

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

The matter arises from an application for a certificate of public convenience and necessity (CPCN) filed by Cellco Partnership d/b/a Verizon Wireless (Verizon) and VB BTS II, LLC d/b/a Vertical Bridge (Vertical Bridge) (collectively, Joint Applicants), pursuant to KRS 278.020, KRS 278.650, and 807 KAR 5:063, to construct and operate a wireless telecommunications facility, including antenna tower, to be located at 3180 Minors Branch Road, Gravel Switch, Casey County, Kentucky. The Commission granted Verizon and Vertical Bridge the CPCN as requested in an Order entered July 12, 2024. On April 29, 2025, Joint Applicants filed a motion indicating that it did not anticipate exercising the CPCN within one year of the CPCN being granted and, therefore requested to amend the CPCN to extend the time to exercise the authority granted thereunder. Given that no intervening parties participated in this matter, Joint Applicants' motion is ripe for a decision.

A person seeking to construct an antenna tower for cellular telecommunications services or personal communications services outside the jurisdiction of a planning

commission must obtain a CPCN from the Commission.¹ Once the Commission grants a CPCN, the applicant must exercise it within the time prescribed by KRS 278.020(1)(e), which states:

Unless exercised within one (1) year from the grant thereof, *exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent*, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.² (Emphasis added.)

The Commission has previously interpreted KRS 278.020(1)(e) as stating that a CPCN is void as a matter of law if it is not exercised within the time prescribed therein,³ which is consistent with the plain language of the statute that a CPCN "shall be void" if not exercised in a timely manner. The time prescribed by KRS 278.020(1)(e) is one year from the date the CPCN is granted, "exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent."⁴ The term "exclusive of" ordinarily

¹ KRS 278.650; see also KRS 278.020(1) ("No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.").

² KRS 278.020(1)(e).

³ See Case No. 2011-00096, *Application of South Kentucky Rural Electric Cooperative Corporation for an Adjustment of Electric Rates*, (Ky. PSC Mar. 30, 2012), Order at 36-37 ("South Kentucky did not start construction of its new headquarters facility within one year of the issuance of the CPCN, and the delay was not due to any court order or failure to obtain a necessary grant or permit. Consequently, the CPCN . . . has lapsed and is void.").

⁴ KRS 278.020(1)(e).

and as used therein means "not including" or "not taking into account."⁵ Meaning, if a delay occurs due to the order of a court or failure to obtain a necessary grant or consent, then the period of that delay would be excluded for the purpose of determining whether one year has passed rendering a CPCN that has not been exercised void.⁶

Joint Applicants' motion requests an extension of time to exercise the CPCN previously approved in this matter. However, because the CPCN is void if not exercised within the time prescribed and a qualifying delay extends the typical one-year period as a matter of law, there is no basis for making a motion for an extension of the time prescribed by KRS 278.020(1)(e) to exercise a CPCN. Nonetheless, the Commission construes Verizon's motion as an Application for Declaratory Order, pursuant to Section 19 of 807 KAR 5:001. Specifically, Joint Applicants' motion is interpreted as seeking a Declaratory Order to determine if the delay alleged is "due to the order of [a] court or failure to obtain [a] necessary grant or consent" such that the typical one-year period for exercising the CPCN is extended pursuant to KRS 278.020(1) (e) due to the delay.

For relief, Joint Applicants are seeking to delay commencement of construction of the wireless communication facility for a period of nine months until April 12, 2026. This extension is to allow additional time to receive the Federal Communications Commission's (FCC) Environmental Assessment coupled with the restrictions on approved months during which tree removal can be accomplished.⁷

⁵ Merriam-Webster, Exclusive of, (accessed Feb. 4, 2020) (defining "exclusive of" as "not taking into account"); see also *Watkins v. Waterfield*, 297 S.W. 2d 761 (Ky. 1956) (where the Court interpreted language in the Kentucky Constitution stating "within ten days (except Sundays)" to mean within ten days "exclusive of Sundays" and explained that it meant that Sundays could not count toward the 10 days).

⁶ *Watkins v. Waterfield*, 297 S.W. 2d 761 (Ky. 1956), footnote 3.

⁷ Verizon Wireless's Motion for Extension of Time (filed Apr. 29, 2025) at 2.

Upon review of the Verizon's motion and KRS 278.020(1)(e), the Commission finds that the outstanding FCC Environmental Assessment should be considered a ". . . necessary grant or consent . . ." necessary for Joint Applicants to obtain prior to commencement of construction, tolling the expiration of the CPCN issued in this case. Although Joint Applicants requested the CPCN issued in this matter be extended for nine months to April 12, 2026, the Commission does not find such a set period extension to be supported by KRS 278.020(1)(e). Finally, if circumstances do not allow Joint Applicants to commence construction prior to the expiration of the CPCN issued in this matter and no applicable grant or consent exists, nothing ordered herein will prohibit Joint Applicants from filing a new CPCN in the future.

IT IS THEREFORE ORDERED that:

1. This case is re-opened to address the motion.
2. Joint Applicants' motion for an extension is denied.
3. Joint Applicants' motion shall be considered an application for Declaratory Order, pursuant to 807 KAR 5:001.
4. Pursuant to Section 19 of 807 KAR 5:001, the outstanding FCC Environmental Assessment shall be considered a ". . . necessary grant or consent . . ." pursuant to KRS 278.020(1)(e).
5. Joint Applicants must exercise its CPCN within the period prescribed by KRS 278.020(1)(e) or the authority conferred by the issuance of the certificate of convenience and necessity shall be void.
6. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman

Vice-Chairman



Commissioner

ATTEST:



Executive Director

ENTERED
MAY 21 2025
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KENTUCKY PUBLIC
SERVICE COMMISSION

*Elizabeth Bentz Williams
Clark, Quinn, Moses, Scott, and Grahn, LLP
320 North Meridian Street
Suite 1100
Indianapolis, IN 46204-172

*Russell L. Brown
Clark, Quinn, Moses, Scott, and Grahn, LLP
320 North Meridian Street
Suite 1100
Indianapolis, IN 46204-172

*Cellco Partnership dba Verizon Wireless
One Verizon Way, Mailcode VC53S309D
Basking Ridge, NJ 07920