

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC, FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2024-00111
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF GRAVES)	

ORDER

On May 17, 2024, New Cingular Wireless PCS, LLC (New Cingular) 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 195 feet in height, with attached antennas, to be located on 1950 State Route 1684, Boaz, Graves County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 53' 41.349908" by West Longitude 88° 34' 37.685318".

Pursuant to 807 KAR 5:063, New Cingular has filed statements of having provided the required notifications regarding the proposed construction.¹ Pursuant to 807 KAR 5:063, New Cingular 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.² The notices solicited any comments and informed the recipients of their

¹ Application (filed May 17, 2024) at 5–6.

² Application at Exhibits J, K and L.

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

New Cingular 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. Documentation confirming that notice to the FAA is not required was provided.³ The KAZC approval is still pending and shall be provided as soon as received.

New Cingular has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.⁴ 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.

New Cingular has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.⁵ New Cingular has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁶

To obtain a CPCN, New Cingular must demonstrate a need for such facilities and an absence of wasteful duplication.⁷

³ Application at 612, Exhibit E.

⁴ Application at 532, Exhibit B.

⁵ Application at 700, Exhibit N.

⁶ Application at 4, paragraph 11.

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

“Need” requires “a showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.”⁸ “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.”⁹ 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.¹⁰

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that New Cingular has demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services. Construction of the tower will improve services to an area currently not served or not adequately served by increasing coverage or capacity and enhancing the public's access to innovative and competitive wireless communications services in Graves County.

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 should be granted.

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

⁹ *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885, 890 (Ky. 1952).

¹⁰ See KRS 278.54611.

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, New Cingular 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 New Cingular.

IT IS THEREFORE ORDERED that:

1. New Cingular is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 195 feet in height, with attached antennas, to be located on 1950 State Route 1684, Boaz, Graves County, Kentucky. The coordinates for the proposed facility are North Latitude 36° 53' 41.349908" by West Longitude 88° 34' 37.685318".
2. New Cingular 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. New Cingular 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.

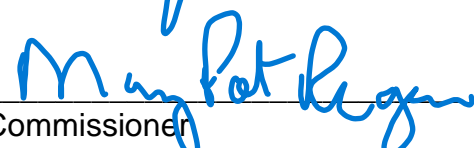
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PUBLIC SERVICE COMMISSION

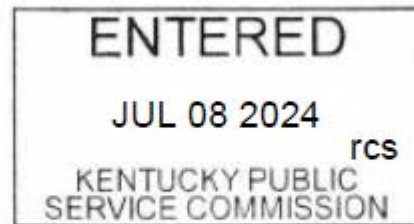
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ATTEST:



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