

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

UNIFORM APPLICATION OF AT&T WIRELESS	)	
PCS, INC., ACTING BY AND THROUGH ITS	)	
AGENT, WIRELESS PCS, INC., FOR THE	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY TO CONSTRUCT	)	CASE NO.
A PERSONAL COMMUNICATIONS SERVICES	)	98-623-UAC
NETWORK FACILITY IN INDEPENDENCE,	)	
KENTUCKY AND CALLED THE	)	
INDEPENDENCE/CEMETERY CELL SITE, SITE	)	
#CN-241-01	)	

O R D E R

On January 11, 1999, AT&T Wireless PCS, Inc. ("AT&T Wireless") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility. The proposed facility is to be located at 5388 Madison Pike, Independence, Kenton County, Kentucky. On June 30, 1999, AT&T Wireless filed a revised site plan wherein the location of the proposed construction was moved approximately 150 feet to the southwest on the instant property. The coordinates for the proposed facility are North Latitude 38° 56' 4.94" by West Longitude 84° 32' 13.26".

AT&T Wireless 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 100.987, AT&T Wireless has notified the Kenton County and Municipal Planning and Zoning Commission ( Planning Commission ) of the proposed construction. On February 11, 1999, the Planning Commission approved the uniform application on the condition that the facility would be moved approximately 150 feet to the southwest. AT&T Wireless has 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. Both applications are pending.

AT&T Wireless has filed evidence of the appropriate notices provided pursuant to 807 KAR 5:063. The notices solicited any comments and informed the recipients of their right to request intervention. The City of Independence ("City") filed comments along with a motion to intervene that was later granted. The City is concerned that the Planning Commission's approval of the proposed construction violates KRS 381.690, which requires cities to "protect" burial grounds from use as building sites. AT&T Wireless disputes the applicability of KRS 381.690 on the facts. The issue is currently before the Kenton Circuit Court. It is not, however, before this Commission. Because the Planning Commission has approved this site, this Commission's only remaining role is to review the proposed construction for safety and service issues. KRS 278.280; KRS 278.020. The Commission is not empowered to interpret statutes other than those directly relating to utility service. Should the Kenton Circuit Court determine that construction at the proposed site is unlawful pursuant to KRS 381.690, such determination will be binding upon AT&T Wireless. In the meantime, there is no reason for this Commission to place in abeyance its review of the application pursuant to its own statutory mandate.

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, AT&T Wireless 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 AT&T Wireless.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that AT&T Wireless has demonstrated that a facility is necessary to provide adequate utility service and therefore should be granted a Certificate of Public Convenience and Necessity to construct the proposed facility.

IT IS THEREFORE ORDERED that:

1. AT&T Wireless is granted a Certificate of Public Convenience and Necessity to construct a wireless telecommunications facility to be located at 5388 Madison Pike, Independence, Kenton County, Kentucky. The coordinates for the proposed facility are North Latitude 38° 56' 4.94" by West Longitude 84° 32' 13.26".

2. AT&T Wireless 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. AT&T Wireless 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 10<sup>th</sup> day of September, 1999.

By the Commission

ATTEST:

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Executive Director