

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)	2024-00168
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY IN THE)	
COUNTY OF WEBSTER)	

ORDER

On June 24, 2024, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T Mobility) 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 199 feet in height, with attached antennas, to be located 695 Dave Miller Road (a.k.a. William Station Road), Clay, Webster County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 29' 53.398565" by West Longitude 87° 53' 05.636801".

Pursuant to 807 KAR 5:063, AT&T Mobility has filed statements of having provided the required notifications regarding the proposed construction.¹ Pursuant to 807 KAR 5:063, AT&T Mobility has filed evidence that the county judge/executive² and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed

¹ Application 6-7.

² Application at 7, Exhibit L.

construction.³ 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.

AT&T Mobility 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. AT&T Mobility filed proof that notice of the proposed construction to the FAA is not required as the proposed tower does not exceed notice criteria.⁴ AT&T Mobility also provided proof that the location and height of the tower are not in KAZC's jurisdiction and that no permit is required.⁵

AT&T Mobility has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.⁶ 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.

AT&T Mobility has provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.⁷ AT&T Mobility has also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.⁸

³ Application, Exhibit J and K.

⁴ Application, Exhibit E.

⁵ Application, Exhibit F.

⁶ Application, Exhibits B and C.

⁷ Application at 8.

⁸ Application at 4.

To obtain a CPCN, AT&T Mobility must demonstrate a need for such facilities and an absence of wasteful duplication.⁹

“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.”¹⁰ “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.”¹¹ 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.¹²

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that AT&T Mobility has 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 Webster County by providing interconnection between 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

⁹ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885 (Ky. 1952).

¹⁰ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

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

¹² See KRS 278.54611.

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, AT&T Mobility 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 AT&T Mobility.

IT IS THEREFORE ORDERED that:

1. AT&T Mobility is granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 199 feet in height, with attached antennas, to be located 695 Dave Miller Road (a.k.a. William Station Road), Clay, Webster County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 29' 53.398565" by West Longitude 87° 53' 05.636801".

2. AT&T Mobility 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. 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 AT&T Mobility.

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.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED
AUG 15 2024
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

*Christopher Shouse
Attorney
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*Honorable David A Pike
Attorney at Law
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*Keith Brown
Pike Legal Group PLLC
1578 Highway 44 East, Suite 6
P. O. Box 369
Shepherdsville, KENTUCKY 40165-0369

*New Cingular Wireless PCS, LLC
1010 N St Mary's Street, 9th Floor
San Antonio, TX 78215