

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)	2020-00306
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF BREATHITT)	

ORDER

On September 18, 2020, 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. The proposed facility consists of a tower not to exceed 370 feet in height, with attached antennas, to be located at 705 Barge Creek Road, Jackson, Breathitt County, Kentucky 41317. The coordinates for the proposed facility are North Latitude 37°27'19.46" by West Longitude 83°16'24.67".

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 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. As of the date of this Order, one public comment and no requests for intervention have been received. The one public comment came by way of letter on September 25, 2020, from Stephen Jones. Mr. Jones lives near the proposed location of the proposed tower and expressed generalized concerns about living near the proposed tower including that having the tower there would “tear up the land.”¹ Mr. Jones, in his comment, neither requested intervention in this matter nor offered to provide any evidence. While the Commission considers all public comments that it receives, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) has found that unsupported opinion does not constitute substantial evidence.² Also, general concerns that a proposed tower is ugly or unwanted near an individual’s residence are not sufficient to meet the Sixth Circuit substantial evidence test.³ Accordingly, while the Commission takes note of Mr. Jones’s comment, it will not afford it any weight when considering AT&T Mobility’s application.

AT&T Mobility 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 the FAA application and the KAZC application have been approved.

¹ Stephen Jones Public Comment (filed Sept. 25, 2000).

² *Cellco Partnership v. Franklin Co.*, KY, 553 F. Supp. 2d 838, 852 (E.D. Ky. 2008).

³ *T-Mobile Central, LLC v. Charter Township of West Bloomfield*, 691 F.3d 794, 800 (6th Cir. 2012).

Having considered the evidence of record and being otherwise sufficiently advised, the Commission 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 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 370 feet in height, with attached antennas, to be located at 705 Barge Creek Road, Jackson, Breathitt County, Kentucky 41317. The coordinates for the proposed facility are North Latitude 37°27'19.46" by West Longitude 83°16'24.67".

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 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.

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By the Commission

ENTERED
JAN 08 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

 for _____
Executive Director

Case No. 2020-00306

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