

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY NETWORK,)	
LLC FOR THE ISSUANCE OF A CERTIFICATE)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY)	2019-00290
TO CONSTRUCT A TOWER IN MORGAN)	
COUNTY, KENTUCKY)	

ORDER

On August 29, 2019, East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless) filed an application seeking a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a wireless telecommunications facility.¹ The proposed facility consists of a tower not to exceed 300 feet in height, with attached antennas, to be located at 429 McClanahan Hill Road, West Liberty, Morgan County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 58' 04.0828" by West Longitude 83° 18' 16.8657".

Appalachian Wireless 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 Appalachian Wireless tendered its application on August 29, 2019. By letter dated September 6, 2019, the Commission rejected the application due to filing deficiencies. Appalachian Wireless cured the deficiencies, and the application was deemed filed as of September 12, 2019.

Pursuant to 807 KAR 5:063, Appalachian Wireless has filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Appalachian Wireless 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.

On September 20, 2019, Avery Bailey (Mr. Bailey) filed a public comment raising concerns about potential health effects to his family and cattle caused by RF radiation.² Mr. Bailey owns property adjacent to and within 500 feet of the proposed tower and has received written notice of the proposed construction from Appalachian Wireless. On September 26, 2019, Appalachian Wireless filed its reply to Mr. Bailey, which states that radiofrequency (RF) energy is common in today's society, and the Federal Communications Commission (FCC) has adopted guidelines for RF emissions from cell phone towers. Appalachian Wireless notes that the FCC has concluded that the exposure that would be experienced by an individual standing on the ground beneath a cell tower is well below the exposure limits established by the FCC. Appalachian Wireless also provides a copy of a publication from the *American Cancer Society* titled "Cellular Phone Towers." Finally, Appalachian Wireless explains that it is licensed by the FCC to provide telecommunications services to citizens in the area, and that it uses its best efforts to construct the infrastructure necessary to provide reliable coverage.³ Furthermore, the

² Avery Bailey Public Comment (filed Sept. 20, 2019).

³ *Id.*

Commission notes that it is preempted by federal law from addressing or considering the health or environmental effects of RF emissions.⁴

Appalachian Wireless 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. Both applications are pending.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Appalachian Wireless 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, Appalachian Wireless 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 practices, including removal of the unused antenna tower, which should be observed by Appalachian Wireless.

⁴ See 47 U.S.C. § 332(c)(7)(B)(iv):

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 300 feet in height, with attached antennas, to be located 429 McClanahan Hill Road, West Liberty, Morgan County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 58' 04.0828" by West Longitude 83° 18' 16.8657".

2. Appalachian Wireless 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. Appalachian Wireless shall file a copy of the final decision regarding the pending KAZC and FAA applications 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.

By the Commission

ENTERED
OCT 14 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00290

*Krystal Branham
Attorney
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*Lynn Haney
Regulatory Compliance Director
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*W.A. Gillum
General Manager
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642