

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

The Commission, on its own motion, finds that this case should be reopened pursuant to KRS 278.390 to investigate whether Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) provided sufficient notice to adjoining landowners as required by KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(l).

BACKGROUND

On October 6, 2022, Verizon Wireless filed an application for the issuance of a certificate of public convenience and necessity (CPCN) to construct a wireless communications facility in Edmonson County, Kentucky.

As part of its application, Verizon Wireless asserted:

Applicant has notified every person who, according to the records of the County Property Valuation Administrator, owns property which is within 500 feet of the proposed tower or contiguous to the site property, by certified mail, return receipt requested, of the proposed construction. Each notified property owner has been provided with a map of the location of the proposed construction, the PSC docket number for this application, the address of the PSC, and will be informed of his or her right to request intervention. A list of the notified property owners and a copy of the form of the notice to be

sent by certified mail to each landowner are attached as Exhibit K and Exhibit L, respectively.¹

Verizon Wireless provided a list of 14 property owners² that were to receive notice by certified mail.³ Verizon Wireless also provided a copy of the letter that it stated was transmitted to the property owners of record within 500 feet of the site of the proposed wireless communications facility.⁴

The Commission accepted Verizon Wireless's application for filing on October 11, 2022, having then found that Verizon Wireless's application met the minimum filing requirements.

On November 30, 2022, having then received no public comments opposing Verizon Wireless's application, the Commission granted Verizon Wireless's application for a CPCN to construct its wireless communications facility in Edmonson County.

On February 1, 2023, the Commission received a public comment filed by Kathy Sasse. Ms. Sasse alleged that she is the owner of land adjoining the site of Verizon Wireless's proposed wireless communications facility. Ms. Sasse argued that she did not receive notice of Verizon Wireless's application because the notice was sent to her stepfather. Further, Ms. Sasse argued that other property owners in the vicinity of the proposed location of the wireless communications facility did not receive notice of Verizon Wireless's application.

¹ Application at 5, paragraph 20.

² One of the property owners was listed two times.

³ Application, Exhibit K.

⁴ Application, Exhibit L.

In response to Ms. Sasse's comment, Verizon Wireless filed a supplement to its application on February 3, 2023. Verizon Wireless included in its February 3, 2023 filing, copies of the envelopes containing the letter to each of the 14 neighboring property owners. The envelopes included the certified mail tracking information. Verizon Wireless provided a copy of the letter sent to the neighboring property owners dated October 4, 2022.⁵ Verizon Wireless also included copies of the return receipts returned to its counsel and the tracking information for one of the mailings. Four of the return receipts sent certified mail to the adjoining property owners were returned signed to Verizon Wireless's counsel.⁶ Verizon Wireless provided copies of eight envelopes that were returned to Verizon Wireless's counsel unclaimed or unable to forward. By using the tracking information provided, the Commission was able to ascertain that the certified mail was successfully delivered to one additional landowner, while the tracking information for another mailing indicated no activity after October 12, 2022, when the mail was scheduled to arrive at its next destination from the regional distribution center.

In sum, five of the neighboring landowners received actual notice of this proceeding by certified mail, while nine of the neighboring landowners did not.

LEGAL STANDARD

The notice requirements for an application for a CPCN to build a wireless communications facility are set forth in 807 KAR 5:063, Section 1(1)(l)–(q). A utility must provide with its application:

⁵ Verizon Wireless's Exhibit S (filed Feb. 3, 2023); *see also* Application, Exhibit L.

⁶ Verizon Wireless also provided a copy of the signed return receipt sent to Edmonson County's county judge executive, Will Cannon.

(l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;
2. Given the commission docket number under which the application will be processed; and
3. Informed of his right to request intervention;

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;

(n) A statement that the county judge executive has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;
2. Given the commission docket number under which the application will be processed; and
3. Informed of his right to request intervention;

(o) A copy of the notice sent to the county judge executive;

(p) A statement that:

1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and
2. The notices shall remain posted for at least two (2) weeks after the application has been filed;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.

However, KRS 278.665(2) provides:

At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will

be processed, and informed of the opportunity to intervene in the commission proceedings on the application.

KRS 278.390 states, “Every order entered by the commission shall continue in force [...] until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.”

DISCUSSION AND FINDINGS

Based on the record as now supplemented by Verizon Wireless, it is not clear that sufficient notice has been provided to all neighboring landowners as required by KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(l). Accordingly, the Commission finds that this case should be reopened for the limited purpose of investigating whether all neighboring landowners have received notice of Verizon Wireless’s application. The Commission notes that in one instance it appears the mail carrier had not even made an attempt to deliver the certified mail to one of the property owners. Verizon Wireless also filed its application just two days after it sent the notice by certified mail to the 14 property owners. Therefore the statement Verizon Wireless provided in its application asserting that it had notified all property owners within 500 feet of the proposed facility was premature. At that point in time Verizon Wireless knew it had mailed notices, but it had no knowledge concerning whether the notices were received by the intended recipients. The Commission further notes that in at least two prior cases, utilities requesting a CPCN to construct a wireless communications facility filed the return receipts with its application,

which seems a reasonable practice when submitting a statement that property owners within 500 feet have been notified.⁷

Additionally, Verizon Wireless should be placed on notice that the Commission may revoke its November 30, 2022 Order and withdraw the CPCN if it determines that all neighboring landowners have not received notice pursuant to KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(l).

