

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY)	
NETWORK LIMITED LIABILITY COMPANY FOR)	
THE ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO CONSTRUCT)	2004-00249
A TOWER IN ELLIOTT COUNTY, KENTUCKY)	

O R D E R

On October 18, 2004, East Kentucky Network, LLC, formerly Mountaineer Cellular Limited Liability Company, ("Applicant") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 325 feet in height, with attached antenna, to be located at Copper Head Road, Green, Elliott County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 8' 14.7" by West Longitude 83° 1' 54.4".

The Applicant has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. 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.¹

Pursuant to 807 KAR 5:063, the Applicant has notified the County Judge/Executive of the proposed construction. The Applicant 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. The KAZC application has been approved, but the FAA application is still pending.

The Applicant has filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited any comments and informed the recipients of their right to request intervention. On October 22, 2004, the Commission received a letter of support to the placement of the tower from the Elliot County Judge/Executive.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the Applicant has demonstrated that a facility is

¹ Although 807 KAR 5:063, Section 1(d), requires geotechnical investigation reports to be “signed and sealed by a professional engineer registered in Kentucky”, the report at Exhibit 3 to the application is signed and sealed by a geologist registered in Kentucky. The Commission takes notice that, according to KRS 322A.010(3), the practice of geology appears to include the type of geotechnical evaluation performed. The Commission also notes that the tower and foundation design plans at Exhibit 5 to the application have been “signed and sealed by a professional engineer registered in Kentucky” as required by 807 KAR 5:063, Section 1(j), and according to those plans the findings from the geotechnical report have been noted and considered in the design and construction of the proposed facility. Therefore, for the purpose of this application, the Commission finds that the geotechnical investigation report, as filed, is in substantial compliance with the purpose and intent of 807 KAR 5:063, Section 1(d). However, the Commission reserves the right to reject future filings unless a specific request for deviation from the appropriate regulation is granted.

necessary to provide adequate utility service and that, therefore, a Certificate of Public Convenience and Necessity to construct the proposed facility should be 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, the Applicant should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its 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 should be observed by the Applicant.

IT IS THEREFORE ORDERED that:

1. The Applicant is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 325 feet in height, with attached antenna, and is to be located at Copper Head Road, Green, Elliott County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 8' 14.7" by West Longitude 83° 1' 54.4".
2. The Applicant shall file a copy of the final decision regarding the pending FAA application for the proposed construction within 10 days of receiving the decision.
3. The Applicant 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 a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 29th day of November, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

Case No. «General_Case_InformationCase_No»