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**Thomas M. Dorman**  
**Executive Director**  
**Public Service Commission**

COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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**Martin J. Huelsmann**  
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**Edward J. Holmes**  
**Vice Chairman**

**Gary W. Gillis**  
**Commissioner**

February 8, 2001

Ms. Wendy Hardin  
Centerpointe  
2106 West Pioneer Pkwy., Suite 131  
Arlington TX 76013

RE: Inquiries Concerning Centerpointe's Construction of Replacement Tower

Dear Ms. Hardin:

This is in response to your letters, both dated January 24, 2001, in which you pose certain inquiries regarding Centerpointe's plan to build a new tower one quarter of a mile from an existing tower that will be decommissioned. According to your letters, Centerpointe intends to transfer the antennas of the current tenants to the new tower. You request Staff opinions regarding Public Service Commission ("PSC") jurisdiction over non-regulated SMR wireless services and cable television. You are correct in stating that the PSC exercises no jurisdiction over SMR 2-way radio companies and cable television providers. However, the issue raised in both letters is whether Centerpointe should file applications with the PSC pursuant to KRS 278.020 when its tenants will consist of an SMR 2-way radio company, a cable tenant, and a "few wireless telecommunications carriers."

Statutes of key relevance to the following analysis include KRS 278.020 (stating that no person may begin construction of a "facility for furnishing to the public" utility service without first obtaining from the Commission a certificate of public convenience and necessity ["CPCN"]); KRS 278.650 (stating requirements for construction of "an antenna tower for cellular telecommunications services or personal communications services"); KRS 100.985 (defining "cellular antenna tower" as a tower "constructed for...the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services"); and KRS 100.987 (providing for a utility or "a company that is engaged in the business of providing the required infrastructure to a utility" to file a uniform application with both the PSC and the planning commission prior to construction of a "cellular antenna tower").



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

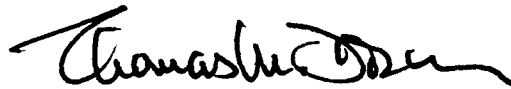
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Ms. Wendy Hardin  
Centerpointe

KRS 100.987 makes it clear that requirements for construction of a "cellular antenna tower" apply whether or not the entity planning to construct is a "utility." Accordingly, the question posed in your letters can be answered in terms of whether Centerpointe plans to "construct" a tower "for ... the location of" equipment to be used for cellular or PCS service, pursuant to KRS 100.985, or "an antenna tower for cellular telecommunications services or personal communications services" pursuant to KRS 278.650 (emphasis added). In brief, the statutory provisions requiring CPCN applications apply if the proposed construction at issue is to be undertaken "for" the purpose of providing tower space for the provision of PCS or cellular service.

You do not provide in your letter sufficient information to enable Staff to provide you with a definitive answer to this question, as it is not clear whether the proposed construction is "for" the provision of wireless telecommunications services or "for" provision of other, non-regulated services. Wireless telecommunications carriers frequently locate their antennas on structures that are not PSC-regulated. Thus, the mere fact that wireless carriers will co-locate on a tower does not indicate that the PSC regulates the construction of that tower. If, for example, the tower in question would be built if no wireless telecommunications carriers were intended to be tenants, the tower would not be constructed "for" the purpose of providing cellular or PCS services. In such a case, the PSC would not regulate the construction itself. The wireless carriers would, however, place the PSC on notice of co-location by filing pursuant to 807 KAR 5:063, Section 6.

The foregoing is a Staff opinion applying the law to the facts stated in your letters. It is not binding on the PSC should the matters discussed herein be formally submitted to the PSC for resolution. If you have questions regarding this matter, please contact Deborah Eversole, General Counsel, at (502) 564-3940, ext. 255.

Sincerely yours,



Thomas M. Dorman  
Executive Director

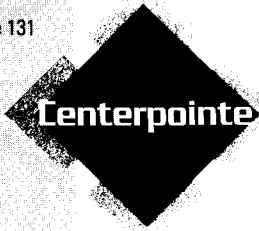
/DTE/rst

cc: Wayne Bates, PSC Engineering Division  
File



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RECEIVED  
JAN 29 2001  
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Director's Office

January 24, 2001

Mr. Tom Dorman  
Executive Director  
PSC of Kentucky  
P.O. Box 615  
211 Sower Blvd.  
Frankfurt, KY 40602

**RE: Staff Opinion regarding Jurisdiction of cable companies as utilities**

Dear Mr. Dorman:

Centerpointe would like to confirm in writing the staff's opinion regarding the current stance of the jurisdiction of the cable companies' collocation on towers.

Currently, there is a tower just south of Berea that will be decommissioned. Centerpointe is interested in building a new tower approximately one quarter of a mile away and then transferring current tenants to the new site. At this point, these tenants include an SMR application, a cable tenant and a few wireless communications carriers.

Please inform as to whether leasing space to a cable company will enable Centerpointe as a tower owner to circumvent the application process for the PSC. It is our understanding that as a landlord to a cable company, Centerpointe would be required to follow local governing bodies, therefore bypassing the PSC process at this time.

Thank you for your confirmation of PCS staff opinion in this regard. Please contact me at the above-listed address if you have any questions.

Sincerely,

Wendy Hardin  
Centerpointe Towers, LLC

MESSAGE CONFIRMATION

DATE : FEB-9-2001 FRI 01:25 PM  
NAME : PUBLIC SERVICE COMMISSION  
TEL. : 5025649625

PHONE : 98172776768  
PAGES : 3/3  
START TIME : 02-09 01:23PM  
ELAPSED TIME : 01'10"  
MODE : ECM  
RESULTS : OK

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**Kentucky Public  
Service Commission**

# Fax

To: Ms. Wendy Hardin From: Lisa Dale/per Kyle Willard  
Fax: (817) 277-6768 Date: February 9, 2001  
Pages: 3, including cover sheet  
Re: CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle

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