to be located near 658 Harold Leforce Road, Williamsburg, Whitley County, Kentucky. The coordinates for the proposed facility are North Latitude 36°48'44.5299" by West Longitude 84°10'02.5765".

Appalachian Wireless 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.

---

<sup>1</sup> Appalachian Wireless tendered its application on March 14, 2018. By letter dated March 20, 2018, the Commission notified Appalachian Wireless that its application was rejected for filing due to filing deficiencies. Appalachian Wireless cured the filing deficiencies and the application was deemed filed on March 23, 2018.

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 the proposed construction. The notices solicited any comments and informed the recipients of their right to request intervention.

The Commission received a comment from Michael and Angela Angel raising concerns about the environmental and health concerns of the facility as well as its potential impact on property values in the area.<sup>2</sup>

The Commission also received a comment from Linda Reynolds, who subsequently filed a motion to intervene on April 9, 2018, and supplemented that motion on April 17, 2018. Ms. Reynolds's motion raised numerous concerns, including environmental and health concerns of the facility. Appalachian Wireless filed a response in opposition to Ms. Reynolds's motion to intervene on April 16, 2018. On September 7, 2018, the Commission entered an Order denying intervention to Ms. Reynolds based on the standard in 807 KAR 5:001, Section 4(11). Particularly relevant here, the Commission found that it was expressly prohibited by the Federal Telecommunications Act of 1996 from regulating the location of a wireless telecommunications facility on the basis of the environmental effects of radio frequency emissions.<sup>3</sup> The documents filed by Ms. Reynolds seeking intervention were deemed public comments pursuant to the September

---

<sup>2</sup> Public Comment: Michael and Angela Angel, 03/29/2018.

<sup>3</sup> 47 U.S.C. § 332(7)(B)(iv); *Telespectrum, Inc. v. Pub. Serv. Comm'n*, 227 F.3d 414 (6th Cir. 2000).

7, 2018 Order. As of the date of this Order, no other public comments or requests for intervention have been received.

Appalachian Wireless 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. Both applications are pending.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Appalachian Wireless has demonstrated that a facility is necessary to provide adequate utility service and, therefore, 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 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 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 tower not to exceed 300 feet in height, with attached antennas, to be located near 658 Harold Leforce Road,

Williamsburg, Whitley County, Kentucky. The coordinates for the proposed facility are North Latitude 36°48'44.5299" by West Longitude 84°10'02.5765".

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 a period of three months in the manner authorized by this Order.

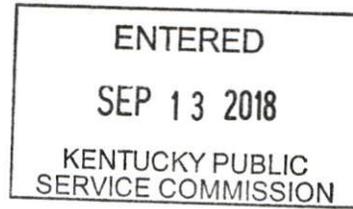
3. Appalachian Wireless shall file a copy of the final decision regarding the pending KAZC and FAA applications for the proposed construction within ten days of receiving a decision.

4. Any documents filed in the future pursuant to ordering paragraphs 2 and 3 shall reference this case number and shall be retained in the post-case correspondence file.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:

  
Executive Director

Case No. 2018-00095

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

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

\*Lynn Haney  
Regulatory Compliance Director  
East Kentucky Network, LLC dba Appalachian  
101 Technology Trail  
Ivel, KY 41642

\*W.A. Gillum  
General Manager  
East Kentucky Network, LLC dba Appalachian  
101 Technology Trail  
Ivel, KY 41642