

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CROWN COMMUNICATION)	
INC. AND KENTUCKY CGSA, INC. FOR)	
ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO CONSTRUCT)	
A WIRELESS COMMUNICATIONS FACILITY AT)	CASE NO.
1568 CYNTHIANA ROAD, PARIS KY 40361)	2000-365-UAC
IN THE WIRELESS COMMUNICATIONS LICENSE AREA)	
IN THE COMMONWEALTH OF KENTUCKY)	
IN THE COUNTY OF BOURBON)	
SITE NAME: PEACOCK)	

O R D E R

On August 3, 2000, Crown Communication Inc. and Kentucky CGSA, Inc. (collectively "Applicants") filed an application with the Commission requesting a Certificate of Public Convenience and Necessity to construct and operate a wireless telecommunications facility at 1568 Cynthiana Road, Parks, Bourbon County, Kentucky. On August 22, 2000, Mary McClinton Clay requested intervention and on August 23, 2000, the Paris/Bourbon County Joint Planning Commission ("Planning Unit"), by counsel, filed a motion for full intervention. The Commission granted the motions on October 6, 2000.

The proposed site is in a jurisdiction in which the Planning Unit has adopted planning and zoning regulations in accordance with KRS Chapter 100, but the Planning Unit has not stated its intent to plan for and regulate the setting of cellular antenna towers by officially registering with the Commission pursuant to KRS 100.987(1).

On December 8, 2000, the Planning Unit, by counsel, moved to consolidate the case herein with Case No. 2000-366-UAC.¹ Case No. 2000-366-UAC concerns a proposed site on Clintonville Road, Paris, Bourbon County, Kentucky. The Applicants filed their objection to the Planning Unit's motion on December 14, 2000. After considering the motion and the objection thereto (which sets out sufficient cause for the denial of the motion), the Commission finds that the cases present different issues such that consolidation would not serve the interests of the efficiency and clarity in the processing of these matters. Accordingly, the motion to consolidate should be denied.²

The Commission, on its own motion, has scheduled a hearing in this matter for March 8, 2001 at 9:00 a.m., Eastern Standard Time, in Hearing Room 2 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

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

¹ Case No. 2000-366-UAC, The Application of Crown Communication Inc. and Kentucky CGSA, Inc. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility at 681 Clintonville, Paris, Kentucky 40361, in the Wireless Communications License Area in the Commonwealth of Kentucky, in the County of Bourbon, Site Name: Paris Downtown.

² By Order dated January 11, 2001, the Commission denied the motion to consolidate in Case No. 2000-366-UAC.

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).

IT IS THEREFORE ORDERED that:

1. The motion of the Planning Unit to consolidate cases is denied.
2. A hearing on the proposed wireless telecommunications facility is scheduled for March 8, 2001 at 9:00 a.m., Eastern Standard Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.
3. If the Intervenors 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 of the date of this Order. If no statement is filed within 10 days of 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.

4. Applicants may file additional responses in writing to information requests and potential alternative sites, if any, within 20 days of the date of this Order, and shall include in their responses information concerning the availability and feasibility of suggested alternative sites.

5. 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 (10th Cir. 1999).

6. 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.

7. 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.

8. Neither opening statements or witnesses' summaries of prefiled testimony shall be permitted at the hearing.

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

10. Prefiled testimony, if any, shall be filed within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 2nd day of February, 2001.

By the Commission

ATTEST:


Executive Director