

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 CONSTRUCT A PERSONAL) CASE NO.
COMMUNICATION SERVICES FACILITY IN THE LOUISVILLE) 96-240
MAJOR TRADING AREA [LONGRUN PCS FACILITY)
LV03XC0085B5])

O R D E R

On June 24, 1996, Sprint Spectrum, L.P. on behalf of WirelessCo, L.P. filed an application seeking a Certificate of Public Convenience and Necessity to build and operate a personal communications system ("PCS") facility in the Louisville Major Trading Area, which encompasses the entire Commonwealth of Kentucky. On August 9, 1996, WirelessCo, L.P., through its agent and general partner Sprint Spectrum, L.P., amended the application, stating that the jurisdictional utility and applicant in this matter is WirelessCo, L.P. WirelessCo, L.P. has requested authorization to construct a PCS site in Shelby County. WirelessCo, L.P. was previously granted the authority to operate in Case No. 96-077.¹

¹ Case No. 96-077, The Application of WirelessCo, L.P., d/b/a Sprint Telecommunications Venture for Operating Authority and Issuance of Certificate of Public Convenience and Necessity to Construct Commercial Mobile Radio Service Transmission Facilities in Kentucky.

The proposed PCS site consists of a 150-foot or less antenna tower to be located at 513 Brooks Lane, Shelby County, Kentucky ("the Brooks Lane PCS site").² WirelessCo, L.P. has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the Brooks Lane PCS site. Based upon the application, the design of the tower and foundation conforms to applicable nationally recognized building standards, and the plans have been certified by a Registered Professional Engineer.

Pursuant to KRS 100.324(1), the Brooks Lane PCS site's construction is exempt from local zoning ordinances; however, WirelessCo, L.P. notified the Shelby County Triple S Planning and Zoning Commission of the pending construction. WirelessCo, L.P. states that the Airspace Safety Analysis Corporation has concluded that the Federal Aviation Administration ("FAA") need not be notified of the proposed construction. The Kentucky Airport Zoning Commission ("KAZC") has been notified of the proposed construction. No decision by the KAZC has been filed in this docket.

WirelessCo, L.P. has verified that each person who owns property or who resides within 500 feet of the Brooks Lane PCS site has been notified of the pending construction. The notice solicited any comments and informed the property owners and residents of their right to intervene. In addition, notice was posted in a visible location on the proposed site for at least two weeks after WirelessCo, L.P.'s application was filed. Numerous people intervened in the case and requested a hearing which was held on February 20, 1997.

² The application originally stated WirelessCo, L.P.'s intention to construct a tower on Colt Run Road. On September 24, 1996, the application was amended to provide that the tower was proposed to be built on Brooks Lane instead.

At the hearing, intervenors raised objections to the proposed location, an agriculturally zoned area which is being subdivided into residential lots devoid of commercial development. The Commission is aware that cell site construction is exempt from local zoning ordinances. Therefore, in considering the public interest with regard to Certificates of Public Convenience and Necessity, it cannot decline to be cognizant of and sensitive to the concerns of the residents and landowners whose property is affected when it appears that diligent efforts on the part of the utility would enable it to locate a more suitable site to provide service. The Commission, having considered the evidence of record, finds that the public convenience and necessity does not require the Commission to grant this certificate.

On February 26, 1997, WirelessCo, L.P. filed a Motion to Strike Affidavit of Ronald Snyder, a document received by the Commission on the date of the hearing held in this matter. The affidavit offered allegedly expert opinions as to the effect of the proposed construction on property values. WirelessCo, L.P. states the affidavit should be stricken because WirelessCo, L.P. was deprived of the right of cross-examination as to any opinion expressed in the affidavit. WirelessCo, L.P. is, however, well aware that the Commission accepts verbal public comments at its hearings, as well as written comments from members of the public, both of which become part of the record. As opposed to sworn testimony subject to cross-examination, public comments are accorded appropriate weight by the Commission. Further, Mr. Snyder's affidavit was not necessary to the decision of the Commission in this matter. Accordingly, WirelessCo, L.P.'s Motion to Strike should be denied.

IT IS THEREFORE ORDERED that:

1. WirelessCo, L.P.'s application for a Certificate of Public Convenience and Necessity to construct a tower at 513 Brooks Lane in Shelby County, Kentucky is denied.

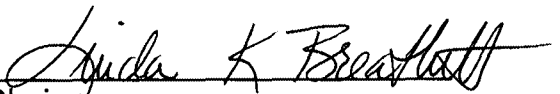
2. WirelessCo, L.P. shall investigate the feasibility of other sites within the area. If a suitable alternative site is found, WirelessCo L.P. may amend its application to reflect the new location.

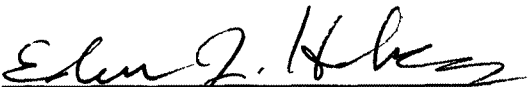
3. If no suitable alternative site is located, WirelessCo L.P. shall so inform the Commission within 60 days.

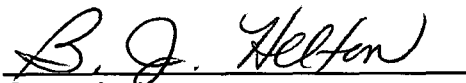
4. WirelessCo, L.P.'s Motion to Strike Affidavit of Ronald Snyder is denied.

Done at Frankfort, Kentucky, this 21st day of May, 1997.

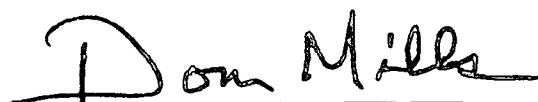
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director