

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS AND)	
VB BTS II, LLC D/B/A VERTICAL BRIDGE FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2023-00308
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF CASEY)	

ORDER

On March 28, 2024, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) and VB BTS II, LLC d/b/a Vertical Bridge (Vertical Bridge) (collectively, 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 305 feet in height, with attached antennas, to be located at 3180 Minors Branch Road, Gravel Switch, Casey County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 30' 33.53" by West Longitude 84° 57' 23.05".

On June 28, 2024, Joint Applicants filed a motion to deviate from administrative regulation 807 KAR 5:063, Section 1(1)(l), and 807 KAR 5:063, Section 1(1)(m), to the extent notice is required to adjoining landowners.¹ For one of the landowners, the notice is showing as moving through the system, and in transit to the next facility, with no

¹ Joint Applicants' Motion for Leave to Deviate from Commission Staff's Request for Information (filed June 28, 2024) at 1.

evidence of delivery.² Joint Applicants argued that two mailings have been issued, and that the tracking information from the United States Postal Service (USPS) should be sufficient to meet the requirements of KRS 278.665(2) and 807 KAR 5:063, Section 1(1)(a)(l)(1) and (m).³ Joint Applicants also stated that they have met all other application requirements, including public notice on site, pursuant to 807 KAR 5:063, Section 1(1)(p), and 807 KAR 5:063, Section 1(2)(a), (b) and (c) and public notice published in a local newspaper, pursuant to 807 KAR 5:063, Section 1(1)(q).⁴ Joint Applicants referenced that the application stated that every person who according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been: (1) notified by certified mail, return receipt requested, of the proposed construction; (2) given the commission docket number under which the application will be processed; and (3) informed of his right to request intervention.⁵

Pursuant to 807 KAR 5:063, Joint Applicants have filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Joint Applicants have filed evidence that the county judge/executive and all property owners, apart from the one discussed above, within 500 feet and contiguous to the cell site have been notified of the proposed construction. The notices solicited any

² Joint Applicants' Motion for Leave to Deviate from Commission Staff's Request for Information at 2 and Exhibit 1.

³ Joint Applicants' Motion for Leave to Deviate from Commission Staff's Request for Information at 3. The motion cites to the regulations as cited in this Order; however, the correct citations are 807 KAR 5:063 Section 1(1)(l) and 807 KAR 5:063 Section 1(1)(m).

⁴ Joint Applicants' Motion for Leave to Deviate from Commission Staff's Request for Information at 2.

⁵ Joint Applicants' Motion for Leave to Deviate from Commission Staff's Request for Information at 2-3.

comments and informed the recipients of their right to request intervention. As of the date of this Order, no public comments or requests for intervention have been received.

Joint Applicants 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. Neither application has been approved. Joint Applicants stated that the approvals or determination of no hazard would be filed when received.⁶

Joint Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.⁷ 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.

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.⁸ Joint Applicants have also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁹

To obtain a CPCN, Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.¹⁰

⁶ Application at 5.

⁷ Application. Exhibit C and D.

⁸ Application at 8 and Exhibit Q; Response to Deficiency Notice of March 25, 2024 (filed March 28, 2024) at Exhibit 1.

⁹ Application at 4 and Exhibit Q.

¹⁰ *Kentucky Utilities Co. v. Public Service Com'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.”¹¹ “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.”¹² 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.¹³

Having considered the evidence of record and being otherwise sufficiently advised, the Commission grants Joint Applicants’ request to deviate from administrative regulation 807 KAR 5:063, Section 1(1)(l), and 807 KAR 5:063, Section 1(1)(m), to the extent notice is required to adjoining landowners. Reasonable attempts have been made by Joint Applicants to ensure all landowners receive proper notice, and good cause has been shown to grant the requested deviation.

Commission further finds that Joint Applicants have demonstrated that there is a need for the proposed facility as a result of increasing demand for telecommunications services, to assure adequate coverage in the area, and to improve service in Casey County by providing interconnection between Joint Applicants’ other sites forming a more cohesive network.

¹¹ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

¹² *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

¹³ See KRS 278.54611.

The Commission also finds that the proposed facility will not result in wasteful duplication. A new tower to improve telecommunication services and assure adequate coverage when there are no reasonable opportunities to co-locate the equipment required to do so is not wasteful duplication. 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 insufficient. To assist the Commission in its efforts to comply with this mandate, Joint Applicants shall 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 shall be observed by Joint Applicants.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' June 28, 2024 motion for leave to deviate is granted.
2. Joint Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 305 feet in height, with attached antennas, to be located 3180 Minors Branch Road, Gravel Switch, Casey County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 30' 33.53" by West Longitude 84° 57' 23.05".

3. 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.

4. Joint Applicants 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.

5. Documents filed, if any, in the future pursuant to ordering paragraphs 3 and 4 herein shall reference this case number and shall be retained in the post-case correspondence file.

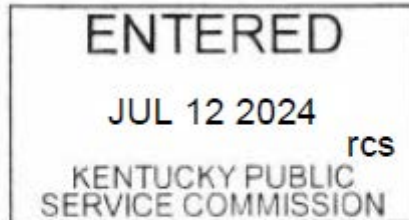
6. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner



ATTEST:



Executive Director

FOR

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