

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CROWN COMMUNICATION)
INC. AND GTE WIRELESS OF THE SOUTH, INC.)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY AT)
4805 LEESTOWN ROAD, LEXINGTON, KY 40511)
IN THE WIRELESS COMMUNICATIONS LICENSE)
AREA IN THE COMMONWEALTH OF KENTUCKY,)
IN THE COUNTY OF FAYETTE,)
SITE NAME: YARNALLTON)

CASE NO.
2000-071-UAC

O R D E R

On March 9, 2000, Crown Communication Inc. and GTE Wireless of the South, Inc. (collectively "Applicants") filed an application requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 4805 Leestown Road, Lexington, Fayette County, Kentucky 40511. The Applicants named the tower site "Yarnallton, Site Number 800792."

On April 20, 2000, the Planning Unit conducted a public meeting, discussed this communications tower application, and voted to approve the application.

Harry A. Sargent and Darlene A. Sargent, his wife, and Kenneth E. Page notified the Commission in writing of their desire to fully intervene in this case. The Commission finds that such intervention is likely to present issues and develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Accordingly, the requests for full intervention should be granted.

In addition, the Commission, on its own motion, has scheduled a hearing on the proposed wireless telecommunications facility for February 15, 2001 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

If Mr. and Mrs. Sargent and Kenneth E. Page ("Intervenors") wish to appear at the hearing in opposition to the proposed facility, they must, within 10 days of the date of this Order, so notify the Commission in writing, with a copy to all parties of record. If no statement of intent to appear at the hearing and present evidence against the proposed facility is received by that date, the hearing will be cancelled and submitted to the Commission for a decision based on the written record without further Orders herein.

In light of the fact that the Planning Unit has approved the uniform application, it appears that the issues to be addressed by the Commission will concern engineering, design, construction, and safety relating to the facility, and the public necessity for the construction and operation of the cellular tower facility. Issues that the Commission cannot address at hearing are land use, zoning, general character of the surrounding area, and land value. These matters are within the jurisdiction of the Planning Unit. In addition, the Commission may not consider the "environmental effects of radio frequency emissions" that comply with Federal Communication Commission standards. 47 U.S.C. § 332(c)(7).

IT IS THEREFORE ORDERED that:

1. The motions of Mr. and Mrs. Sargent and Kenneth E. Page to fully intervene are granted.

2. The Intervenors shall be entitled to the full rights of a party and shall be served with Commission Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by the parties after the date of this Order.

3. Should the Intervenors file documents of any kind with the Commission during the course of these proceedings, they shall also serve a copy of said documents on all parties of record.

4. A hearing on the proposed wireless telecommunications facility is scheduled for February 15, 2001 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1, of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

5. In regard to the uniform application, proceeding, and hearing, it is understood and ordered that the Federal Communications Commission has exclusive jurisdiction over issues regarding radio frequency emissions, including radio frequency interference. 47 U.S.C. 332(c) and Southwest Bell Wireless, Inc. v. Johnson County Board of Education Commissioners, 199 F.3d 1185 (10th Cir. 1999). "In the Communication Amendments Act of 1982, Congress gave the Federal Communications Commission the explicit authority to regulate home electronic equipment with the potential to cause radio frequency interference" (at page 1191). In light of the local Planning Unit's approval of the application, the only issues related to this proceeding are safety [as related to the design and construction of the tower] and the public necessity or service for the construction of said tower. Issues specifically not at issue in these proceedings are land use or zoning, potential effects of a tower on the

surrounding area, land value, and matters that are related to radio frequency and radio frequency interference.

6. The Applicants shall appear at the hearing and shall be prepared to present testimony on the engineering, design, and construction of the proposed facility, as well as the safety issues relating to the facility and to the public necessity for the facility.

7. Neither opening statements nor witnesses' summaries of prefiled testimony shall be permitted at the hearing.

8. Any interested person shall have the opportunity to present testimony or comment on the proposed facility.

9. Prefiled testimony, if any, shall be filed within 35 days of the date of this Order.

10. Pursuant to KRS 100.324, a copy of this Order is being sent to the Planning Unit at 200 East Main Street, Lexington, Kentucky 40507 to notify it that the above-scheduled hearing may affect location or relocation of service facilities within the Planning Unit's jurisdiction and to allow it the opportunity to intervene within 10 days of the date of this Order if it so desires.

Done at Frankfort, Kentucky, this 21st day of December, 2000.

By the Commission

ATTEST:


Executive Director