

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)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2021-00398
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF GRAYSON)	

ORDER

On October 18, 2021, New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (AT&T Mobility) and Tillman Infrastructure LLC, a Delaware limited liability company (Tillman Infrastructure) (jointly, Applicants) filed an application to construct a wireless communications facility (WCF). On November 16, 2021, Roger and Janelle Nicolai filed a motion for intervention. On February 24, 2022, the Commission issued an Order granting intervention to the Nicolais. Numerous comments¹ and filings² have been made in the processing of the case. A hearing was held on July 27, 2023. After the hearing, an Order³ was issued holding the case in abeyance while the Applicants consider alternatives to its original proposed location. The case remains open.

¹ There have been in excess of 30 comments filed in this matter.

² There have been multiple filings by both the Applicants and the Nicolais, not relevant to the motion at hand.

³ Based on a motion by the Applicants filed on August 8, 2023, the Commission issued an Order on August 11, 2023, to hold the case in abeyance.

The Commission, on its own motion, dismisses this action without prejudice. In light of the passage of Senate Bill 349 (SB 349) by the 2024 Kentucky General Assembly, the Commission must take action to prevent this application from being deemed approved. If this bill is signed by the Governor or otherwise enacted in its current form, SB 349 will require the Commission to issue an Order within eight months of particular applications being filed, including but not limited to applications for a certificate of public convenience and necessity (CPCN) pursuant to KRS 278.020. If no such Order is issued, the application is deemed approved as filed. This application implicates KRS 278.020. It has been more than eight months since the application date, and the Commission has not issued a final Order. The Commission wants to protect all parties as well as any interested person from an unjust outcome from consequences of this bill which may not have been intended. The Commission will incorporate the record from this matter into any new case initiated by the Applicants, should they so choose. In order to afford the intervenors due process, Applicants shall notify Roger and Janelle Nicolai at both the email and address on record in this proceeding of any subsequent filing made related to the application for a WCF as a result of this dismissal. The Commission reiterates that this is not a finding on the merits of this matter but a necessary procedural determination in order to prevent injustice.

IT IS THEREFORE ordered that:

1. This application is dismissed without prejudice.
2. If the Applicants file a new application relating back to this case, the record of this matter shall be incorporated.

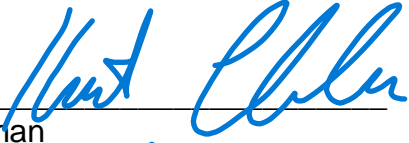
3. If the Applicants file a new application relating back to this case, the Applicants shall notify Roger and Janelle Nicolai at both the email and mailing address on file in this matter.

4. If the Applicants file a new application relating back to this case, Roger and Janelle Nicolai shall be granted intervention in that matter.

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

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
APR 12 2024 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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