

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)	CASE NO.
AND NECESSITY TO CONSTRUCT A WIRELESS)	2019-00176
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF CASEY)	

ORDER

On June 7, 2019, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) filed an application (Application) seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility in Casey County, Kentucky. On July 1, 2019, Susan Hoskins, Elwood Hoskins, and Mandy Wahl filed three separate letters of public comment stating that they are residents of Casey County, Kentucky, and requesting that the Commission hold a public hearing concerning the Application. On July 17, 2019, and July 22, 2019, AT&T filed responses to these requests for public hearing as well as to the six other requests for public hearing that had been filed.

Mr. and Ms. Hoskins and Ms. Wahl filed a response to AT&T (Hoskins Wahl Response) on July 25, 2019. Although the Hoskins Wahl Response sets out arguments for why the Commission should hold a public hearing in this case, the last sentence of the

Hoskins Wahl Response moves that the Commission grant Mr. and Ms. Hoskins and Ms. Wahl's intervention in the case.¹

Mr. and Ms. Hoskins are the owners of the Casey County property that is in close proximity to the proposed tower site in the present case and is leased to SBA Communications Corporation (SBA) where a tower is presently located. The Hoskins state that they believe the proposed tower would be located too close to their property and too close to a nearby church and burial ground.²

Ms. Wahl states that although she does not live in close proximity to the proposed tower site, she has a granddaughter buried in this same burial ground near the church and as such will be impacted by the proposed tower.³

DISCUSSION

The only person with a statutory right to intervene in a proceeding before the Commission is the Attorney General.⁴ Intervention by all others is permissive and is within the sole discretion of the Commission.⁵

The standard for intervention is twofold. As provided by 807 KAR 5:001, Section 4(11), a motion to intervene, "shall state his or her interest in the case and how an intervention is likely to present issues or develop facts that will assist the commission in

¹ *Elwood Hoskins, Susan Hoskins, and Many Wahl Reply to New Cingular Wireless PCS, LLC, A Delaware Limited Liability Company d/b/a AT&T Mobility Response and Amended Response to These Public Comments Requesting a Hearing*, at 5.

² *Id.* at 3.

³ *Id.*

⁴ See KRS 367.150(8)(b). The Attorney General has not requested to intervene in this matter.

⁵ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

fully considering the matter without unduly complicating or disrupting the proceedings.”

The regulation further provides that:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

It is under these criteria that the Commission reviews a motion for intervention.

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Mr. and Ms. Hoskins and Ms. Wahl do not have a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented. The Commission also finds that Mr. and Ms. Hoskins and Ms. Wahl are not likely to present issues or develop facts that will assist the Commission in considering this matter. It is likely that if the Commission permitted Mr. and Ms. Hoskins and Ms. Wahl to intervene, this intervention would unduly complicate this proceeding.

Neither Mr. and Ms. Hoskins nor Ms. Wahl state which special interest they are asserting, which cannot be otherwise adequately represented. All three assert that they will give testimony about whether AT&T has fully and accurately considered the impacts of the proposed cell tower on existing land uses and property values. However, Mr. and Ms. Hoskins also state in their motion that they allowed a tower to be built by SBA on their property in close proximity to the site of the proposed tower in this case, which somewhat undercuts their stated concerns. Ms. Wahl does not live in close proximity to the proposed site, further weakening her testimony. Finally, lay opinion such as Mr. and Ms. Hoskins

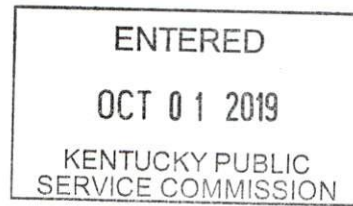
and Ms. Wahl are prepared to offer is not substantial evidence justifying the rejection of a cellular tower application.⁶ There has been no indication that there would be any offering of expert testimony to support these general concerns.

The Commission finds that, although Mr. and Ms. Hoskins and Ms. Wahl have not proven that they have a special interest or that they can present issues or develop facts that assist the Commission in fully considering this matter without undue complication or disruption of the proceedings, Mr. and Ms. Hoskins and Ms. Wahl shall have the opportunity to file additional comments in this proceeding even though they have not been granted intervenor status. They may file comments as frequently as they choose, and those comments will be entered into the record of this case. Mr. and Ms. Hoskins and Ms. Wahl can review all documents filed in this case and monitor the proceedings via the Commission's website.

IT IS THEREFORE ORDERED that Mr. and Ms. Hoskins and Ms. Wahl's request to intervene is denied.

⁶ *Cellco Partnership v. Franklin County, et al*, 553 F.Supp.2d 838, 852 (E.D. Ky. 2008).

By the 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