

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)	2021-00398
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF GRAYSON)	

ORDER

This matter arises upon the motion of the Robert and Janelle Nicolai (collectively, the Nicolais), filed November 16, 2021, for intervention in the application of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility and Tillman Infrastructure LLC (collectively, the Joint Applicants) to construct a wireless tower in Grayson County, Kentucky. As a basis for their motion, the Nicolais state that the proposed placement of the tower will negatively affect the value of their property and cite to an article claiming that cell towers affect the value of neighboring property. The Nicolais also claim that the proposed tower is at the western edge of their property, which would impede the use of their property. The Nicolais are not opposed to the construction of the tower, objecting only to the location of the tower, and state that the tower could be placed elsewhere on their neighbor's property.

LEGAL STANDARD

The only person who has a statutory right to intervene in a Commission case is the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate

Intervention (Attorney General), pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sole discretion of the Commission.¹

The statutory standard for permissive intervention, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”²

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is two-fold. Commission regulation 807 KAR 5:001, Section 4(11) requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

DISCUSSION AND FINDINGS

Based on a review of the pleadings at issue and being otherwise sufficient advised, the Commission finds that the Nicolais demonstrated that the Nicolais have a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented or that the Nicolais are likely to present issues or develop facts that will assist the Commission in considering this matter without undue complication the proceedings, for the reasons discussed below.

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 at 3 (Ky. App. Feb. 2, 2007).

The Commission “*may take into account . . . the likely effect of the installation on nearby land uses . . .*”³ (Emphasis added.) The Nicolais’ interest in the proposed placement of the tower and the possible effect on the use of their land is a special interest that is not otherwise represented in this proceeding. The Commission, therefore, finds that the Nicolais should be granted full rights of a party in this proceeding. The Commission directs the Nicolais to the Commission’s July 22, 2021, Order in Case No. 2020-00085⁴ regarding filings with the Commission.

In addition, the Commission has received more than three requests from residents of Grayson County, Kentucky, for a local public hearing on the Joint Applicants’ application. Because more than three residents have requested a local public hearing on the Joint Applicants’ application, the Commission, pursuant to KRS 278.650, must convene a local public hearing. The Commission, therefore, finds that a local public hearing will be held on March 3, 2022, beginning at 5 p.m. Central Standard Time at Rough River State Park.

IT IS HEREBY ORDERED that:

1. The motion of the Nicolais to intervene is granted.
2. The Nicolais shall be entitled to the full rights of a party and shall be served with the Commission’s Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

³ KRS 278.650.

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

3. The Nicolais shall file all documents with the Commission by U.S. mail to P.O. Box 615, Frankfort, Kentucky 40602-0615, or by email to PSCED@ky.gov.

4. Within seven days of the date of this Order, the Nicolais shall provide to the Commission and to the Joint Applicants an email address at which the Nicolais may receive electronic service of documents.

5. A local public hearing is convened for the purpose of taking public comment the Joint Applicants' application to construct a wireless telecommunications facility to be located at 2589 Blue Bird Road, Falls of Rough, Kentucky 40119.

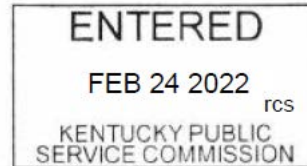
6. The local public hearing shall be held on March 3, 2022, at the Rough River State Park, 450 Lodge Road, Falls of Rough, Kentucky 40119, and shall begin at 5 p.m. Central Standard Time.

7. No evidence shall be taken at the local public hearing.

8. The Joint Applicants shall have a representative present at the local public hearing to answer questions from the public.

9. The Joint Applicants shall provide written notice of the time and place of the local public hearing to the residents of Grayson County who requested the local public hearing and to the Grayson County Judge Executive.

By the Commission



ATTEST:


Executive Director

Case No. 2021-00398

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