

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF WIRELESSCO, L.P., BY	)	
AND THROUGH ITS AGENT AND GENERAL	)	
PARTNER SPRINT SPECTRUM, L.P., AND SBA	)	
TOWERS KENTUCKY, INC, JOINTLY, FOR	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	CASE NO. 97-355
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	
A PERSONAL COMMUNICATIONS SERVICES	)	
FACILITY IN THE LEXINGTON MAJOR TRADING	)	
AREA (ALTON FACILTY)	)	

O R D E R

On September 23, 1997, Sprint Spectrum, L.P., agent for WirelessCo., L.P. ( Sprint Spectrum ) and SBA Towers Kentucky, Inc. ( SBA ) (collectively "the Applicants") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility consists of a self-supporting antenna tower not to exceed 265 feet in height, with attached antennas, to be located at 1830 Old Frankfort Highway, Lawrenceburg, Anderson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 5' 46.5" by West Longitude 84° 55' 17.3". Sprint Spectrum has indicated that it plans to place its facilities on the proposed tower.

SBA has provided information regarding the structure of the tower, safety measures, and antenna design criteria for the proposed facility. 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 proposed facility's construction is exempt from local zoning ordinances. However, the Applicants have notified the Anderson County Planning Commission ( Planning Commission ) of the proposed construction. The Planning Commission filed comments but did not intervene in this matter. The 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 Applicants have filed notices verifying that each person who owns property within 500 feet of the proposed facility has been notified of the pending construction. The notice solicited any comments and informed the property owners of their right to request intervention. In addition, notice of the proposed construction was posted in a visible location for at least two weeks the application was filed. The Commission received several protests regarding the proposed construction. The Commission granted intervention to three parties and a hearing was held May 6, 1998.

During the hearing the Applicants provided extensive evidence in support of the proposed construction. The Applicants discussed their investigation of alternative sites suggested by the intervenors and explained their determination that none of the alternative sites would be more suitable than the proposed site at providing the necessary coverage for its wireless system. In support of its conclusion, the Applicants filed radio frequency propagation maps to show the differences in projected coverage areas for the proposed site and several alternatives proposed by the intervenors. The Applicants further argued that the proposed construction would provide for potential co-location for other wireless carriers thereby reducing the necessity of additional towers in the area.

The intervenors argue that the proposed construction is inconsistent with the character of the area and would reduce property values. In addition, they contend that the Applicants have not fully investigated alternative sites. In review of the radio frequency maps, the intervenors claim that there is no substantial difference in coverage among the proposed site and the alternative sites. The Intervenor provided evidence that at least one of the alternative sites may be available for lease.

This Commission is required by statute to ensure that utility service is adequate.<sup>1</sup> Denial of a certificate to construct is clearly inappropriate when such denial obstructs a utility's ability to provide adequate service to its customers. Furthermore, in the competitive wireless service environment, the Commission may not create competitive disadvantages when reviewing the construction of essential facilities. It is against this legal background that the Commission must assess Sprint Spectrum's contention that it requires a facility at the proposed location to provide adequate service to its customers.

According to a witness for Sprint Spectrum, the coverage objectives for the proposed construction, in addition to providing service to the community of Alton, are to establish contiguous service for subscribers traveling between Lawrenceburg and the adjacent communities of Frankfort and Waddy to the north and northwest, respectively.<sup>2</sup> Based on the expert testimony of Sprint Spectrum's witness, the proposed site would accomplish these objectives. The witness also testified that moving the facility further to the south of the proposed location would result in a loss of coverage to the north, thereby

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<sup>1</sup> See, e.g., KRS 278.040 (granting the Commission jurisdiction over rates and service of utilities); KRS 278.260 (granting original jurisdiction to the Commission over complaints regarding, *inter alia*, inadequacy of any service provided by a utility); KRS 278.080 (requiring the Commission to enforce rules governing, *inter alia*, adequacy of utility service and to ensure that facilities are adequate to provide service).

<sup>2</sup> Transcript of Evidence ( Tr. ) at 52.

jeopardizing the coverage requirements of the site. The witness advised that the proposed site was about as far to the south as [Sprint Spectrum] can tolerate.<sup>3</sup> The post hearing exhibits filed by Sprint Spectrum demonstrate that even the best alternative sites proposed by the Intervenors would result in marginally less coverage to the north and to the west when compared to the proposed site.<sup>4</sup>

Accordingly, having thoroughly reviewed the record and the applicable law, the Commission finds that the public convenience and necessity require the proposed construction and that there is no more suitable location known from which adequate service can be provided. The Commission notes that Sprint Spectrum has gone to considerable lengths to design its wireless network through use of as many existing structures as possible in order to avoid such complications as those presented in this case.<sup>5</sup> However, there are situations when construction of a facility is required. This is one of those situations.

The Commission finds that the proposed construction is necessary and that the site selected by the Applicants appears to be a suitable location for the proposed construction. The Applicants have attempted to select a site that will minimize adverse effects while still providing adequate service for its wireless system.

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<sup>3</sup> Tr. at 61.

<sup>4</sup> A witness for Powertel/Kentucky, Inc. also indicated that moving the proposed site may adversely affect service and require reversal of its decision to co-locate its facilities on this tower (Tr. at 29-32 and 34-35).

<sup>5</sup> The witness for Sprint Spectrum testified that over 70 percent of its sites are to be placed on existing structures, thereby eliminating the need for constructing additional antenna towers (Tr. at 49).

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, SBA should notify the Commission if it does not use this antenna tower to provide service in the manner set out in its 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 should be observed by SBA.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that SBA should be granted a Certificate of Public Convenience and Necessity to construct the proposed facility.

IT IS THEREFORE ORDERED that:

1. SBA is granted a Certificate of Public Convenience and Necessity to construct a self-supporting antenna tower not to exceed 265 feet in height, with attached antennas, to be located at 1830 Old Frankfort Highway, Lawrenceburg, Anderson County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 5' 46.5" by West Longitude 84° 55' 17.3".
2. The Applicants shall file a copy of the final decisions regarding its pending FAA and KAZC applications for the proposed construction within 10 days of receiving these decisions.
3. SBA 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 a period of 3 months in the manner authorized by this Order.

Done at Frankfort, Kentucky, this 2<sup>nd</sup> day of February, 1999.

By the Commission

ATTEST:

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Executive Director