

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO, L.P.)
THROUGH ITS AGENT AND GENERAL)
PARTNER, SPRINT SPECTRUM, L.P. FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) CASE NO. 96-228
CONSTRUCT A PERSONAL COMMUNICATION)
SERVICES FACILITY IN THE LOUISVILLE)
MAJOR TRADING AREA [MOUNTCLAIR PCS)
FACILITY LV03XC086B1])

O R D E R

On September 6, 1996, WirelessCo, L.P. ("WirelessCo") was granted a certificate of public convenience and necessity to construct a 250' self-supporting antenna tower at 1306 Buck Creek Road in Shelby County, Kentucky. The Order was based, *inter alia*, upon a finding that WirelessCo had notified each person who owns property or who resides within 500 feet of the site of the proposed construction. In making this finding, the Commission relied upon WirelessCo's statements in its July 5, 1996 application and in its statement filed August 29, 1996. The certificate was issued without hearing and without controversy in part because no intervention requests were filed.

On October 3, 1996, the Commission received, by facsimile, a copy of a letter sent to WirelessCo by attorneys representing Ms. Lisa Fleming and Mr. Joseph Ware [attached hereto as Appendix 1]. The letter states that Ms. Fleming and Mr. Ware own property within 500 feet of the site and that, prior to the issuance of the certificate, they had received no notification of the impending construction. Ms. Fleming and Mr. Ware

demanded that WirelessCo immediately cease and desist from building the antenna tower. On October 4, 1996, also by facsimile, Ms. Fleming, Mr. Ware, and Hunington Pointe Development, by counsel, filed a complaint and motion to reopen this case and suspend the certificate pending further investigation [attached hereto as Appendix 2]. WirelessCo, the movants claim, obtained its certificate under false and fraudulent pretenses in that it claimed to have notified property owners within 500 feet when it did not, in fact, do so.

The Commission is entitled to rely upon the accuracy of statements made by utilities before it. In this proceeding, WirelessCo twice stated that it had notified all property owners within 500 feet. Serious question has been raised as to the accuracy of that statement. Accordingly, this case should be reopened and the matter investigated. If the Commission finds that WirelessCo's statements regarding notice were inaccurate, the Commission will schedule a hearing wherein the affected property owners may state their objections to the tower under construction.

Petitioners also request the Commission to suspend the certificate immediately so that the ongoing construction will cease. However, the Commission has authority to order WirelessCo to dismantle the tower subsequent to its construction, should such action appear appropriate based upon evidence gathered in this investigation. Consequently, such an Order is unnecessary at this time. However, WirelessCo should be aware that, under the circumstances, it proceeds with construction of the tower at its own risk. Should WirelessCo elect to proceed with construction, it may not operate this

tower unless and until the Commission issues an order affirming its decision to issue a certificate of public convenience and necessity in this case.

The Commission being sufficiently advised, IT IS HEREBY ORDERED that:

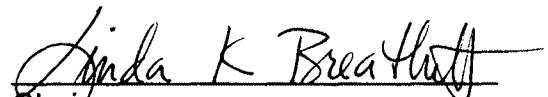
1. Petitioners Ware, Fleming, and Hunington Pointe Development are made parties to this case, and their motion to reopen this case for further investigation is granted.

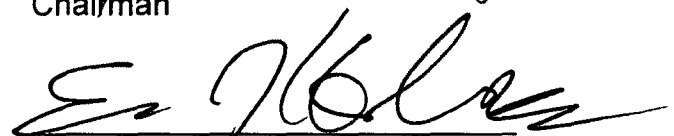
2. Petitioners' motion for an emergency order suspending the certificate of public convenience and necessity granted to WirelessCo on September 6, 1996 is denied except to the extent specified herein.

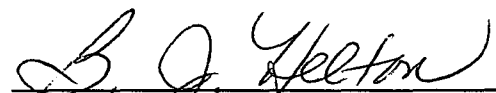
3. Within 10 days of the date of this Order, WirelessCo shall file its response to Petitioners' allegations.

Done at Frankfort, Kentucky, this 7th day of October, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX 1

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 96-228, DATED October 7, 1996.

