

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|--|---|------------|
| ELECTRONIC APPLICATION OF CELLCO       | ) |            |
| PARTNERSHIP D/B/A VERIZON WIRELESS FOR | ) |            |
| ISSUANCE OF A CERTIFICATE OF PUBLIC    | ) | CASE NO.   |
| CONVENIENCE AND NECESSITY TO           | ) | 2022-00332 |
| CONSTRUCT A WIRELESS COMMUNICATIONS    | ) |            |
| FACILITY IN THE COMMONWEALTH OF        | ) |            |
| KENTUCKY IN THE COUNTY OF EDMONSON     | ) |            |

ORDER

On October 6, 2022, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) 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 199 feet in height, with attached antennas, to be located near 4229 Otter Gap Road, Bowling Green, Kentucky 42101, in Edmonson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 05' 02.74" by West Longitude 86° 16' 10.91".

Pursuant to 807 KAR 5:063, Verizon Wireless has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Verizon 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. As of the date of this Order, no public comments or requests for intervention have been received.

Verizon Wireless used the Federal Aviation Administration's notice criteria tool to determine that filing for a Determination of No Hazard to Air Navigation was not required by the Federal Aviation Administration.<sup>1</sup> Verizon Wireless also filed an application with the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. That application is pending.<sup>2</sup>

Verizon Wireless has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.<sup>3</sup> 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.

Verizon Wireless has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.<sup>4</sup> Verizon Wireless has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.<sup>5</sup>

To obtain a CPCN, Verizon Wireless must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>6</sup>

"Need" requires "a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the

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<sup>1</sup> Application, Exhibit F.

<sup>2</sup> Application, Exhibit G.

<sup>3</sup> Application at 3; Exhibits C–D.

<sup>4</sup> Application at 6; Exhibit P.

<sup>5</sup> Application at 3–4; Exhibit Qa.

<sup>6</sup> *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952).

new system or facility to be constructed or operated.”<sup>7</sup> “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.”<sup>8</sup> 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.<sup>9</sup>

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Verizon Wireless has demonstrated that there is a need for the proposed facility in order to provide adequate utility service. The Commission also finds that the proposed facility will not result in wasteful duplication because of the lack of reasonable opportunities to co-locate Verizon Wireless’ equipment on existing structures. The Commission, therefore, finds that a CPCN to construct the proposed facility is 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, Verizon 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

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

<sup>8</sup> *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>9</sup> See KRS 278.54611.

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 Verizon Wireless.

IT IS THEREFORE ORDERED that:

1. Verizon Wireless is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 199 feet in height, with attached antennas, to be located near 4229 Otter Gap Road, Bowling Green, Kentucky 42101, in Edmonson County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 05' 02.74" by West Longitude 86° 16' 10.91".

2. Verizon 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. Verizon Wireless shall file a copy of the final decision regarding the pending KAZC application for the proposed construction within ten days of receiving a decision.

4. Documents filed, if any, in the future pursuant to ordering paragraphs 2 and 3 herein 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.

PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

  
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Commissioner



ATTEST:

  
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Executive Director

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