

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY NETWORK, LLC D/B/A)	
APPALACHIAN WIRELESS FOR THE ISSUANCE)	CASE NO.
OF A CERTIFICATE OF PUBLIC CONVENIENCE)	2024-00174
AND NECESSITY TO CONSTRUCT A)	
REPLACEMENT TOWER IN MORGAN COUNTY,)	
KENTUCKY)	

ORDER

On July 31, 2024,¹ East Kentucky Network, LLC d/b/a Appalachian Wireless (Appalachian Wireless) 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 300 feet in height, with attached antennas, to be located on a tract of land near 2220 Centerville Road, West Liberty, Morgan County, Kentucky, 41472. The coordinates for the proposed facility are North Latitude 37 50' 18.5" by West Longitude 83 17' 43.3".

Pursuant to 807 KAR 5:063, Appalachian Wireless has filed statements that it provided the required notifications regarding the proposed construction; as discussed below, notice was mailed to but not received by at least one of the adjoining property owners. Pursuant to 807 KAR 5:063, Appalachian Wireless has filed a list, including the county judge/executive and all property owners within 500 feet and contiguous to the cell

¹ The application was originally filed on June 11, 2024. By letters dated June 13, 2024, and July 23, 2024, Appalachian Wireless was informed of filing deficiencies. Those deficiencies were cured, and the application deemed filed on July 31, 2024.

site, to whom notice of the proposed construction was sent by certified mail. 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 have been received. The required proof of notification was not submitted with the application.

Commission Staff's First Request for Information (Staff's First Request) in this matter was issued September 18, 2024.² On October 10, 2024, Appalachian Wireless submitted a response to Staff's First Request when it tendered a document entitled "Response of East Kentucky Network, LLC d/b/a Appalachian Wireless to Commission Staff's Second Request for Information," the substance of which actually contained information regarding another case before the Commission, Case No. 2024-00089.³ On October 14, 2024, Appalachian Wireless filed a motion for extension of time, clarified that it inadvertently submitted the wrong file in response to Staff's First Request, and submitted the correct file.⁴ However, in the corrected response there were discrepancies in the notice to one of the property owners, Isaac and Kristin Allen (Allens). The Certified Mail Receipt,⁵ and the USPS Tracking Receipt⁶ had different cities and zip code numbers for the Allens, and there was no signed "Green Card" acknowledging receipt of the notice for them. Additionally, the address on the notice sent to the Allens⁷ is not the same

² Commission Staff's First Request for Information (Staff's First Request) (issued Sept. 18, 2024).

³ Appalachian Wireless's Response to Commission Staff's First Request (filed Oct. 10, 2024).

⁴ Appalachian Wireless's Motion for Extension (filed Oct. 14, 2024), Exhibit A, Amended Response to Staff's First Request .

⁵ Appalachian Wireless's Motion for Extension, Exhibit A-2.

⁶ Appalachian Wireless's Amended Response to Staff's First Request, Exhibit 2.

⁷ Application, Exhibit 2.

address for the Allens listed with the Morgan County Kentucky Property Value Administration.⁸ The Allens purportedly own a portion of the property the replacement cell tower was to be placed on. However, the lease provided by Appalachian Wireless was not with the Allens⁹ and the deed provided does not reference the lease.¹⁰

On October 24, 2024, Commission Staff's Second Request for Information (Staff's Second Request) was issued.¹¹ On November 4, 2024, Appalachian Wireless filed a response acknowledging the replacement cell tower would be located on the Allens' property and contending that the lease agreement with Archie Smallwood and Nancy Smallwood, the prior owner of the property, was sufficient.¹²

On November 19, 2024, Commission Staff's Third Request for Information (Staff's Third Request) was issued.¹³ This request sought confirmation that the Allens were aware of the lease on their property in the form of letters, contracts or other types of written acknowledgements or documentation with the Allens. On November 25, 2024, Appalachian Wireless responded that no such documentation existed which would affirmatively confirm that the Allens are aware of the lease on their property. Appalachian

⁸ Appalachian Wireless's Amended Response to Staff's First Request, Exhibit 1.

⁹ Application, Exhibit 8.

¹⁰ Appalachian Wireless's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Nov. 4, 2024), Exhibit 1

¹¹ Commission Staff's Second Request for Information (Staff's Second Request) (filed Oct. 24, 2024).

¹² Appalachian Wireless's Response to Staff's Second Request, Item 2.

¹³ Commission Staff's Third Request for Information (Staff's Third Request) (filed Nov. 19, 2024). The data request was inadvertently labeled "Second Request for Information."

Wireless contended that the Allens have constructive notice of the Lease Agreement due to the purchase of the property.¹⁴

Appalachian Wireless acknowledged that no proof of service has been obtained demonstrating the Allens received notice of the replacement cell tower.¹⁵

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Appalachian Wireless has failed to demonstrate that the Allens have been provided notice as required by 807 KAR 5:063. The Commission, therefore, finds that a CPCN to construct the proposed facility should not be granted at this time. Additionally, to address Appalachian Wireless' motion for an extension of time to file responses, the Commission finds that the motion for an extension should be granted as once the error was discovered, Appalachian Wireless filed the corrected responses in a timely fashion.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless' motion for an extension of time is granted.
2. The application for a CPCN is denied.
3. If the Applicant files a new application and wishes the Commission to relate back to this case, the Applicant should reference this case in the new matter and request the record of this matter be incorporated.
4. This case is closed and removed from the Commission's docket.


¹⁴ Appalachian Wireless's Response to Staff's Third Request (filed Nov. 25, 2024), Item 1.

¹⁵ Appalachian Wireless's Response to Staff's Second Request, Item 1.

PUBLIC SERVICE COMMISSION



Chairman

Commissioner


Commissioner

Commissioner John Will Stacy did not participate in the deliberations or decision concerning this case.

ATTEST:

Executive Director

ENTERED
DEC 23 2024 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

*Krystal Branham
Attorney
East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*Michael L Johnson
East Kentucky Network, LLC
101 Technology Trail
Ivel, KY 41642

*East Kentucky Network, LLC dba Appalachian
101 Technology Trail
Ivel, KY 41642

*Raina Helton
East Kentucky Network, LLC
101 Technology Trail
Ivel, KY 41642