PEDLEY ZIELKE GORDINIER OLT & PENCE

ATTORNEYS AT LAW

1150 STARKS BUILDING

455 SOUTH FOURTH AVENUE

LOUISVILLE, KENTUCKY 40202-2555

(502) 589-4800

FAX (502) 584-0422

OF COUNSEL
CAROLINE G. MEENA

LAWRENCE L. PEDLEY *
LAWRENCE J. ZIELKE
JOHN K. GORDINIER
JOSEPH M. WHITTLE
WILLIAM W. STODGHILL **
STEPHEN B. PENCE
P. STEPHEN GORDINIER
SCHUYLER J. OLT
JOHN H. DWYER, JR.
RANDAL K. PERKINS

* ALSO ADMITTED FLORIDA
** ALSO ADMITTED ILLINOIS

October 3, 1996

Wireless Co., L. P. d/b/a
Sprint Telecommunications Venture
9000 Wessex Place
Suite 100
Louisville, Kentucky 40222

Gearon & Co., Inc.
9000 Wessex Place
Suite 100
Louisville, Kentucky 40222

Dear Sir or Madam:

This office represents Ms. Lisa Fleming and Mr. Joseph Ware, owners of the property located at 183 Hunters Pointe Place, Simpsonville, Kentucky, which property is immediately adjacent to and contiguous with the property located at 1306 Buck Creek Road, Simpsonville, Kentucky, upon which Wireless Co., L.P., was granted a Certificate of Public Convenience and Necessity, by Order dated September 6, 1996, of the Kentucky Public Service Commission, to construct and operate an antenna tower.

Pursuant to KRS.278 et. seq., and the regulations propounded thereunder, each person who owns property or who resides within five hundred feet (500') of proposed construction is required to be notified, with invitation to intervene, or otherwise object or comment upon the subject of the Application; Wireless Co., L.P., as a part of its Application to construct the referenced tower, falsely verified to the PSC that all affected property owners had been notified.

Neither Ms. Fleming nor Mr. Ware ever received the required Notice, and their first knowledge of the subject of the Application occurred when they observed construction in progress immediately adjacent to their property. Upon inquiry it was determined that the Notice required of Wireless Co. L.P., was attempted by a mailing to an address in Middletown, Kentucky, that has no association with either Ms. Fleming or Mr. Ware (Copy attached). Based upon information received, the other affected property owner also did not receive the required notice of the proposed construction.

Demand is hereby made upon Wireless Co., L.P. and Gearon & Co., Inc., to immediately cease and desist from all construction associated with the antenna tower to be located at 1306 Buck Creek Road, Simpsonville, Kentucky. This will further serve as Notice that Wireless Co., L.P. and Gearon & Co., Inc., will be held accountable for all damages, both legal and equitable,

PEDLEY ZIELKE GORDINIER OLT & PENCE

accruing to Ms. Fleming and Mr. Ware from and after Thursday, October 3, 1996, growing out of the construction of the antenna tower that is the subject of the referenced Certificate.

Please contact the undersigned at your earliest opportunity regarding the above.

Sincerely,



John K. Gordinier

JKG/kmh

cc: Ms. Lisa Fleming
Mr. Joseph Ware
Mr. Donald Mills, Executive Director,
Commonwealth of Kentucky Public Service Commission
Richard Raff, Esq.

APPENDIX 2
AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 96-228 DATED October 7, 1996.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 96-228

Huntington Pointe Development
and
Lisa L. Fleming
and
Joseph Ware

PETITIONERS

vs.

MOTION AND FOR EMERGENCY ORDER
SUSPENDING CERTIFICATE

WirelessCo. J.P. ...

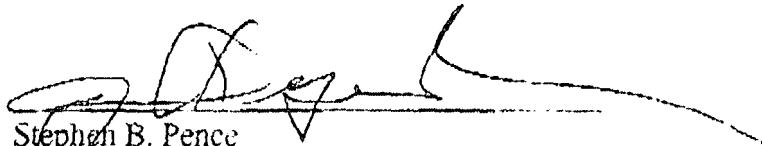
RESPONDENT

Comes the Petitioners and moves the Commission to Re-open the above matter for reconsideration of the issuance of a Certificate of Public Convenience and Necessity issued by the Commission on September 6, 1996. In support of this motion the Petitioners state that Respondent obtained the above Certificate under false and fraudulent pretenses in that the Respondent did not notify all persons who own property or reside within five hundred feet (500') of proposed construction as required by KRS 278 et. seq.

Petitioners further state that the Respondent has begun construction on the antenna tower pursuant to the authority given by the Commission in the fraudulently obtained Certificate. That Respondent has been notified of its violation of KRS 278 et. seq. but continues to construct the tower. Unless the Commission grants this motion for an Emergency Order Suspending Certificate irreparable harm will come to the Petitioners and others as yet unidentified.

Wherefore, the Petitioners move that its Motion to Re-open and Motion for Emergency Order Suspending Certificate be granted.

Respectfully submitted,



Stephen B. Pence
John K. Gordinier
Podley Zielke Gordinier Olt & Pence
455 S. Fourth Avenue
1150 Starks Building
Louisville, Kentucky 40202
(502) 589-4600

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 96-228

HUNTER POINTE DEVELOPMENT

and

LISA L. FLEMING

and

JOSEPH WARE

PETITIONERS

vs.