The Commission has the discretion to reopen a case pursuant to KRS 278.390. For example, in Case No. 89-272, the Commission reopened a rate case because it received allegations from 26 customers that the utility did not provide sufficient notice compliant with Commission regulations.⁸ The Commission reopened those proceedings only on the narrow issue of whether notice was sufficiently provided to those customers. Additionally, the Kentucky Court of Appeals has stated, “We do not believe that an administrative agency can be prevented from correcting a mistake on [...] equitable grounds because such agencies have the public interest as an inherent responsibility.”⁹ The Commission has the responsibility of ensuring that the adjoining property owners received notice compliant with KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(l). Accordingly, the Commission Staff is issuing requests for information to

⁷ Case No. 2018-00178, *Application of Kentucky RSA #4 Cellular General Partnership D/B/A Bluegrass Cellular for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Cell Site in the Commonwealth of Kentucky in the County of Marion* (filed Sept. 20, 2018); Case No. 2018-00152, *Application of Kentucky RSA #4 Cellular General Partnership D/B/A Bluegrass Cellular for Issuance of a Certificate of Public Convenience and Necessity to Construct a Cell Site in the Commonwealth of Kentucky in the County of Marion* (filed Sept. 24, 2018).

⁸ Case No. 89-272, *The Application of Hunters Hollow Sewer System for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Nov. 5, 1990).

⁹ *Mike Little Gas Company v. Public Serv. Com'n of Kentucky*, 574 S.W.2d 926, 927 (Ky. App. 1978) (internal citation omitted).

Verizon Wireless to investigate the notice sent to and received by the owners of property within 500 feet of the proposed construction site and whether that notice complies with KRS 278.665(2) and 807 KAR 5:063, Section 1(1). Verizon Wireless is to file its response to Commission Staff's request for information attached to this Order as Appendix B on or before February 24, 2023.

The Commission also finds that a procedural schedule should be established to ensure an orderly review of Verizon Wireless's responses to the attached requests for information and that Verizon Wireless should be granted the opportunity to brief whether the notice filed of record complies with KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(I).

IT IS THEREFORE ORDERED that:

1. This case is reopened to investigate whether the record landowners of property within 500 feet of Verizon Wireless's proposed construction site received notice of Verizon Wireless's application compliant with KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(I).
2. The procedural schedule set forth in the Appendix A to this Order shall be followed.
3. Verizon Wireless shall file a response to the request for information attached to this Order as Appendix B on or before February 24, 2023.
4. Verizon Wireless shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

5. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

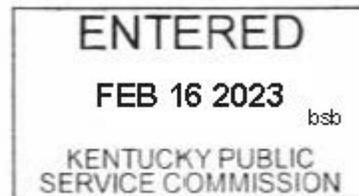
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PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00332 DATED FEB 16 2023

Verizon Wireless shall file responses to initial requests for
information no later than..... 02/24/2023

All supplemental requests for information to Verizon Wireless
shall be filed no later than 03/03/2023

Verizon Wireless shall file responses to supplemental requests
for information no later than 03/10/2023

Verizon Wireless shall file its brief regarding its service
on the adjoining property owners no later than 03/17/2023

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00332 DATED FEB 16 2023

COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS

Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless), pursuant to 807 KAR 5:001E, is to file with the Commission an electronic version of the following information. The information requested is due on February 24, 2023. The Commission directs Verizon Wireless to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

Each response shall include the question to which the response is made and shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

Verizon Wireless shall make timely amendment to any prior response if Verizon Wireless obtains information that indicates the response was incorrect when made or,

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

though correct when made, is now incorrect in any material respect. For any request to which Verizon Wireless fails or refuses to furnish all or part of the requested information, Verizon Wireless shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention shall be given to copied and scanned material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations. When filing a paper containing personal information, Verizon Wireless shall, in accordance with 807 KAR 5:001E, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

1. Refer to Application, Exhibits K–L. Provide documentation showing all attempts to serve by certified mail, return receipt requested, every person who, according to the records of the Edmonson County property valuation administrator, owns property which is within 500 feet of the proposed tower or contiguous to the site property proposed in Verizon Wireless’s application.

2. Provide documentation showing the mailing addresses for the record property owners, per the Edmonson County property valuation administrator, for each of the parcels of property identified as being within 500 feet of the proposed tower location in Verizon Wireless’s application.

3. Refer to Application, page 6 and Application, Exhibit N:

a. Provide the dates that both notice signs were posted at the location of the proposed site and at the nearest road.

b. Provide the photographs taken, if any, of the notice signs posted by Verizon Wireless posted at the location of the proposed site and at the nearest road. Also provide the dates each photograph was taken if the photograph is not date-stamped.

6. Refer to Application, page 6, and Application, Exhibit O. Provide the tear sheets showing the legal notice advertisement published by Verizon Wireless.

7. Refer to Exhibit S filed February 3, 2023. Provide documentation showing all of Verizon Wireless's follow-up attempts to notify property owners of this proceeding and who did not receive the letter originally sent by certified mail on October 4, 2022.

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