

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

ORDER

On April 25, 2025, Roger and Janelle Nicolai (Joint Intervenors) filed a response to the Commission’s final Order (Joint Intervenors’ Motion)¹ in which they request reconsideration of the Commission’s April 7, 2025 final Order² granting a Certificate of Public Convenience and Necessity (CPCN) to New Cingular Wireless PCS, LLC d/b/a AT&T Wireless and Tillman Infrastructure (Joint Applicants) to construct a monopole wireless communications facility.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the

¹ Joint Intervenors’ Motion (filed Apr. 25, 2025).

².Order (Ky. PSC Apr. 7, 2025).

evidence presented leaves no room for difference of opinion among reasonable minds.”³

An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁴

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

MOTION AND RESPONSE

The Joint Intervenors’ Motion requesting reconsideration was filed April 25, 2025. Although the Joint Intervenors’ Motion does not address the statutory standard or KRS 278.400, the Commission will treat Joint Intervenors’ Motion as a request for rehearing. As a basis for the Joint Intervenors’ Motion, they stated that the “approved tower placement poses a significant and quantifiable financial threat to our livelihood.”⁵ The Joint Intervenors also raised concern over a potential conflict of interest.⁶

In response, on May 1, 2025, Joint Applicants filed a response and objection to the Joint Intervenors’ Motion.⁷ The Joint Applicants raised several bases for objection but

³ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

⁴ *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁵ Joint Intervenors’ Motion at unnumbered page 2.

⁶ Joint Intervenors’ Motion at unnumbered page 2.

⁷ Joint Applicants’ Response and Objection to Intervenors’ Appeal (Joint Applicants’ Objection) (filed May 1, 2025).

the main objection is that the Joint Intervenors' offered no grounds for substantive relief.⁸ According to the Joint Applicants' Objection, the Joint Intervenors have not raised any new information not readily available or any basis to find that the final Order is unlawful or unreasonable.⁹ In addition, the Joint Applicants raised additional objections as follows: the Joint Intervenors' Motion is untimely and not properly served upon the parties,¹⁰ and the rehearing would result in a violation of a Federal Communication Commission regulation.¹¹

DISCUSSION AND FINDINGS

Having considered the Joint Intervenors' Motion and the Joint Applicants' Objection, the Commission finds that the Joint Intervenors' Motion requesting rehearing or reconsideration should be denied. A rehearing or reconsideration is limited to correcting omissions, errors, or a discussion of new evidence not readily available at the time of the Order. The Joint Intervenors raised at least one argument, property valuation, that was raised during the original proceeding involving this application as well as this proceeding.¹² They did not present any new factual information; nor did they allege that the final Order issued in this proceeding was unlawful nor unreasonable.

⁸ Joint Applicants' Objection at 6–9.

⁹ Joint Applicants' Objection at 6–9.

¹⁰ Joint Applicants' Objection at 2–5.

¹¹ Joint Applicants' Objection at 9–10 (the FCC “shot clock”).

¹² In addition, the Joint Intervenors raised property valuation in the proceeding prior to this one. 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 Apr. 12, 2024) (dismissed without prejudice on legislative grounds unrelated to material findings by the Commission).

The Commission considered the information¹³ from the Joint Intervenors as well as the fact that the Joint Applicants both changed the structure of the wireless communication facility to a monopole and relocated the monopole further away from the Joint Intervenors' residence.¹⁴ The issues raised in the Joint Intervenors' Motion have either been presented before or are related to previous arguments and information filed by the Intervenors. The one exception is the alleged conflict of interest regarding Commissioner Regan.

Regarding the alleged conflict of interest, in summary, Joint Intervenors allege that the fact that Commissioner Regan held executive roles at AT&T "creates a direct conflict and undermines public trust in this decision-making process."¹⁵ Joint Intervenors offered no evidence to support their allegation. On this point, the Commission would note that Commissioner Regan participated in the first case; a hearing was held but no objection was made in that case. No objection was made in this case, until now. Moreover, the statute that sets forth the qualifications for Public Service Commission Commissioners states that Commissioners may not hold any official relationship to any utility, or own any stocks or bonds thereof, or have any pecuniary interest therein.¹⁶ Without evidence that one of these conditions exists, the Joint Intervenors' allegation as to this alleged conflict

¹³ The Commission notes that the information tendered by Joint Intervenors did not necessarily have the evidentiary foundation required by not comply with 807 KAR 5:001. The Commission gave it weight accordingly.

¹⁴ Case No. 2021-00398, Application, Exhibit B; Case No. 2024-00284, Application at 4, Exhibit B-C ("The proposed WCF will consist of a 108-foot tall monopole tower, with an approximately 3-foot tall lightning arrestor attached at the top, for a total height of 111-feet. The original proposed site in case number 2021-00398 was a 145-foot tall self-support tower, with an approximately 4-foot tall lightning arrestor attached at the top, for a total height of 149-feet.")

¹⁵ Joint Intervenors' Motion at unnumbered page 2.

¹⁶ KRS 278.060(2).

is baseless, and thus not a material error or omission, nor is it a basis to correct findings that are unreasonable or unlawful as contemplated by KRS 278.400.

In sum, the Joint Intervenor's have provided no legal grounds for rehearing on the Commission's April 7, 2025 final Order, and as such, the Joint Intervenor's Motion, as noted above, should be denied. Although the Joint Applicants also raised procedural objections to the filing, given the other findings set forth in this Order, the Commission need not reach a finding on those issues.

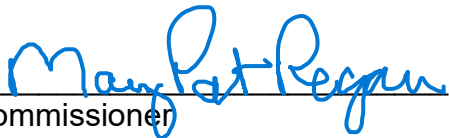
IT IS THEREFORE ORDERED that:

1. Joint Intervenor's Motion requesting reconsideration of the Commission's April 7, 2025 final Order is denied.
2. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director



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