VERIFIED COMPLAINT

WirelessCo. LP D B A Sprint Spectrum

RESPONDENT

In the Matter of:

APPLICATION OF WIRELESSCO, L.P. THROUGH ITS AGENT
AND GENERAL PARTNER, SPRINT SPECTRUM, L.P. FOR
ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT A PERSONAL
COMMUNICATION SERVICES FACILITY IN THE LOUISVILLE
MAJOR TRADING AREA (MOUNTCLAIR PCS FACILITY
LVO3XCO86B1)

Come the Petitioners, Hunters Pointe Development Company ("Hunters Pointe"), Lisa Fleming and Joe Ware and for their Complaint against the Respondent, WirelessCo. L.P. d/b/a/ Sprint Spectrum state as follows:

1. Petitioner, Hunters Pointe, on and before September 6, 1996, owned property located on Buck Creek Road within 500 feet of the Mountclair PCS site.
2. Petitioners, Lisa Fleming and Joseph Ware, on and before September 6, 1996, owned property and a residence located at 183 Hunters Pointe Place, Simpsonville, Kentucky which residence is within 500 feet of the Mountclair PCS site.
3. By order dated September 6, 1996, the Public Service Commission issued its certificate Of Public Convenience and Necessity ("Certificate") to construct an

antenna tower located at 1306 Buck Creek Road Shelby County, Kentucky.

4. Pursuant to KRS 278et.seq. and the regulation propounded thereunder, each person who owns property or who resides within five hundred feet (500") of proposed construction is required to be notified, with invitation to intervene, or otherwise object or comment upon the subject of the Application.

5. Respondent, as a part of its Application to construct the referenced tower, falsely verified to the PSC that all affected property owners had been notified thereby causing the above Certificate to be issued under false and fraudulent circumstances.

6. Petitioners did not receive the notification required by statute and as falsely verified by the Respondent as part of its Application for the Certificate.

7. Respondent has begun construction of the above referenced tower. Unless the construction of said tower is halted immediately, irreparable harm will occur to the Petitioners and others as yet unidentified.

WHEREFORE, the Petitioners demand as follows:

1. Immediate withdrawal or suspension by the Commission of the Certificate for the construction of antenna tower at the Mountclair PCS site;
2. Opportunity of the Petitioners to be heard;
3. Any and all other relief to which they may be justly entitled including attorneys fees.

Respectfully submitted,



Stephen B. Pence
John K. Gordinier
Pedley Zielke Gordinier Olt & Pence
455 S. Fourth Avenue
1150 Starks Building
Louisville, Kentucky 40202
(502) 589-4600

VERIFICATION

I, Lisa Fleming, the plaintiff herein, swear that the statements contained in the foregoing Complaint are true and correct to the best of my knowledge and belief.

Lisa Fleming

Lisa Fleming

Subscribed and sworn to and acknowledged before me by Lisa Fleming on this 4th day of October, 1996.

My commission expires: 4-5-2000

Kyrene Greene

Notary Public

I, Joseph Ware, the plaintiff herein, swear that the statements contained in the foregoing Complaint are true and correct to the best of my knowledge and belief.

Joseph Ware

Joseph Ware

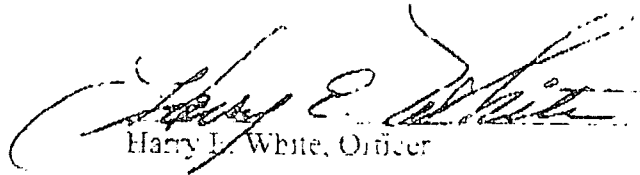
Subscribed and sworn to and acknowledged before me by Joseph Ware on this 4th day of October, 1996.

My commission expires: 4-5-2000

Kyrene Greene

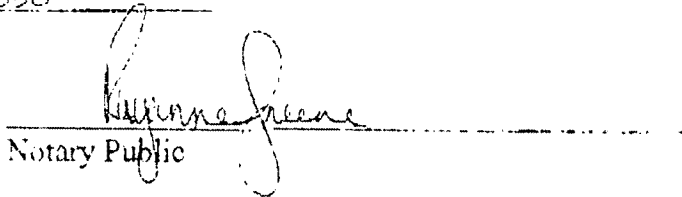
Notary Public

I, Harry E. White, Officer for Hunter Pointe Development, Petitioner herein, swear that the facts stated in the foregoing Complaint are true and correct to the best of my knowledge and belief.


Harry E. White, Officer

Subscribed and sworn to and acknowledged before me by Harry White on this 4th day of April, 1996

My commission expires 7/2000


Notary Public

Certificate of Service

A true and correct copy of the foregoing was made and delivered to the petitioner at 9000 Wessex Place, Suite 100, Louisville, Kentucky.

