

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)	2021-00049
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF ADAIR)	

ORDER

On February 1, 2021, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility and Uniti Towers LLC (jointly, Joint Applicants) 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 212 feet in height, with attached antennas, to be located 7481 Edmonton Road, Columbia, Adair County, Kentucky. The coordinates for the proposed facility are North Latitude 37°02'41.72" by West Longitude 85°27'27.50".

Pursuant to 807 KAR 5:063, the Joint Applicants have filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, the Joint Applicants have 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 February 25, 2021, Thomas and Rachel Dzieran (collectively, Dzierans) filed a document with the Commission in which the Dzierans requested, *inter alia*, intervention in this proceeding. The Commission, on December 17, 2021, denied the Dzierans' request finding that the Dzierans did not meet the standards for intervention found in 807 KAR 5:001, Section 4(11).

The Joint Applicants 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.

The Joint Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.¹ 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.

The Joint Applicants have provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.² The Joint Applicants have also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.³

To obtain a CPCN, the Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.⁴

¹ Application, Exhibit C.

² *Id.*, Exhibit N.

³ *Id.* at 4.

⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm'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.”⁵ “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.”⁶ 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.⁷ Thus, unlike traditionally regulated utilities, the Commission does not monitor wireless providers for unwise or excessive investments in utility plant.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that the Joint Applicants demonstrated that there is a need for the proposed facility in order to provide adequate utility service. The Commission also finds that the proposed facility will not result in wasteful duplication because of the lack of reasonable opportunities to collocate the Joint Applicants’ equipment on existing structures. The Commission, therefore, finds that 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

⁵ *Id.* at 890.

⁶ *Id.*

⁷ See KRS 278.54611.

insufficient. To assist the Commission in its efforts to comply with this mandate, the Joint Applicants 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 the Joint Applicants.

IT IS THEREFORE ORDERED that:

1. The Joint Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 212 feet in height, with attached antennas, to be located at 7481 Edmonton Road, Columbia, Adair County, Kentucky. The coordinates for the proposed facility are North Latitude 37°02'41.72" by West Longitude 85°27'27.50".

2. The Joint Applicants 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.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner



ATTEST:



Executive Director

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