

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 AND VB 500 II LLC FOR ISSUANCE	)	
OF A CERTIFICATE OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY TO CONSTRUCT A WIRELESS	)	2023-00317
COMMUNICATIONS FACILITY IN THE	)	
COMMONWEALTH OF KENTUCKY IN THE	)	
COUNTY OF GARRARD	)	

ORDER

On September 27, 2023, New Cingular Wireless PCS, LLC dba AT&T Mobility (AT&T Mobility) and VB 500 II, LLC (VB 500 II) (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 270 feet in height, with attached antennas, to be located at 265 Gooch Pike, Paint Lick, Garrard County, Kentucky, 40461. The coordinates for the proposed facility are North Latitude 37° 35' 17.63" by West Longitude 84° 29' 39.61".

Pursuant to 807 KAR 5:063, Joint Applicants filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Joint Applicants 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, no public comments or requests for intervention have been received.

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. Joint Applicants have filed evidence into the record that the Federal Aviation Administration made a determination of no hazard to air navigation<sup>1</sup> and that the Kentucky Airport Zoning Commission has approved Joint Applicants' application.<sup>2</sup>

Joint Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.<sup>3</sup> 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.<sup>4</sup> Joint Applicants have also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.<sup>5</sup>

To obtain a CPCN, Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>6</sup> "Need" requires "a showing of a substantial

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<sup>1</sup> FAA Determination of No Hazard to Air Navigation (filed Nov. 13, 2023).

<sup>2</sup> KAZC Letter of Approval (filed Nov. 13, 2023).

<sup>3</sup> Application, Exhibit C.

<sup>4</sup> Application at 7 and Exhibit N.

<sup>5</sup> Application at 4.

<sup>6</sup> *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952).

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.”<sup>7</sup> “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.”<sup>8</sup> 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.<sup>9</sup>

Having considered the evidence of record and being otherwise sufficiently advised, the Commission 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 Garrard County by providing interconnection between Joint Applicants’ other sites forming a more cohesive network. The Commission also finds that the proposed facility will not result in wasteful duplication. Building 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

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<sup>7</sup> *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>8</sup> *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).


<sup>9</sup> See KRS 278.54611.

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 are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 270 feet in height, with attached antennas, to be located 265 Gooch Pike, Paint Lick, Garrard County, Kentucky 40461. The coordinates for the proposed facility are North Latitude 37° 35' 17.63" by West Longitude 84° 29' 39.61".
2. 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

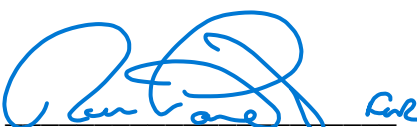
  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
DEC 15 2023  
KENTUCKY PUBLIC SERVICE COMMISSION <sup>rCS</sup>

ATTEST:

  
Executive Director

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