

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SPRINTCOM, INC.,	)	
FOR ISSUANCE OF A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY	)	CASE NO.
TO CONSTRUCT A PERSONAL	)	2000-143-UAC
COMMUNICATIONS SERVICES FACILITY	)	
IN THE CINCINNATI BASIC TRADING AREA	)	
(SLAMMERS FACILITY)	)	

O R D E R

On March 28, 2000, SprintCom, Inc. (“Applicant”) filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 7567 Mall Road, Florence, Boone County, Kentucky. On July 19, 2000, the Boone County Planning and Zoning Commission conditionally approved the application, pending verification of the elevation of a proposed alternative site. On September 15, 2000, Applicant amended its application. On November 6, 2000, the Applicant and the Boone County Planning and Zoning Commission jointly requested that the application be returned to the Boone County Planning and Zoning Commission for further consideration of an alternative site because the condition upon which approval had been granted was not met. The elevation of a proposed alternative site was different than that originally provided to Boone County Planning and Zoning by the Applicant.

Bruce A. Krone and J. Blair Fields III (“Intervenors”) were granted intervention in this matter on October 6, 2000. Intervenors were granted 15 days from the October 6, 2000 Order to file any potential alternative sites for the proposed construction and

any requests for information. By that same Order the Intervenor were notified that they may not produce evidence regarding any alternative site at any hearing which may be scheduled other than those filed of record as of the date specified. Moreover, Applicant was provided 30 days from the October 6, 2000 Order in which to respond to any proposed alternative sites. Such report was to include the feasibility of the alternative sites.

On January 8, 2001, the Boone County Planning and Zoning Commission filed its denial of the proposed site. On March 23, 2001, the Applicant filed a motion to override the denial by the Boone County Planning and Zoning Commission. The Applicant argues that the Boone County Planning and Zoning Commission has not supported its findings by substantial evidence, that no more appropriate site is reasonably available, and that public convenience and necessity require approval of this specific site.

The Commission, on its own motion, has scheduled a hearing in this matter for June 5, 2001 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's office at 211 Sower Boulevard, Frankfort, Kentucky.

If the Intervenor wish to appear at the hearing in opposition to the application and 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 the matter will be submitted to the Commission for a decision based upon the written record without further Orders herein.

The Intervenor are hereby notified that the hearing will be conducted pursuant to the evidentiary standards of KRS 278.650(4). Evidence regarding potential

alternative sites for the proposed construction and any requests for information have already been filed with the Commission. No Intervenor may produce evidence at the hearing regarding alternative sites not already noted in this proceeding. Any additional response by Applicants regarding potential alternative sites shall be filed within 20 days from the date of this Order.

Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(4), alternative sites, if any, engineering, design, construction, and safety of the facility, and the public necessity for the construction and operation of the facility. In this proceeding and hearing, the Federal Communications Commission ("FCC") has exclusive jurisdiction over radio emissions, including radio frequency interference. The Commission will not consider the "environmental effects of radio frequency emissions" that comply with FCC standards. 47 U.S.C. § 332(c)(7).

Accordingly, IT IS THEREFORE ORDERED that:

1. A hearing on the proposed wireless telecommunications facility is scheduled for June 5 2001, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

2. If the Intervenors or the Boone County Planning and Zoning Commission intend to appear at the hearing and present evidence against the construction of the tower, they shall file a statement of intent to appear in opposition to the proposed telecommunications facility within 10 days from the date of this Order. If no statement is filed within 10 days from the date of this Order, the hearing shall be cancelled and the matter shall be submitted to the Commission on the existing record without further Orders herein.

3. During this proceeding and public hearing, it is understood and ordered that the FCC has exclusive jurisdiction over issues regarding radio frequency, including radio frequency interference, pursuant to 47 U.S.C. § 332(c) and Southwest Bell Wireless, Inc. v. Johnson County Board of Education, 1999 F.3d 1185 (10<sup>th</sup> Cir. 1999).

4. Issues to be addressed at hearing by testimony and evidence are those relating to KRS 278.650(4), alternative sites, if any, engineering, design, construction, and safety of the facility, and the public necessity for the construction and operation of the facility.

5. Unless the hearing is cancelled, Applicants shall appear at the hearing and shall be prepared to present testimony and evidence regarding the matters set out herein, including safety and public necessity issues.

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

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

8. Prefiled testimony, if any, shall be filed within 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 3<sup>rd</sup> day of May, 2001.

By the Commission

ATTEST:

  
Executive Director