

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY	)	
NETWORK LIMITED LIABILITY COMPANY FOR	)	CASE NO.
THE ISSUANCE OF A CERTIFICATE OF	)	2009-00064
PUBLIC CONVENIENCE AND NECESSITY TO	)	
CONSTRUCT A TOWER IN LETCHER	)	
COUNTY, KENTUCKY	)	

O R D E R

On March 6, 2009, East Kentucky Network, LLC d/b/a Appalachian Wireless (“East Kentucky”) filed an application requesting issuance of a Certificate of Public Convenience and Necessity (“CPCN”) to construct, maintain and operate a wireless telecommunications facility (“Cell Facility”) located at Dry Fork, Letcher County, Kentucky, in an area that East Kentucky states is unzoned and outside the jurisdiction of a local planning commission. By Commission Order dated April 20, 2009, Lee Etta Cummings (“Ms. Cummings” or “Intervenor”) was granted full intervention, as her property is located near the proposed site and she may be able to assist in the development or presentation of facts or issues before the Commission. This matter is now before the Commission for decision on the parties’ cross-motions to strike certain filings from the record.

On May 28, 2009, the Intervenor filed a list of five alternate tower locations. On June 12, 2009, East Kentucky filed a response to the alternate tower locations wherein it rejected the alternate sites for various reasons. On June 25, 2009, Ms. Cummings

filed two additional documents in response to East Kentucky's objections to the alternate sites. On June 26, 2009, East Kentucky filed an objection to the Intervenor's offer of additional information contained in the two documents, stating that the time to file alternate site information had passed, pursuant to the Commission's Order issued on May 8, 2009, and requesting the documents to be stricken. East Kentucky states that the Commission made no provision in that Order for the filing of responsive pleadings. On June 30, 2009, Ms. Cummings filed a response to East Kentucky's objection, alleging that East Kentucky also made two filings not authorized by the Commission. Specifically, Ms. Cummings states that East Kentucky made filings on May 20, 2009 and May 22, 2009, which are copies of letters to third parties regarding the proposed construction site. Ms. Cummings argues that neither of these filings was allowed under the Commission's May 8, 2009 Order. She argues that, if her pleading is stricken from the record, then the two additional filings by East Kentucky must also be stricken. On July 6, 2009, East Kentucky filed a reply to the Intervenor's response to the objection.

Having reviewed the current submissions, including those items in dispute, and in consideration of the record, the Commission finds that the documents filed by Ms. Cummings on June 25, 2009 and the two documents filed by East Kentucky on May 20, 2009 and May 22, 2009 are all relevant to the issue of whether East Kentucky should be permitted to construct a tower at the site proposed in its application or be ordered to build at an alternate site. The Commission finds that the filed documents are relevant and necessary to the proceeding and will assist the Commission in fully

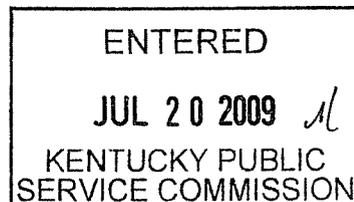
considering the issues under review. For these reasons, the Commission will decline to strike these pleadings from the record.

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. East Kentucky's objection and request to strike Ms. Cummings' documents filed on June 25, 2009 is denied.

2. Ms. Cummings' response to East Kentucky's objection, which requests to strike the documents filed by East Kentucky on May 20, 2009 and May 22, 2009, is denied.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

William S Kendrick  
Francis, Kendrick and Francis First  
Suite 504, 311 North Arnold Avenue  
P.O. Box 268  
Prestonsburg, KY 41653-0268

Gerald Robinette  
General Manager  
East Kentucky Network, LLC dba Appalachian  
101 Technology Trail  
Ivel, KY 41642

Janice Robinson  
Technical Site Coordinator  
East Kentucky Network, LLC dba Appalachian  
101 Technology Trail  
Ivel, KY 41642

Nora J Shepherd  
Sword, Floyd & Moody, PLLC  
218 West Main Street  
Richmond, KY 40476