

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NEW)	
CINGULAR WIRELESS PCS, LLC D/B/A AT&T)	
MOBILITY FOR ISSUANCE OF A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO.
TO CONSTRUCT A WIRELESS)	2019-00176
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF CASEY)	

ORDER

On June 7, 2019, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T Mobility) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility in Casey County, Kentucky. AT&T Mobility attests that both public convenience and necessity require the construction of the wireless telecommunications tower. AT&T Mobility argues that construction of the tower will improve its services to an underserved area, by providing a necessary link in its communications network and allowing it to meet increasing demands for for wireless services in Kentucky.¹ This case has had a unique history before the Commission, including multiple requests for intervention, numerous public comments, and a rare public informational hearing.

The proposed facility consists of a tower not to exceed 237 feet in height, with attached antennas, to be located at 74 Antioch Road, Liberty, Casey County, Kentucky.

¹ Application at 2–3.

The coordinates for the proposed facility are North Latitude 37°13'26.77" by West Longitude 84°57'18.92".

AT&T Mobility 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.

Pursuant to 807 KAR 5:063, AT&T Mobility has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, AT&T Mobility 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 recipients of their right to request intervention. The Commission received several public comments and request for intervention.

AT&T Mobility filed applications with the Federal Aviation Administration and the Kentucky Airport Zoning Commission seeking approval for the construction and operation of the proposed facility. Both applications have been approved.

On June 25, 2019, SBA Communications Corporation d/b/a SBA Towers LLC (SBA), pursuant to 807 KAR 5:001, Section 4(11), moved to intervene in this matter, asserting that it would present issues and develop facts that would assist the Commission in this matter, that it had an interest not being adequately represented, and would not unduly complicate or disrupt the proceeding. By Order dated October 1, 2019, the Commission issued an order denying SBA's motion to intervene.

On July 1, 2019, Elwood Hoskins, Susan Hoskins, and Mandy Wahl filed three separate letters of public comment requesting that the Commission hold a public hearing concerning AT&T Mobility's application to build the tower. Mr. and Mrs. Hoskins and Ms. Wahl also requested intervention. By Order dated October 1, 2019, the Commission denied all three motions to intervene.

The Commission, as required by KRS 278.650, convened a public hearing in Casey County on December 11, 2019, whereby members of the public were permitted time to state their objections to the proposed cell tower. Representatives from AT&T Mobility attended the public hearing and were available to answer questions from the public.

SBA, despite being denied intervenor status, has filed numerous public comments in this case seeking to prevent AT&T Mobility's construction of the proposed tower. SBA Communications owns the tower on which AT&T Mobility currently has its antennae, and which will be moved to the new tower once it is built. SBA's only interest is to remain AT&T Mobility's landlord; however, AT&T Mobility seeks to move to the new tower because the monthly rent is more than \$1,000 less per month than on the SBA Communications tower.² Even though SBA recently offered to lower the monthly rent,³ the proposed rent is still greater than that to be charged on the proposed tower.⁴ Based

² AT&T Mobility's Response to SBA Communications Corporation Motion to Intervene (filed July 2, 2019) at 10.

³ Public Comment of SBA Communications (filed Dec. 4, 2020) at 2.

⁴ AT&T Mobility's Response to SBA Public Comment Suggesting Rent Reduction on Existing SBA Tower (filed Dec. 15, 2020) at 10.

upon this, the Commission finds that AT&T Mobility has met its burden to prove to show that colocation is not reasonable available.⁵

As we noted in our order denying SBA's motion to intervene, SBA is a competitor with an interest in keeping tower rents high by limiting the number of towers. This runs counter to one of the stated purposes of the Telecommunications Act of 1996, which is to promote competition⁶ as well as KRS 278.546(4) which states that market-based competition benefits consumers. Unreasonable and excessive fees for rent on a tower have the potential to divert resources that could otherwise be used to invest in expanding wireless networks and conducting necessary network upgrades necessary to meet increased demand for wireless voice and broadband services.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that AT&T Mobility has demonstrated that a facility is necessary to provide adequate utility service and, therefore, a CPCN 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, AT&T Mobility should 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

⁵ See 807 KAR 5:063, Section 1(1)(s).

⁶ *T-Mobile USA INC. v. City of Anacortes*, 572 F.3d 987, 991 (9th Cir. 2009).

practices, including removal of the unused antenna tower, which should be observed by AT&T Mobility.

IT IS THEREFORE ORDERED that:

1. AT&T Mobility is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 237 feet in height, with attached antennas, to be located at 74 Antioch Road, Liberty, Casey County, Kentucky. The coordinates for the proposed facility are North Latitude 37°13'26.77" by West Longitude 84°57'18.92".

2. AT&T Mobility 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 three months in the manner authorized by this Order.

3. Documents filed, if any, in the future pursuant to ordering paragraph 2 herein shall reference this case number and shall be retained in the post-case correspondence file.

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

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style.

Executive Director

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