

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NEW CINGULAR WIRELESS)	
PCS, LLC D/B/A AT&T MOBILITY FOR ISSUANCE)	
OF A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO CONSTRUCT A WIRELESS)	CASE NO.
COMMUNICATIONS FACILITY IN THE)	2018-00384
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF LEE)	

ORDER

On December 18, 2018, New Cingular Wireless PSC, LLC, d/b/a AT&T Mobility (AT&T Mobility) 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 370 feet in height, with attached antennas, to be located at 400 Evelyn Road, Beattyville, Lee County, Kentucky. The coordinates for the proposed facility are North Latitude 37°37'53.58" by West Longitude 84°48'31.51".

AT&T Mobility 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, AT&T Mobility has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR

5:063, AT&T Mobility 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.

On January 14, 2019, Donnie Benton (Mr. Benton) submitted a public comment in opposition to the proposed facility, based upon potential health and safety concerns regarding radio frequency emissions, the potential impact on property values, possible increase in traffic due to maintenance trucks, and the location of the proposed facility near a residential area. By letter dated January 15, 2019, the Commission acknowledged receipt of Mr. Benton's letter, and informed Mr. Benton that federal law prohibited the Commission from regulating the placement of the proposed facility based on the environmental effects of radio frequency emissions, and that the Commission balances the appropriate placement of necessary facilities within applicable engineering boundaries with the statutory requirement to ensure that telecommunications service is adequate and reliable. The Commission also directed AT&T Mobility to file a response to Mr. Benton's concerns.

On January 23, 2019, AT&T Mobility responded by first asserting that Mr. Benton offered only generalized, unsupported lay opinions that, under federal law, are not sufficient evidence to justify denying the CPCN. AT&T Mobility explained that it is licensed by the Federal Communications Commission to provide wireless communications service in the area at issue, emphasized that federal law prohibits consideration of radio frequency emissions as a factor in locating the proposed facility,

and provided a report from a property valuation expert, which concluded that the proposed facility will not have a negative impact on surrounding property values. AT&T Mobility asserted that the proposed facility was designed and located to prevent or limit potential adverse effects on surrounding properties, which AT&T Mobility noted are mountainous and heavily wooded, in contrast to Mr. Benton's characterization that the location is a residential area. AT&T Mobility stated that the proposed facility will be unmanned, with only occasional maintenance crews present, and therefore will not result in an increase in traffic to the area. Finally, AT&T Mobility averred that engineers conducted studies and tests in order to determine the optimum area for locating the proposed facilities.

AT&T Mobility filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that AT&T Mobility 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, AT&T Mobility 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 AT&T Mobility.

IT IS THEREFORE ORDERED that:

1. AT&T Mobility is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 370 feet in height, with attached antennas, to be located at 400 Evelyn Road, Beattyville, Lee County, Kentucky. The coordinates for the proposed facility are North Latitude 37°37'53.58" by West Longitude 84°48'31.51".

2. AT&T Mobility 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.

By the Commission

ENTERED
FEB 04 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Honorable David A Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*New Cingular Wireless PCS, LLC dba AT&T
1010 N St Mary's Street, 9th Floor
San Antonio, TX 78215