

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY NETWORK, LLC FOR THE)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2022-00397
CONSTRUCT A TOWER IN FLOYD COUNTY,)	
KENTUCKY)	

ORDER

On December 13, 2022, East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN)¹ to construct and operate 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 Bobcat Way, Betsy Layne, Floyd County, Kentucky. The coordinates for the proposed facility are North Latitude 37°33'53.2" by West Longitude 82°37'53.0".

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

¹ Appalachian Wireless originally filed the application on December 8, 2022, and by letter dated December 12, 2022 the Commission found the application was deficient. Appalachian Wireless filed additional documents on December 13, 2022. By later dated December 13, 2022 the Commission found that the deficiencies in the application had been corrected and the Application was deemed filed on December 13, 2022.

recipients of their right to request intervention. As of the date of this Order, no public comments or requests for intervention have been received.

Appalachian Wireless has 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.

Appalachian Wireless has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.² 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.³

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

To obtain a CPCN, Appalachian Wireless must demonstrate a need for such facilities and an absence of wasteful duplication.⁶

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

² Application, Exhibit 5.

³ Application, Exhibit 5 at 63.

⁴ Map Search Area (filed on Dec. 13, 2022)

⁵ Application at 3.

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

new system or facility to be constructed or operated.”⁷ “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.”⁸ 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.⁹

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Appalachian Wireless has demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to assure adequate coverage in the area, and to improve service in Floyd County by providing interconnection between East Kentucky Network, LLC’s other sites forming a more cohesive network.

The Commission also finds that the proposed facility will not result in wasteful duplication. Building a new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. 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

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

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

⁹ See KRS 278.54611.

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 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 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 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 Bobcat Way, Betsy Layne, Floyd County, Kentucky. The coordinates for the proposed facility are North Latitude 37°33'53.2" by West Longitude 82°37'53.0".

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 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. 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.

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

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


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