

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CELLCO)	
PARTNERSHIP D/B/A VERIZON WIRELESS AND)	
TOWER VENTURES FOR ISSUANCE OF A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND)	2024-00065
NECESSITY TO CONSTRUCT A WIRELESS)	
COMMUNICATIONS FACILITY IN THE)	
COMMONWEALTH OF KENTUCKY)	

ORDER

On April 10, 2024, Cellco Partnership d/b/a Verizon Wireless and Tower Ventures (collectively, Joint Applicants) 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 266 feet in height, with attached antennas, to be located on 11473 State Route 69, Dundee, Ohio County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 33' 21.13" by West Longitude 86° 46' 26.17".

Pursuant to 807 KAR 5:063, Joint Applicants have filed statements of having provided the required notifications regarding the proposed construction. Pursuant to 807 KAR 5:063, Joint Applicants have filed evidence that the county judge/executive and all property owners within 500 feet and contiguous to the cell site have been notified of the proposed construction. The notices solicited any comments and informed the recipients of their right to request intervention. As of the date of this Order, one public comment has been received, and no requests for intervention have been received.

Joint Applicants have 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. The FAA Determination of No Hazard has been received. The KAZC approval is still pending and will be provided as soon as received.

Joint Applicants have provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility.¹ 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.

Joint Applicants have provided information, including a radio frequency analysis, that the proposed facility is required to provide adequate service and improve its service coverage.² Joint Applicants have also provided information that there is no reasonable opportunity to co-locate its equipment on existing structures.³

To obtain a CPCN, Joint Applicants must demonstrate a need for such facilities and an absence of wasteful duplication.⁴

“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.”⁵ “Wasteful duplication” is defined

¹ Application at 102-153.

² Application at 225.

³ Application at 227.

⁴ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885 (Ky. 1952).

⁵ *Kentucky Utilities Co. v. Public Service Com’n*, 252 S.W.2d 885, 890 (Ky. 1952).

as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁶ 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.⁷

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Joint Applicants have 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 cellular service for the residents and businesses in Ohio County since there are no other existing towers or structures in the area.

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 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, Joint

⁶ *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885, 890 (Ky. 1952).

⁷ See KRS 278.54611.

Applicants 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 Joint Applicants.

IT IS THEREFORE ORDERED that:

1. Joint Applicants are granted a CPCN to construct a wireless telecommunications facility. The proposed facility consists of a tower not to exceed 266 feet in height, with attached antennas, to be located 11473 State Route 69, Dundee, Ohio County, Kentucky. The coordinates for the proposed facility are North Latitude 37° 33' 21.13" by West Longitude 86° 46' 26.17".

2. Joint Applicants 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.

3. Joint Applicants shall file a copy of the final decision regarding the pending KAZC application for the proposed construction within ten days of receiving a decision.

4. Documents filed, if any, in the future pursuant to ordering paragraphs 2 and 3 herein shall reference this case number and shall be retained in the post-case correspondence file.

5. 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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