

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 TILLMAN INFRASTRUCTURE)	
LLC FOR ISSUANCE OF A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY TO)	2024-00284
CONSTRUCT A WIRELESS COMMUNICATIONS)	
FACILITY IN THE COMMONWEALTH OF)	
KENTUCKY IN THE COUNTY OF GRAYSON)	

ORDER

This matter arises upon the comment of the Roger and Janelle Nicolai (jointly, Nicolais), filed December 26, 2024, and the Commission’s final Order in Case No. 2021-00398¹ in which the Commission ruled in pertinent part that the Nicolais shall be granted intervention in any matter filed relating back to the application for a wireless communications facility in Grayson County, Kentucky. As New Cingular Wireless PSC, LLC d/b/a AT&T Mobility and Tillman Infrastructure (together, Joint Applicants) stated in the application, the matter here relates back to Case No. 2021-00398.²

LEGAL STANDARD

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), has the statutory right to intervene in

¹ Case No. 2021-00398 *Electronic Application of New Cingular Wireless PCS, LLC D/B/A AT&T Mobility for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Grayson* (Ky. PSC April 12, 2024) Order.

² Application at 2.

Commission cases pursuant to KRS 367.150(8)(b). With limited exception, intervention by all others is permissive and within the sole discretion of the Commission.³

The regulatory standard for permissive intervention, set forth in 807 KAR 5:001, Section 4, is twofold. Commission regulation 807 KAR 5:001, Section 4(11), requires a person to set forth in the motion to intervene either (1) a special interest in the proceeding that is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

DISCUSSION AND FINDINGS

Based on a review of the final Order in Case No. 2021-00398 and the filings in this matter, and being otherwise sufficiently advised, the Commission finds that the Nicolais have demonstrated that they have a special interest in the proceeding over which the Commission has jurisdiction that is not otherwise adequately represented for the reasons discussed below.

In Case No. 2021-00398 a hearing was held on July 27, 2023. After the hearing, an Order⁴ was issued holding the case in abeyance while the Applicants considered alternatives to its original proposed location. However, the Commission, in light of the passage of Senate Bill 349 by the 2024 Kentucky General Assembly, *sua sponte* dismissed the action without prejudice.

The Joint Applicants considered alternatives to its original proposed location, have made modifications and, as of November 20, 2024, resubmitted their request for a

³ KRS 164.2807.

⁴ Case No. 2021-00398, Aug. 11, 2024 Order.

Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in the Commonwealth of Kentucky in the County of Grayson. The Nicolais still own at least one parcel of land adjoining the proposed project site.⁵ Moreover, the Nicolais tendered a document, marked as a public comment, to the Commission on December 26, 2024, challenging this application and describing the Nicolais as intervenors. Although the comment was not filed in a timely manner for intervention according to the procedural schedule,⁶ the Commission did Order the Nicolais be granted intervention in any matter relating back to the original case.⁷ The public comment notes that the Nicolas's position of opposition to the wireless communication facility has not changed.⁸

Based on the above, the Commission finds that the Nicolais should be granted full rights of a party in this proceeding. The Commission directs the Nicolais to the Commission's July 22, 2021, Order in Case No. 2020-00085⁹ regarding filings with the Commission. The Nicolais should provide an email address for service or make a filing indicating that they wish to receive all filings via the United States Postal Service.

In addition, in order to facilitate efficiency in processing this case as noted in the final Order of Case No. 2021-00398, the entirety of the record in Case No. 2021-00398 should be incorporated by reference into this case. Moreover, the Commission finds that

⁵ Application, Exhibit B, PDF page 76 and Exhibit J.

⁶ Order (Dec. 6, 2024).

⁷ Case No. 2021-00398, Order at 2-3 (Apr. 12, 2024).

⁸ Nicolais' Public Comment (filed Dec. 26, 2024).

⁹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

the procedural schedule issued by Order dated December 6, 2024, should be amended to afford the Nicolais time to issue a data request.

IT IS HEREBY ORDERED that:

1. The Nicolais motion to intervene is granted pursuant to the Commission Final Order in Case No. 2021-00398.

2. The Nicolais are entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.

3. The Nicolais shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, Section 8, related to the service and electronic filing of documents.

4. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, the Nicolais shall file a written statement with the Commission that:

a. Certifies that they, or their agent, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.


5. The entirety of the record in Case No. 2021-00398 shall be incorporated into this record.

6. All parties shall adhere to the procedural schedule issued on December 6, 2024, as amended and set forth in the Appendix of this Order. Any terms set forth in the December 6, 2024, Order not in conflict with this Order or Appendix thereto shall remain in effect.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:

Executive Director



APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2024-00284 DATED JAN 7 2025

All requests for information to Joint Applicants
shall be filed no later than01/15/2025

Joint Applicants shall file responses to requests
for information no later than01/22/2025

Intervenor testimony, if any, in verified prepared
form shall be filed no later than..... 01/31/2025

All requests for information to intervenors shall
be filed no later than.....02/12/2025

Intervenors shall file responses to requests for
information no later than.....02/21/2025

Joint Applicants shall file, in verified form, its rebuttal
testimony no later than.....02/28/2025

Last day for parties to request a public hearing or submit a
request for the matter be decided based upon the written record 03/05/2025

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